

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 904 (Delegate Olszewski)
Economic Matters

Homeowner's Insurance - Action for Bad Faith Settlement of or Bad Faith Failure to Settle a Claim

This emergency bill establishes requirements with which an insured must comply in order to file a civil action against an insurer for bad faith settlement of – or bad faith failure to settle – a claim under a homeowner’s insurance policy.

The bill applies to a claim made by an insured under a homeowner’s insurance policy filed on or after September 17, 2003, if a full release has not been given by the insured.

Fiscal Summary

State Effect: The bill is not expected to materially affect the finances or operations of the Maryland Insurance Administration (MIA) or the Judiciary.

Local Effect: None – see effect on Judiciary above.

Small Business Effect: Minimal.

Analysis

Bill Summary: At least 30 days before filing the action, written notice of the insured’s intent to file an action, meeting specified criteria, must be sent by certified mail to the insured’s insurer.

Within five days after receiving the notice, the insurer may request that the insured allow reasonable access for the insurer or insurer’s agent to inspect the insured property to

determine the nature and cause of the loss, as well as the nature and cost of repairs in accordance with the policy. The insurer may also request that the insured provide any evidence not previously provided that establishes the nature and cause of the loss or the nature and cost of repairs. Evidence provided under this provision may include any evidence discoverable under the Maryland Rules. An insurer may not allege that an insured has denied reasonable access on the grounds that repairs, restorations, or replacements have been completed before an inspection of the insured property is conducted.

Within 10 days after the earlier of the inspection or the receipt of the requested evidence, an insurer is required to send a written response. The response must be sent by certified mail or personal delivery. It must also either offer to settle the claim and state the amount of the offer or state that the insurer refuses to settle.

Within 15 days after receiving a settlement offer, the insured must send a written notice to the insurer by certified mail accepting the settlement offer or rejecting it (including the reason for the rejection).

An insured may file an action without further notice if the insurer does not send a written response to the insured as required under the bill or states in its response that it refuses to settle the claim. A claimant who files an action under the bill must send specified documents to the Maryland Insurance Commissioner and the People's Insurance Counsel.

If an insurer is found to have settled a claim in bad faith or, in bad faith, failed to settle a claim, the insurer is liable to the claimant for: (1) the amount of the claimant's losses; (2) consequential damages; (3) punitive damages of up to twice the amount awarded for losses and consequential damages; and (4) reasonable attorney's fees.

Current Law: Generally, if an insured wishes to challenge a determination by its insurer that a loss is not covered under the policy or the amount of coverage, the insured may: (1) pursue a civil action for breach of contract; or (2) appeal the determination to MIA under the unfair claim settlement practices provisions. Under these provisions, it is an unfair claim settlement practice to refuse to pay a claim for an arbitrary or capricious reason. If MIA determines that the unfair claim settlement practices provisions have been violated, it may order restitution of up to the amount of actual damages, subject to the policy's limits.

MIA may impose a penalty of up to \$2,500 for each violation of the unfair claim settlement practices provisions. MIA may also issue a cease and desist order. In addition to any administrative penalty, a person who willfully violates a provision of the Insurance

Article, if a greater penalty is not applicable, is guilty of a misdemeanor and on conviction is subject to a fine of up to \$100,000.

Background: Generally, attorney's fees are not recoverable in a civil action absent a requirement in statute or a contractual agreement, or under the Maryland Rules. Under the Maryland Rules, a court must find that the conduct of a party in maintaining or defending a proceeding was in bad faith or without substantial justification before the court may require the offending party, the attorney advising the conduct, or both, to pay the adverse party's costs, including reasonable attorney's fees.

The People's Insurance Counsel, in the Office of the Attorney General, is required to review medical professional liability and homeowner's insurance matters before the Insurance Commissioner to determine whether the interests of insurance consumers are at stake. The People's Insurance Counsel may appear before the Insurance Commissioner and courts on behalf of insurance consumers in matters over which the Insurance Commissioner has original jurisdiction.

Additional Information

Prior Introductions: None.

Cross File: Although SB 721 is identified as a cross file, it is not identical.

Information Source(s): Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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