

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

FINAL TEXT OF REGULATION

DATE: December 29, 2011

REGULATION FILE REG-2010-00001

Standards and Training for Estimating Replacement Value on Homeowners' Insurance

ADD

New Section 2188.65 to Article 6.5 of Subchapter 1 of Chapter 5 of Title 10 of the California Code of Regulations, as follows.

Adopt Section 2188.65. Broker-agent Training on Estimating Replacement Value.

(a) As used in this section 2188.65 and in Insurance Code section 1749.85 the following terms have the following meanings:

(1) "Homeowners' insurance policy" shall have the same meaning as "policy of residential property insurance" as defined in subdivision (a) of Insurance Code section 10104.

(2) "Replacement value" shall have the same meaning as "replacement cost" and is defined as the amount it would cost to repair, construct, rebuild or replace a damaged or destroyed structure.

(3) "Fire and casualty broker-agent" and "personal lines broker-agent" mean holders of the licenses defined in Insurance Code sections 1625 and 1625.5, respectively. Fire and casualty broker-agents and personal lines broker-agents are also referred to as "broker-agents" in this section.

(b) On or after June 27, 2011, every California resident fire and casualty broker-agent and personal lines broker-agent who has not already taken a homeowners' insurance valuation training course must satisfactorily complete one three-hour training course on homeowners' insurance valuation meeting the requirements of this section prior to estimating the replacement value of structures in connection with, or explaining the various levels of coverage under, a homeowners' insurance policy. For resident broker-agents, this requirement shall be part of, and not in addition to, the continuing education requirements of Insurance Code section 1749.3. The homeowners' insurance valuation training course needs to be taken only once in order to satisfy the requirements of this subdivision (b).

(c) The training required by this section must be approved by the commissioner and shall consist of topics related to dwelling, fire, and homeowners' insurance. Any course taken to satisfy the requirements stated in Section 1749.85 of the Insurance Code shall use subject matter described in this article.

(d) The broker-agent shall be trained on the differences between homeowners' insurance coverage and other Fire, and Dwelling Property policies, which differences may necessitate differences in coverage or coverage levels. The broker-agent shall also be trained on the basic concepts of property insurance and estimating replacement value, which includes:

(1) How loss settlement provisions in an insurance policy apply to major claims, the potential causes of underinsurance and the potential effects that underinsurance may have on settlement;

(2) The differences in the measure of indemnity between actual cash value coverage and replacement cost coverage, as summarized in Insurance Code sections 2051, 2051.5, and 10102, including:

(A) California Residential Property Insurance Disclosure, as described in Insurance Code section 10102; and

(B) Depreciation and how it is applied under a homeowners' insurance policy;

(3) The several components and features of a structure necessary to estimate replacement cost, as well as the other costs incident to reconstruction, including at least the following:

(A) Type of foundation;

(B) Type of frame;

(C) Roofing materials and type of roof;

(D) Siding materials and type of siding;

(E) Whether the structure is located on a slope;

(F) Size of the entire structure and, separately, the square footage of the living space;

(G) Geographic location of property;

(H) Number of stories and any nonstandard interior wall heights;

(I) Materials used in, and generic types of, interior features and finishes, such as, where applicable, the type of heating and air conditioning system, walls, flooring, ceiling, fireplaces, kitchen and bath(s);

(J) Cost of demolition and debris removal;

(K) Cost of permits and architect's plans;

(L) Age of the structure or the year it was built; and

(M) Size and type of attached garage; and

(N) Additional costs associated with building a single or custom home.

(4) The effects of catastrophes on replacement cost. This includes how shortages of construction labor, building supplies, fuel, transportation issues, and permit restrictions can result in increased costs, sometimes referred to as demand surge, and delays in rebuilding.

(5) Review of the significant enhancements and endorsements to the homeowners' insurance policy, and identification of coverages that help protect against underinsurance. The review is to include:

(A) what is included and excluded in Building Code Upgrade (Ordinance and Law) Coverage, as defined in California Insurance Code section 10102; and

(B) the various types and levels of replacement cost, as defined in California Insurance Code section 10102;

(6) Review of the California Standard Form Fire Policy and FAIR (Fair Access to Insurance Requirements) Plan coverages, as described in California Insurance Code sections 2071 and 10090, respectively; review of earthquake insurance coverages as described in Insurance Code section 10081 et seq., including coverage offered by the CEA (California Earthquake Authority).

(7) Review of the types of basic building construction, including tilt-up, cinderblock, wood frame, brick and masonry, and metal frame.

(8) Review of the various methodologies of estimating replacement cost including:

- (A) Proprietary replacement cost valuation tools;
- (B) Real estate appraisals;
- (C) Insurance company's valuation software;
- (D) Contractor's and architect's estimates or opinions;
- (E) Cost per square footage estimates; and
- (F) Insured's opinion.

(9) Review of fire mitigation and how it affects insurance costs, to include:

(A) Define, recognize, and describe the fire problem in the wildland urban interface;

(B) Discuss the areas that affect the risk and hazard such as topography, fuel types and locations, weather, and construction; and

(C) Discuss current statutes and regulations that address efforts to mitigate and indicate that local codes may also apply. These statutes, regulations and codes include requirements for defensible space and fire-resistant building construction.

(e) The training required by this section 2188.65 shall ensure that the broker-agent is aware of the provisions of sections 2695.182 and 2695.183.

(f) Any course or seminar that is disapproved for the reason that it fails to comply with this section shall be presumed invalid for credit towards the continuing education requirement of this section unless the course or seminar is later approved in writing by the commissioner.

NOTE: Authority cited: Sections 790.04, 790.10, 1749.7, 1749.85, and 2051.5, Insurance Code.
Reference: Sections 790.03, 790.04, 1625, 1625.5, 1749.1, 1749.3, 1749.31, 1749.85, 2051.5, 10087, and 10104, Insurance Code.

AMEND

Section 2190.2 of Article 7 of Subchapter 1 of Chapter 5 of Title 10 of the California Code of Regulations, as follows.

Section 2190.2. Required Records.

Wherever applicable, the following records shall be maintained by every agent or broker or surplus lines broker or special lines' surplus lines broker with respect to each and every insurance transaction for at least five years after expiration or cancellation date of the policy to which the records pertain:

- (a) Name of insured,
- (b) Name of insurer,
- (c) Policy number,
- (d) Effective date, termination date and mid-term cancellation date of coverage,
- (e) Amount of gross premium,
- (f) Amount of net premium,
- (g) Amount of commission and basis on which computed,
- (h) Names of persons who receive, or are promised, any commissions or other valuable consideration related to the transaction,
- (i) Amount of premium received including itemization of any partial payments or additional premium,
- (j) Date premium received by agent or broker,
- (k) Date deposited in bank account or bank depository into which premiums are deposited or maintained in accord with Section 1733 of the Insurance Code, including but not limited to trustee accounts maintained pursuant to Section 1734 of the Insurance Code,
- (l) Name and address of bank and number of account in which premium is deposited or maintained in accord with Section 1733 of the Insurance Code, including but not limited to trustee accounts maintained pursuant to Section 1734 of the Insurance Code,
- (m) Date premium paid by agent or broker to the person entitled thereto and identification of the means of transmittal,
- (n) Amount of net and gross return premium,
- (o) Date return premium is received from insurer by agent or broker which may be the date the credit is taken from the insurer or the date the check or draft is received, ~~and~~
- (p) Date gross return premium is remitted to person entitled thereto by agent or broker and identification of means of transmittal, ~~and~~
- (q) Any documents required to be maintained pursuant to Section 2695.182 or subdivision (i) of Section 2695.183.

NOTE: Authority cited: Sections 1727, 1763 and 1768, Insurance Code. Reference: Sections 1727, 1733, 1734, 1763 and 1768, Insurance Code.

AMEND

Section 2190.3 of Article 7 of Subchapter 1 of Chapter 5 of Title 10 of the California Code of Regulations, as follows.

Section 2190.3. Records by File.

(a) Wherever applicable, the following records shall be maintained by every agent or broker and surplus lines broker and special lines' surplus lines broker in a file pertaining to a particular insured for a period of eighteen months after the transaction described by such records:

(1) Identity of each person who transacted the insurance, renewals and any change in coverage,

(2) Records of all binders, whether written or oral, showing the names of insured and insurer, nature of coverage, effective and termination dates and premium for binder or policy to be issued,

(3) Copy of application or memorandum of request for insurance,

(4) Correspondence received, copies of correspondence sent, memoranda, notes of conversation, or any other record necessary to describe the transaction.

(b) The following records of surplus line transactions shall be maintained by every agent and broker and surplus lines broker and special lines' surplus lines broker for a period of at least five years after expiration or cancellation date of the policy to which the records pertain: forms, reports or statements required to be maintained or filed under Sections 1763 and 1764.1 of the Insurance Code.

(c) The agent, broker, surplus line broker or special lines' surplus lines broker who signs the form, report or statement under Insurance Code Section 1763 shall maintain the original. The agent, broker, surplus lines broker or special lines' surplus lines broker who receives the originally signed disclosure statement under Insurance Code Section 1764.1 shall maintain the original.

(d) The agent, broker, surplus line broker or special lines' surplus lines broker who signs the diligent search form under Insurance Code Section 1763 or receives the originally signed disclosure statement under Insurance Code Section 1764.1 shall send copies to all other agents, brokers, surplus lines brokers or special lines' surplus lines brokers involved in the transaction.

(e) The agent, broker, surplus line broker or special lines' surplus lines broker who receives copies of documents pursuant to 2190.3(d), shall maintain the copies which show the signature of the agent, broker, surplus lines broker, special lines' surplus lines broker or applicant who signed it.

(f) An agent or broker who provides an estimate of replacement cost to an applicant or insured with respect to a policy of homeowner's insurance shall maintain records and copies as mandated by Section 2695.182 and subdivision (i) of Section 2695.183.

NOTE: Authority cited: Sections 1727, 1763 and 1768, Insurance Code. Reference: Sections 1760.5(b), 1763 and 1764.1, Insurance Code.

ADD

New Article 1.3: Valuation of Homes to Subchapter 7.5 of Chapter 5 of Title 10 of the California Code of Regulations, as follows.

Article 1.3. Valuation of Homes.

Adopt Section 2695.180. Definitions.

As used in this article and in California Insurance Code section 1749.85 the following terms have the following meanings:

- (a) "Homeowners' insurance policy" shall have the same meaning as a "policy of residential property insurance" as defined in subdivision (a) of Insurance Code section 10104.
- (b) "Replacement value" shall have the same meaning as "replacement cost" and is defined as the amount it would cost to repair, construct, rebuild or replace a damaged or destroyed structure.
- (c) "Fire and casualty broker-agent" and "personal lines broker-agent" mean holders of the licenses defined in Insurance Code sections 1625 and 1625.5, respectively. Fire and casualty broker-agents and personal lines broker-agents are also referred to as "broker-agent" in this article.
- (d) "Licensee" means
 - (1) any person or entity that holds a license or certificate of authority issued by the Department of Insurance;
 - (2) a broker-agent; or
 - (3) any other entity for whom the Insurance Commissioner's consent is required before transacting business in the State of California or with California residents.
- (e) "Estimate of replacement value" shall have the same meaning as "estimate of replacement cost" and means any estimate, statement, calculation, approximation or opinion, whether expressed orally or in writing, regarding the projected replacement value of a particular structure or structures.

NOTE: Authority cited: Sections 790.10, 1749.7, 1749.85, and 2051.5 of the California Insurance Code. Reference: Sections 790.03, 1625, 1625.5, 1749.85, 2051.5, 10087, and 10104 of the California Insurance Code.

Adopt Section 2695.181. Standards for Real Estate Appraisers.

Subdivision (d) of Insurance Code 1749.85 provides that if the Department of Insurance, by adopting a regulation, establishes standards for the calculation of estimates of replacement value of a structure by appraisers, then on and after the effective date of the regulation a real estate appraiser's estimate of replacement cost shall be calculated in accordance with the regulation. A real estate appraiser, whether or not a licensee, shall not estimate the replacement cost of a structure for use in connection with a homeowner's insurance policy unless the estimate of replacement cost complies with the provisions of subdivisions (a) through (e) of Section 2695.183. Appropriate licensure by the Department of Insurance is required in order to lawfully explain levels of coverage under a homeowners' insurance policy.

NOTE: Authority cited: Sections 35, 790.10, 1631, 1633, 1749.7, 1749.85, and 2051.5, Insurance Code. Reference: Sections 35, 790.03, 1631, 1625, 1625.5, 1633, 1749.85, 2051.5, 10087, and 10104, Insurance Code.

Adopt Section 2695.182. Documentation of Person Making Estimate.

(a) In the event an estimate of replacement cost is provided or communicated by a licensee to an applicant or insured in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis, the licensee shall document and maintain in the applicant's or insured's file the following information:

(1) The status of the person preparing the estimate of replacement value, as the insurer underwriter or actuary or other person identified by the insurer, a broker-agent, a contractor, an architect, a real estate appraiser, or other person or entity permitted to make such an estimate by Insurance Code section 1749.85;

(2) The name, job title, address, telephone number, and license number, if applicable, of the person preparing the estimate of replacement value;

(3) The source from which or method by which the estimate of replacement cost was prepared, to include any replacement cost calculator, contractor's estimate, architectural report, real estate appraisal, or other source or method; and

(4) A copy of any reports, inspection reports, contractor's estimates, or other documents used to prepare the estimate of replacement value.

(b) In the event the estimate of replacement cost is provided by a licensee to an applicant or insured in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis, the licensee shall maintain in the insured's file the records specified in subdivision (a) of this Section 2695.182 for the entire term of the insurance policy or the duration of coverage, whichever terminates later in time, and for five years thereafter. In the event the estimate of replacement cost is provided by a licensee to an applicant to whom an insurance policy is never issued, subdivision (a) of this Section 2695.182 shall not apply.

(c) Notwithstanding any other provision of this Section 2695.182, this section shall impose no duty upon a broker-agent to obtain from the insurer and maintain any information or document that in the absence of this section would not come into the possession of the broker-agent in the ordinary course of business.

NOTE: Authority cited: Sections 730, 790.04, 790.10, 1727, 1749.7, and 1749.85, Insurance Code. Reference: Sections 730, 790.03, 790.04, and 1749.85, Insurance Code.

Adopt Section 2695.183. Standards for Estimates of Replacement Value.

No licensee shall communicate an estimate of replacement cost to an applicant or insured in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis, unless the requirements and standards set forth in subdivisions (a) through (e) below are met:

(a) The estimate of replacement cost shall include the expenses that would reasonably be incurred to rebuild the insured structure(s) in its entirety, including at least the following:

(1) Cost of labor, building materials and supplies;

(2) Overhead and profit;

(3) Cost of demolition and debris removal;

(4) Cost of permits and architect's plans; and

(5) Consideration of components and features of the insured structure, including at least the following:

(A) Type of foundation;

(B) Type of frame;

- (C) Roofing materials and type of roof;
- (D) Siding materials and type of siding;
- (E) Whether the structure is located on a slope;
- (F) The square footage of the living space;
- (G) Geographic location of property;
- (H) Number of stories and any nonstandard wall heights;
- (I) Materials used in, and generic types of, interior features and finishes, such as, where applicable, the type of heating and air conditioning system, walls, flooring, ceiling, fireplaces, kitchen, and bath(s);
- (J) Age of the structure or the year it was built; and
- (K) Size and type of attached garage.

(b) The estimate of replacement cost shall be based on an estimate of the cost to rebuild or replace the structure taking into account the cost to reconstruct the single property being evaluated, as compared to the cost to build multiple, or tract, dwellings.

(c) The estimate of replacement cost shall not be based upon the resale value of the land, or upon the amount or outstanding balance of any loan.

(d) The estimate of replacement cost shall not include a deduction for physical depreciation.

(e) The licensee shall no less frequently than annually take reasonable steps to verify that the sources and methods used to generate the estimate of replacement cost are kept current to reflect changes in the costs of reconstruction and rebuilding, including changes in labor, building materials, and supplies, based upon the geographic location of the insured structure. The estimate of replacement cost shall be created using such reasonably current sources and methods.

(f) Except as provided in subdivision (k) of this Section 2695.183, the provisions of this article are binding upon licensees, notwithstanding the fact that information, data or statistical methods used or relied upon by a licensee to estimate replacement cost may be obtained through a third party source. Any and all information received by the Department pursuant to this article shall be accorded the degree of confidential treatment required by section 735.5 of the Insurance Code or Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code, commencing at section 11180.

(g)(1) If a licensee communicates an estimate of replacement cost to an applicant or insured in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis, the licensee must provide a copy of the estimate of replacement cost to the applicant or insured at the time the estimate is communicated. However, in the event the estimate of replacement cost is communicated by a licensee to an applicant to whom the licensee determines an insurance policy shall not be issued, then the licensee is not required pursuant to the preceding sentence to provide a copy of the estimate of replacement cost. In the event the estimate of replacement cost is communicated by telephone to an insured, the copy of the estimate shall be mailed to the insured no later than three business days after the time of the telephone conversation. In the event the estimate of replacement cost is communicated by telephone to an applicant, the copy of the estimate shall be mailed to the applicant no later than three business days after the applicant agrees to purchase the coverage.

(2) An estimate of replacement cost provided in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis must itemize the projected cost for each element specified in paragraphs (a)(1) through (a)(4), and shall identify the assumptions made for each of the components and features listed in paragraph (a)(5), of this Section 2695.183.

(h) If an estimate of replacement cost is updated or revised by, or on behalf of, the licensee and the revised estimate of replacement cost is communicated to the applicant or insured in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis, the licensee shall provide a copy of the revised or updated estimate of replacement cost to the applicant as provided in paragraph (g)(1) of this Section 2695.183, or to the insured simultaneously with the renewal offer, as the case may be. This subdivision (h) shall not apply when the update or revision to the estimate of replacement cost or the policy limit results solely from the application of an inflationary provision in a policy or an inflation factor. This subdivision (h) shall not obligate a licensee to recalculate an estimate of replacement cost on an annual basis.

(i) Licensees shall maintain (1) a record of the information supplied by the applicant or insured that is used by the licensee to generate the estimate of replacement cost, and (2) a copy of any estimate of replacement cost supplied to the applicant or insured pursuant to paragraph (g)(1), or subdivision (h), of this Section 2695.183. If a policy is issued, these records and copies shall be maintained for the entire term of the insurance policy or the duration of coverage, whichever terminates later in time, and for five years thereafter. However, if the estimate of replacement cost is provided to an applicant to whom an insurance policy is never issued, the records and copies referred to in the first sentence of this subdivision (i) shall be maintained for the period of time the licensee ordinarily maintains applicant files in the normal course of business, provided that such period of time shall be at least sufficient to ensure that the licensee is able to comply with the provisions of this subdivision in the event the policy is issued to the applicant.

(j) To communicate an estimate of replacement value not comporting with subdivisions (a) through (e) of this Section 2695.183 to an applicant or insured in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis constitutes making a statement with respect to the business of insurance which is misleading and which by the exercise of reasonable care should be known to be misleading, pursuant to Insurance Code section 790.03.

(k) When an insurer identifies one or more specific sources or tools that a broker-agent must use to create an estimate of replacement cost,

(1) the insurer shall prescribe complete written procedures to be followed by broker-agents when they use the sources or tools,

(2) the insurer shall provide the broker-agent with the training and written training materials necessary to properly utilize the sources or tools according to the insurer's prescribed procedures, and

(3) the insurer, and not the broker-agent, shall be responsible for any noncompliance with this Section 2695.183 that results from the failure of the estimate to satisfy the requirements of subdivisions (a) through (e), unless that noncompliance results from failure by the broker-agent to follow the insurer's prescribed written procedures when using the source or tool.

(l) This Section 2695.183 applies to all communications by a licensee, verbal or written, with the sole exception of internal communications within an insurer, or confidential communications between an insurer and its contractor, that concern the insurer's underwriting decisions and that never come to the attention of an applicant or insured.

(m) No provision of this article shall be construed as requiring a licensee to estimate replacement cost or to set or recommend a policy limit to an applicant or insured. No provision of this article shall be construed as requiring a licensee to advise the applicant or insured as to the sufficiency of an estimate of replacement cost.

(n) No provision of this article shall limit or preclude a licensee from providing and explaining the California Residential Property Insurance Disclosure, as cited in Insurance Code section 10102, explaining the various forms of replacement cost coverage available to an applicant or insured, or explaining how replacement cost basis policies operate to pay claims.

(o) No provision of this article shall limit or preclude an applicant or insured from obtaining his or her own estimate of replacement cost from an entity permitted to make such an estimate by Insurance Code section 1749.85.

(p) For purposes of this subdivision (p), "minimum amount of insurance" shall mean the lowest amount of insurance that an insurer requires to be purchased in order for the insurer to underwrite the coverage on a particular property, based upon an insurer's eligibility guidelines, underwriting practices and/or actuarial analysis. An insurer may communicate to an applicant or insured that an applicant or insured must purchase a minimum amount of insurance that does not comport with subdivisions (a) through (e) of this Section 2695.183; however, if the minimum amount of insurance that is communicated is based in whole or in part on an estimate of replacement value, the estimate of replacement value shall also be provided to the applicant or insured and shall comply with all applicable provisions of this article. Nothing in this article shall limit or preclude an insurer from agreeing to provide coverage for a policy limit that is greater than or less than an estimate of replacement cost provided pursuant to this article.

(q) This article shall apply only to estimates of replacement value that are prepared, communicated or used by a licensee on or after June 27, 2011.

NOTE: Authority cited: Sections 730, 790.03, 790.04, 790.10, 1749.7, 1749.85, 1861.05, and 2051.5, Insurance Code. Reference: Sections 730, 790.03, 790.04, 735.5 and 1749.85, Insurance Code.