# DEPARTMENT OF REGULATORY AGENCIES

## Division of Insurance

### 3 CCR 702-5

### PROPERTY AND CASUALTY

**Amended Regulation 5-1-14**

**PENALTIES FOR FAILURE TO PROMPTLY ADDRESS PROPERTY AND CASUALTY FIRST PARTY CLAIMS**


Section 1 Authority
Section 2 Scope and Purpose
Section 3 Applicability
Section 4 Rules
Section 5 Severability
Section 6 Enforcement
Section 7 Effective Date
Section 8 History


**Section 1 Authority**

This regulation is promulgated and adopted by the Commissioner of Insurance pursuant to §§ 10-1-109 and 10-3-1110, C.R.S.

**Section 2 Scope and Purpose**

The purpose of this regulation is to describe the procedure and circumstances under which penalties will be imposed for failure to make timely decisions and/or payment on first party claims.

**Section 3 Applicability**

This rule shall apply to all insurers authorized to write property and casualty insurance in the state of Colorado.

**Section 4 Rules**

A. Timely Decisions and Payment of Benefits

1. Penalties

a. All insurers authorized to write property and casualty insurance policies in Colorado, shall make a decision on claims and/or pay benefits due under the policy within sixty (60) days after receipt of a valid and complete claim unless there is a reasonable dispute between the parties concerning such claim, and provided the insured has complied with the terms and conditions of the policy of insurance.

b. If an insurer fails to make a decision and/or pay benefits due under the policy within sixty (60) days after a valid and complete claim has been received, and there is not a reasonable dispute between the parties, and the insured has complied with the terms and conditions of the policy of insurance, the

Commissioner of Insurance may impose the following penalties to be paid by the insurer to the insured:

(1) If the claim is $100.00 or less, the penalty shall not be more than $20.00;

(2) If the claim is more than $100.00, the penalty shall be 8 percent annual interest on the amount of benefits due, computed from the latest of the time a valid and complete claim is received, the reasonable dispute was resolved, or the insured complied with the terms and conditions of the policy, until the time the benefits due are paid by the insurer.

c. In addition to such penalties payable to the claimant, the Commissioner of Insurance, after notice and hearing, may assess a civil penalty against any insurer of $100.00 per day for each day benefit payments are delayed more than sixty (60) days after a valid and complete filing of the claim unless there is a reasonable dispute between the parties concerning such claim.

2. Conditions

a. A valid and complete claim is deemed received by the insurer when:

(1) All information and documents necessary to prove the insured's claim have been received by the insurer;

(2) A reasonable investigation of the information submitted has been completed by the insurer, in compliance with §10-3-1104, C.R.S.;

(3) The terms and conditions of the policy have been complied with by the insured;

(4) Coverage under the policy for the insured has been established for the claim submitted;

(5) There are no indicators on the claim requiring additional investigation before a decision can be made; and/or

(6) All repairs have been satisfactorily completed and the insured has given authorization to pay; and/or

(7) Negotiations or appraisals to determine the value of the claim have been completed; and/or

(8) Any litigation on the claim has been finally and fully adjudicated.

b. A reasonable dispute may include, but is not limited to:

(1) Information necessary to make a decision on the claim has not been submitted or obtained;

(2) Conflicting information is submitted or obtained and additional investigation is necessary;

(3) The insured is not in compliance with the terms and conditions of the policy;

(4) Coverage under the policy for the loss claimed has not been determined;

(5) Indicators are present in the application or submission of the claim and additional investigation is necessary;

(6) Litigation is commenced on the claim; or

(7) Negotiations or appraisals are in process to determine the value of a claim.

3. A good faith offer by the insurer to the insured within sixty (60) days after the receipt of a valid and complete claim satisfies the requirements under this regulation.

4. If claims for benefits are processed by a third party administrator or other entity acting on behalf of the insurer, or if the insured is represented by a third party, the failure of the third party to comply with the terms of the policy or this regulation, shall be the failure of the insurer or insured respectively.

5. In all actions initiated under this regulation, the insured shall have the burden of proving to the Commissioner of Insurance that he/she submitted a valid and complete claim to the insurer.

6. The insurer shall have the burden of proving to the Commissioner of Insurance that a reasonable dispute existed.

7. If it is determined that benefits are due to the insured, the insurer must issue a payment to the insured within sixty (60) days of a valid and complete claim being received, if all the conditions in the definition herein are met.

8. In the event of a significant catastrophe resulting in multiple claims, an insurer may notify the Commissioner of Insurance of the nature and extent of the catastrophe and request a deviation or exemption from this regulation.

B. Reasonable Investigation

1. The Commissioner of Insurance recognizes that the scope of an investigation can be determined, in part, to be reasonable based on the terms and conditions of the policy and the facts and circumstances of each claim. It may include, but is not limited to:

a. Reports from police or other law or fire enforcement authorities;

b. Scene investigations;

c. Photographs, videotaped evidence;

d. Surveillance information;

e. Statements or reports from the insureds, claimants, other parties, witnesses, or anyone who may have knowledge of elements of the claim;

f. Repair estimates;

g. Reports from relevant experts;

h. Credit reports and financial information;

i. Information on prior, concurrent or subsequent claims; or

j. Other relevant information.

2. Documentation that a reasonable investigation has been conducted shall be maintained in the claim file. Such documentation may include, but is not limited to:

a. Adjuster's log notes;

b. Copies of written communications;

c. Written reports used in the investigation of a claim;

d. Status reports;

e. Evidence of payments; or

f. Other relevant information.

3. When an investigation is incomplete or is otherwise continued and the insurer has not paid the claim within the time required under section 4.A.1. above, the insurer shall immediately notify the insured or the insured's representative, if applicable, of the reason(s) the claim has not been paid. Additionally, if the claim is not paid within the time requirement under section 4.A.1., above, the insurer shall, every thirty (30) days thereafter, send to the insured or the insured's representative a letter setting forth the reason(s) additional time is needed for investigation. This requirement is not intended to alter any terms of the contract between the insurer and insured regarding their respective rights, duties, and obligations and the law involving such matters.

4. If the claim has not been paid because an investigation is underway, the insurer shall document in the claim file the actions being taken to investigate the claim and the efforts being made to promptly conclude the investigation.

5. The claim file documentation required by this regulation will be reviewed by the Division of Insurance during an investigation of a complaint or during a market conduct examination to determine if the requirements of §10-3-1104(1)(h), C.R.S. and this regulation have been met.

**Section 5 Severability**

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

**Section 6 Enforcement**

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

**Section 7 Effective Date**

This regulation shall become effective on September 1, 2012.

**Section 8 History**

New regulation 5-1-14 effective May 1, 2001.
Amended regulation effective December 1, 2001.
Amended regulation effective February 1, 2004.
Amended regulation effective September 1, 2012.