

Unfair Claims Settlement Practices: An Overview (Part I)

By Tim Lynch & Anne Bandle

According to the National Association of Insurance Commissioners' Insurance Department Resources Report, 7,660 U.S. domestic insurance companies were in existence in 2006. With the ongoing consolidation of the insurance industry in the United States, that number is sure to decrease over the next decade. As a result, claims personnel in central claims offices are being required to handle claims from a multitude of different states with diverse statutes and regulations.

Although the insurance industry does not have a single set of guidelines for claims handling, all states have statutory or regulatory provisions governing unfair claim settlement practices. In fact, most states have adopted some version of the model Unfair Claims Practices Act and /or the Unfair Property/Casualty Claims Settlement Practices Model Regulation promulgated by the National Association of Insurance Commissioners. Unfortunately, the variations in the Model Act and Model Regulation from jurisdiction to jurisdiction make claims handling by centrally located claims personnel a challenge.

This is the first in a five-part series of articles which will highlight some of the contrasting provisions and unique variations of the Unfair Claims Settlement Practices Act and the Unfair Property/Casualty Claims Settlement Practices Model Regulation among the states. This series is not intended to be an exhaustive analysis of each state's statutes and regulatory scheme. Rather, the goal of this series is to raise the overall awareness of claims personnel with respect to the variations that exist.

For ease of future reference, the Model Act's substantive prohibitory provisions are set forth below.

Section 3. Unfair Claims Settlement Practices Prohibited.

It is an improper claims practice for a domestic, foreign or alien insurer transacting business in this state to commit an act defined in Section 4 of this Act if:

- A. It is committed flagrantly and in conscious disregard of this Act or any rules promulgated hereunder; or
- B. It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

Section 4. Unfair Claims Practices Defined.

Any of the following acts by an insurer, if committed in violation of Section 3, constitutes an unfair claims practice:

- A. Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions relating to coverages at issue;
- B. Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;
- C. Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;
- D. Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;
- E. Compelling insureds or beneficiaries to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them;
- F. Refusing to pay claims without conducting a reasonable investigation;
- G. Failing to affirm or deny coverage of claims within a reasonable time after having completed its investigation related to such claim or claims;
- H. Attempting to settle or settling claims for less than the amount that a reasonable person would believe the insured or beneficiary was entitled by reference to written or printed advertising material accompanying or made part of an application;
- I. Attempting to settle or settling claims on the basis of an application that was materially altered without notice to, or knowledge or consent of, the insured;
- J. Making claims payments to an insured or beneficiary without indicating the coverage under which each payment is being made;
- K. Unreasonably delaying the investigation or payment of claims by requiring both a formal proof of loss form and subsequent verification that would result in duplication of information and verification appearing in the formal proof of loss form;
- L. Failing in the case of claims denials or offers of compromise settlement to promptly provide a reasonable and accurate explanation of the basis for such actions;
- M. Failing to provide forms necessary to present claims within fifteen (15) calendar days of a request with reasonable explanations regarding their use;
- N. Failing to adopt and implement reasonable standards to assure that the repairs of a repairer owned by or required to be used by the insurer are performed in a workmanlike manner.

The Model Regulation contains claims handling requirements that fall under the general section titles set forth below. This series of articles will focus primarily on sections 4 through 7.

- Section 4. File and Record Documentation
- Section 5. Misrepresentation of Policy Provisions
- Section 6. Failure to Acknowledge Pertinent Communications

- Section 7. Standards for Prompt, Fair and Equitable Settlements
Applicable to All Insurers
- Section 8. Standards for Prompt, Fair and Equitable Settlements
Applicable to Automobile Insurance
- Section 9. Standards for Prompt, Fair and Equitable Settlements
Applicable to Fire and Extended Coverage Type Policies
with Replacement Cost Coverage

In keeping with the objective of this series, each article in the series will be accompanied by state-specific claims handling reference charts. These charts are intended to be used as a tool by claims personnel; they are not, however, designed to replace the need to review and familiarize oneself with the statutes and regulations for each state for which one handles claims.

In the next issue, we will provide a general overview of the claims handling timeframes associated with a sampling of different versions of the Model Regulations, and identify some of the more unique variations of the Model Act that exist in various jurisdictions.

Tim Lynch and Anne Bandle are insurance defense attorneys with Lynch & Associates in Anchorage, Alaska. They may be reached at 907-276-3222 or via email:
tlynch@northlaw.com; abandle@northlaw.com