

**Maryland General Assembly
Department of Legislative Services**

**Reproposed Regulations
Maryland Insurance Administration
(DLS Control No. 14-115)**

Overview and Legal and Fiscal Impact

These reproposed regulations clarify the scope of the original proposed regulations, change certain defined terms to more descriptive terms, add definitions for “flood” and “water” and delete unnecessary references to “waterborne material.” In addition, these reproposed regulations clarify that an offer for coverage by an insurer is for loss caused by water that backs up into a dwelling or other covered structure and authorize an insurer that makes an offer of coverage for loss caused by water that backs up through sewers or drains with certain limits, to also offer the coverage with a combined single limit.

These reproposed regulations present no legal issues of concern.

Special fund revenues for the Insurance Regulation Fund increase minimally in fiscal 2015.

Regulations of COMAR Affected

Maryland Insurance Administration:

Property and Casualty Insurance: Coverage for Loss Caused by Water That Backs Up Through Sewers or Drains: COMAR 31.08.14.01-.03

Legal Analysis

Background

The proposed regulations were originally published in the October 4, 2013 issue of the *Maryland Register*. As the Maryland Insurance Administration made several substantive changes to the original submission, the administration has submitted these reproposed regulations.

Summary of Original Proposed Regulations

The regulations implement § 19-202 of the Insurance Article by establishing standards for the offer of coverage, under a homeowner’s insurance policy, for loss caused by sewer or drain water backup.

New Regulation 31.08.14.01 provides definitions for the chapter. Regulation .01B(7) specifies that “homeowner’s insurance” means insurance for residential property under a

homeowner's, condominium owner's, townhome owner's, mobile homeowner's, renter's, or non-commercial farm owner's policy, but does not include an umbrella policy.

New Regulation 31.08.14.02A requires, in accordance with § 19-202(a), an insurer that issues, sells, or delivers a policy of homeowner's insurance in the State to offer in writing at time of application and renewal to provide coverage for loss that (1) is caused by or results from water that backs up through sewers or drains and (2) is not caused by the negligence of the insured. New Regulation .02B requires that the insurer offer coverage for loss caused by sewer or drain water backup with limits equal to the limits of liability for specified coverage under the policy of homeowner's insurance. New Regulation .02C authorizes an insurer that offers coverage in satisfaction of Regulation .02B to also offer coverage for loss caused by sewer or drain water backup with limits less than the limits for specified coverage under the policy of homeowner's insurance.

Summary of Reproposed Regulations

These reproposed regulations clarify the scope of the regulations. New Regulation .01 specifies that the chapter does not apply to losses caused by a flood.

The reproposed regulations amend the definitions for the chapter. First, the reproposed regulations change "Coverage A," "Coverage B," "Coverage C," and "Coverage D" to be "dwelling coverage," "other structure coverage," "personal property coverage," and "loss-of-use coverage," respectively. In addition, the reproposed regulations define "flood" as a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, the unusual and rapid accumulation or runoff of surface water from any source, and specified mudslides that are proximately caused by the unusual and rapid accumulation or runoff of surface water from any source. The definition includes inundation or overflow due to the collapse or subsidence of land along the shore of a body of water as a result of erosion or undermining under certain circumstances. The reproposed regulations also define "water" to include sewage and other waterborne waste matter; consequently, instances of "waterborne material" are deleted from the chapter as unnecessary.

As amended, Regulation 31.08.14.03A clarifies that an offer for coverage by an insurer is for loss caused by water that backs up into a dwelling or other covered structure. In addition, as amended, Regulation .03C authorizes an insurer that makes an offer of coverage for loss caused by water that backs up through sewers or drains with certain limits, to also offer the coverage with a combined single limit that is equal to or less than the highest limit of liability under the policy of homeowner's insurance.

Legal Issue

These reproposed regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The Maryland Insurance Administration cites §§ 2-109 and 19-202 of the Insurance Article as authority for the regulations. More specifically, authority for the regulations is provided by § 2-109(a)(1), which establishes the general authority of the Maryland Insurance Commissioner to adopt regulations to carry out the Insurance Article. As noted above, § 19-202

concerns offers for coverage, under a homeowner's insurance policy, for loss caused by sewer or drain water backup.

The cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

Special fund revenues for the Insurance Regulation Fund increase minimally in fiscal 2015.

Agency Estimate of Projected Fiscal Impact

Insurers that issue a homeowner's insurance policy but do not currently meet the requirements of the regulations will be required to file revised rates and forms with the Maryland Insurance Administration and pay \$125 for each rate and form filing. The administration advises that, in fiscal 2013, there were about 120 insurance companies writing homeowners insurance in the State, and most were in compliance with the proposed regulation. While an estimate of the additional rate and form filings necessary to comply with the regulations is unknown at this time, the revenue from such filings is anticipated to be minimal. The administration can review any additional rate and form filings with existing budgeted resources. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The administration advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

Legal Analysis: George H. Butler, Jr. – (410) 946/(301) 970-5350

Fiscal Analysis: Richard L. Duncan – (410) 946/(301) 970-5510