

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-5

PROPERTY AND CASUALTY

Emergency Regulation 22-E-15

CONCERNING LAW AND ORDINANCE COVERAGE RELATING TO THE MARSHALL FIRE

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Section 1 Authority

This emergency regulation is being promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(7), 10-1-109(1), 10-3-1103, 10-3-1104(1)(h), and 10-3-1110, C.R.S.

Section 2 Scope and Purpose

On December 30, 2021, the Marshall Fire - the most devastating fire in Colorado history - damaged or destroyed more than 1,000 residential and commercial structures. In the aftermath of the fire, the towns of Louisville and Superior are allowing victims of the Marshall Fire to opt-out of certain portions of their building codes. The purpose of this emergency regulation is to protect homeowner policyholders who have suffered a loss during the 2021 Marshall Fire and have law and ordinance coverage. This regulation identifies specific acts or practices regarding law and ordinance coverage that may constitute unfair claim settlement practices.

The Division of Insurance ("Division") finds, pursuant to § 24-4-103(6)(a), C.R.S., that immediate adoption of this regulation is imperatively necessary for the preservation of public health, safety, or welfare. This emergency regulation is necessary in part to provide immediate protections for those homeowner policyholders that were impacted by the Marshall Fire and are filing related claims to repair or replace damaged structures, implicating law and ordinance coverage, or trying to determine their liability and coverage under their policies. Homeowner policyholders are requesting estimates by homebuilders.

Individuals impacted by this fire will need access to every available claim dollar they are entitled to under their policy. In order to rebuild their lives and communities, policyholders are entitled to amounts available through their law and ordinance coverage to cover upgrades made in rebuilding their homes to be compliant with authorized building codes. The Division finds that this regulation will help to protect and provide necessary resources to affected policyholders. Therefore, compliance with the requirements of § 24-4-103, C.R.S., would be contrary to the public interest.

Section 3 Applicability

This regulation shall apply to all companies issuing homeowner insurance policies that have loss claims and have law and ordinance coverage resulting from the Marshall Fire.

Section 4 Rules

- A. Companies shall pay benefits to policyholders based on the terms of their policies and for amounts incurred by policyholders to rebuild their homes. These payments shall include all payments owed under the primary structure limit and any optional coverages that are applicable, including law and ordinance coverage.
- B. Companies shall pay benefits to policyholders for law and ordinance coverage based on the policyholders' costs incurred to rebuild to the applicable building codes in effect for unincorporated Boulder County, Louisville and Superior on the date of the policyholders' loss, subject to applicable coverage limits.
- C. If a policyholder chooses to utilize prior building codes, as allowed by the local government, companies shall provide coverage for rebuilding costs for those portions of the building codes in effect on the date of loss that the policyholder chooses to apply, subject to applicable coverage limits.
- D. If the policyholder requests that the Dwelling Unit Fire Sprinkler Systems be included in the rebuild, and such a system is required under the building code in effect on the date of loss, the company shall cover the cost of indoor fire sprinklers subject to applicable coverage limits and law and ordinance coverage in the policy.
- E. Companies shall not interfere with the policyholder's decision to rebuild in whole or in part pursuant to a prior building code, including but not limited to use of coverage determinations or limitations to influence this decision.
- F. A violation of this section may constitute an unfair claims settlement practice under sections 10-3-1103 and 10-3-1104(1)(h), C.R.S.

Section 5 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 6 Enforcement

Noncompliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance, or other laws, which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 7 Effective Date

This emergency regulation shall become effective August 22, 2022.

Section 8 History

Emergency regulation effective August 22, 2022.