



ROBIN SMITH WESTCOTT, ESQ.
INSURANCE CONSUMER ADVOCATE

October 30, 2012

Kevin McCarty, Insurance Commissioner
Office of Insurance Regulation
200 East Gaines Street, Larson Building
Tallahassee, FL 32399

RE: Post-Claim Underwriting
Denial of Claims and Voiding of Coverage for Credit History

Dear Commissioner McCarty:

I am writing to inform you of a troubling new trend, and potentially unlawful action, of post-claim underwriting of homeowners' policies. This activity threatens not only homeowners' financial stability but also the state's economic recovery.

It has come to my attention through consumer complaints to this office as well as the Division of Consumer Services that policies are being cancelled or rescinded years after the initial application based on what I believe is abusive and inappropriate application of Section 627.409, Florida Statutes, (representations in applications) in conjunction with the notice of cancellation provisions found in Section 627.4133, Florida Statutes, and certain underwriting guidelines to circumvent payment of claims and void policies.

It appears many insurance companies are using bankruptcy, liens, judgments and perhaps foreclosures as a reason to find Floridians ineligible for a HO-3 Homeowners' policy. With Florida leading the nation in bankruptcies and foreclosures, many homeowners are finding themselves in these types of financial situations. Such underwriting restrictions put all Floridians at risk as more homeowners will be driven to Citizens Property Insurance Corporation and will be unqualified for coverage in the private marketplace.

APPOINTED BY JEFF ATWATER, CHIEF FINANCIAL OFFICER, STATE OF FLORIDA
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The post-claim underwriting scenario is occurring as follows:

- (1) Underwriting guidelines are submitted and approved that allow companies to use credit reports to **verify** representations made by the insured in the application for coverage. Also contained in the underwriting guidelines are exclusions for applicants that had previous bankruptcies, liens or foreclosures occurring prior to the application.
- (2) The policyholder purchases a policy and diligently pays the premium, sometimes for years, expecting that in their time of need, the insurance company will perform under the contract of insurance and relying upon the representation that the largest asset they possess is protected.
- (3) Upon reporting of a claim, the insurer then runs the credit history to verify that the information submitted regarding credit history was accurate.
- (4) If there is any inconsistency in the application with regard to representations about the insured's credit, the insurance company deems this to be a material misrepresentation and then denies the claim and/or cancels the policy void ab-initio.

In the three cases that have been handled in my office, the policyholders have had insurance coverage with Universal Property and Casualty Insurance Company (Universal) for at least 18 months and up to four years and have had their policies cancelled or rescinded as of the original policy's effective date for misrepresentation after they filed a claim. All cases involved previous financial issues such as bankruptcy or a lien which occurred up to four years before the consumer applied for insurance coverage with Universal.

In addition, two of the consumers had HO-6 policy forms. During our initial review, it was found that Universal's underwriting guidelines pertaining to bankruptcy and other financial issues apply only to its HO-3 policy form. On June 22, 2012, we brought this issue to Universal's attention and the policy in question was reinstated and the claim paid. At that time, we were confident that Universal had taken the necessary steps to correct its claims handling procedures. However, on October 12, 2012, my office was contacted by another consumer who had their HO-6 policy rescinded on July 31, 2012, after reporting a claim on a policy that had been in force since November 29, 2010. Universal is currently standing by their decision to void this policy.

Of greater concern and a potentially unlawful action is the voiding of these policies and cancellation of these policies ab initio. This places the insurance consumer in a precarious circumstance. Since the policy has been cancelled for the cited reason of misrepresentation, no admitted carrier, including Citizens Property Insurance Corporation, will write their policy and as a homeowner bound by terms of a mortgage, they must retroactively purchase coverage under a lender-placed program. The homeowner is left with no other choice and may not be able to afford the lender-placed coverage and therefore may not be able to keep their home. The provisions for cancellation of a policy under Section 627.4133, Florida Statutes, recognize that an insurer may cancel after the initial 90 days of coverage for a material misrepresentation;

however, there is only one circumstance cited in this statute allowing an insurer to void coverage and cancel ab initio and that is for a dishonored check received as the initial premium payment. This would also seem to contradict the provisions of Section 627.409(2), Florida Statutes, on misrepresentation in applications which supports a higher threshold for voiding a policy under this provision.

I believe that the practice described to void coverage and/or deny claims for misstatements relative to credit history is an abusive practice that should be considered an unfair trade practice. Many consumer advocates question the legitimacy of using credit as a reliable predictor of risk and the Florida Legislature has strictly regulated the use of credit reports and credit scores for underwriting purposes, as specified in Section 626.9741, Florida Statutes, to prohibit insurers from using credit information in an abusive or discriminatory fashion.

I believe consumers have a duty to be truthful on their applications for insurance, but I also think that insurance companies must use Credit Reports, CLUE Reports, ChoicePoint, MVRs and any other investigative tool readily available to them within the first 90 days of the policy's effective date if the true intent is to verify the information provided in the application. Failure to do so leaves vulnerable policyholders with a false sense of security and a real potential financial disaster. Further, if credit information is important enough to be considered in the acceptance of risk and truly *material* to the binding of the policy, the burden to verify the credit information should be undertaken by the insurer at the implementation of the policy. The practice of ignoring readily available information to your potential advantage (collecting premium) and using it only when convenient (denying the claim) reeks of the same business practice we have seen recently for the use of the death rolls.

By my statutory authority as found in Section 627.0613, Florida Statutes, I am recommending the investigation and commencement of action against any admitted insurance carrier, including but not limited to Universal Property and Casualty Insurance Company, that employs the business practice of routinely using credit information obtained after a claim has been filed to deny a claim or void coverage.

We would encourage working with insurance companies to place reasonable standards in the underwriting criteria that recognize Florida's unique circumstance with regard to the foreclosure crisis. Almost half of the mortgages in our state are upside down and there is still an inventory

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of homes entering the foreclosure process. If the private sector intends to meet the needs of Florida insurance consumers, they must contemplate these circumstances and be ready to respond with reasonable underwriting criteria that provide a true understanding of their risk and provide the consumers of our state access to their products.

I look forward to hearing from you on this important consumer issue.

With regards,

A handwritten signature in blue ink, appearing to read "Robin Smith Westcott", with a long horizontal flourish extending to the right.

Robin Smith Westcott, Esq.

Attachments

cc: Jeff Atwater, Chief Financial Officer
Belinda Miller, Esq., General Counsel
Richard Koon, Deputy Commissioner, P&C Financial Oversight / Product Review
Sandra Starnes, Director, P&C Product Review
Jim Pafford, Director of Market Investigations
Tasha Carter, Director, Division of Consumers Services

Statutory References: Sections 627.4133(1)(b), 2.; 627.409(1)(a) & (b), (2); 626.9741; and 627.0613, Florida Statutes.

UNIVERSAL PROPERTY AND CASUALTY INSURANCE COMPANY
FLORIDA PERSONAL PROPERTY MANUAL
HOMEBOWNERS SECTION
PAGE 18
EDITION 06/07

APPROVED
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OFFICE OF INSURANCE REGULATION

100. ADDITIONAL UNDERWRITING REQUIREMENTS

The following underwriting rules are in addition to those located elsewhere in the Homeowners section of the manual.

- A. Risks meeting one or more of the following cannot be bound.
1. Risks written on Forms HO 00 03, HO 00 04 or HO 00 06 who have sustained more than one loss, excluding Act of God losses, during the last thirty-six (36) month period. Risks written on Form HO 00 08 who have sustained more than four losses, excluding Act of God losses, during the last five (5) year period.
 2. Risks with a previous water damage loss during the last thirty-six (36) month period. These risks are not eligible for Forms HO 00 03, HO 00 04, or HO 00 06. (These risks may be eligible for consideration under Form HO 00 08 and may be bound in accordance with Company guidelines.
 3. First Party Lawsuit-Any applicant or named insured who has been involved in a first party personal lines lawsuit against an auto or homeowners insurance company.
 4. Alcohol or Illegal Substances, Assault or Battery of any kind, and Disorderly Conduct - Any applicant or named insured who has been arrested for driving under the influence of alcohol or any illegal substance, or for Assault or Battery of any kind, or disorderly conduct.
 6. Drivers License - Any applicant or named insured whose drivers license has been suspended in the last 5 years; or
 6. Any applicant or named insured who has been convicted of or plead guilty (nolo contendere) to a felony in the last 10 years.
- B. Risks meeting one or more of the following will not be bound on Form HO 00 03. Risks may be eligible for Form HO 00 08 in accordance with this Manual and binding guidelines in effect for the Company:
1. Bankruptcy in the last 60 months;
 2. Risks subject to any lien with the last 60 months;
 3. Risks subject to any judgment in the last 60 months;
 4. Risks subject to any voluntary repossession in the last 60 months;
 5. Risks subject to any involuntary repossession in the last 60 months;
 6. Risks with immediate prior coverage not in authorized, voluntary market;
 7. Risks with one or more water damage claim(s).
- C. The Company does not use credit reports or a credit scoring system in initial underwriting, provided, however, that the Company may obtain a credit report to verify representations made by the applicant, insured, or resident. In the event the Company obtains a credit report for verification purposes, the following will apply:
1. The Company will not request a credit report based upon the race, color, religion, marital status, age, gender, income, national origin, or place of residence of the applicant, insured, or resident.
 2. The Company will obtain credit reports only from nationally recognized consumer credit reporting agencies (Equifax, Transunion, etc.) or their successors.
 3. The Company will not make an adverse decision based solely on the basis of information in a credit report without consideration of any other underwriting or rating factor.
 4. The Company will not make an adverse decision based in whole or in part on the absence of a credit history or insufficient credit history, collection accounts with a medical industry code (if identified in the credit report), place of residence, or any other circumstance set forth in a rule promulgated by the Florida Financial Services Commission.
 5. The Company will not consider the number of credit inquiries identified in a report.