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## **The Only Constant is Change: New California Insurance Laws for 2020**

By Andrew B. Downs

The California legislature didn't exactly leave coal in the insurance industry's stocking in 2019, but it did make a number of changes to California's insurance statutes. Those changes include revisions to the manner of calculation of actual cash value, including the abrogation of the fair market value rule established by *Jefferson Ins. Co. v. Superior Court*, 3 Cal.3d 398 (1970).

In addition, changes were made regarding procedures when a third adjuster is assigned to a property insurance claim, non-renewal procedures, the Insurance Information Privacy Act, and automobile physical damage payment.

### **Actual Cash Value**

For the past 49 years, in the absence of contrary policy provisions, California has equated actual cash value with fair market value rather than replacement cost less depreciation. Many insurers have addressed that rule by including endorsements providing for replacement cost less depreciation measurement of actual cash value.

In 2019, the California legislature responded by amending Insurance Code § 2051 effective January 1, 2020. It now provides for open policies providing coverage on an actual cash value basis the measure of actual cash value for both total and partial losses is the cost of replacement or repair less "a fair and reasonable deduction for physical depreciation based upon its condition at the time of the injury." The depreciation may only be taken for "components of the structure that are normally subject to repair and replacement during the useful life of the structure."

The legislature kept the existing provision that replacement cost be calculated "as of the time of the commencement of the fire." That, of course, means "demand surge" following a wildfire is not a relevant consideration except where the insurance policy provides a more generous standard for the calculation of replacement cost.

### **Three is a Crowd: What Happens When a Third Adjuster is Assigned to a Claim**

Turnover in handling adjusters has long been a point of friction between property insurers and policyholders. For some years, California has had procedures in place to address the property adjuster turnover, but in 2019, the legislature added statutory provisions that go beyond prior procedures. Insurance Code § 14047 went into effect as an urgency bill on October 3, 2019.

Section 14047 requires an insurer who assigns a third or subsequent primary adjuster to a property claim within a six month period to do several things including (1) Provide the policyholder with a written status report; (2) Establish a primary point of contact for the policyholder, who shall remain assigned to the file until it is closed or suit has been filed; (3) Provide the policyholder with one or more direct means of communication with the primary point of contact; and (4) Ensure that the primary point of contact, upon request of the policyholder, refers and transfers the policyholder to "the appropriate supervisor with a span of control over the primary point of contact."

### **So Long, Farewell – Changes to Non-Renewal Statutes**

California has long required 45-day notice of an insurer's intent to non-renew a policy. For policies expiring on or after July 1, 2020, Insurance Code § 678 will now require a 75-day notice



of non-renewal. If the insurer does not give timely notice, the policy will remain in force, with no changes to its terms and conditions until 75 days after the notice of non-renewal is sent.

Section 678 will also require changes to the content of notices of non-renewal, including contact information for the insurer's representatives who handle complaints, and information similar to that now required in claim denial letters, advising policyholders they may have the matter reviewed by the Department of Insurance.

### **Privacy Changes, Not Quite**

In 2018 California enacted a landmark and controversial consumer privacy statute, which took effect January 1, 2020. That law includes provisions requiring businesses, such as insurers, who collect personal information about consumers, to do a number of things including notifying consumers of their right to request deletion of that information. Civil Code § 1798.105.

The California Consumer Privacy Act of 2018 has been criticized by many businesses for its breadth and for being impractical. Legislative efforts to modify it in the 2019 legislative session, including to provide an exemption when retaining the information was necessary to complete an insurance transaction, failed.

### **Automobile Physical Damage**

An amendment to Insurance Code § 560 effective January 1, 2020 permits policyholders to elect to cash out automobile physical damage claims without having the vehicle repaired provided the damage is not so serious as to compromise safety features that are part of the vehicle's operating system.