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12938, THIS REPORT WILL BE MADE PUBLIC AND PUBLISHED ON THE  
CALIFORNIA DEPARTMENT OF INSURANCE (CDI) WEBSITE]**

**WEBSITE PUBLISHED REPORT OF THE MARKET CONDUCT  
EXAMINATION OF THE CLAIMS PRACTICES OF**

**FIRST AMERICAN HOME BUYERS PROTECTION  
CORPORATION**

**NAIC # H3358 CDI # 3358-9**

**AS OF APRIL 15, 2013**

**ADOPTED DECEMBER 16, 2015**

**STATE OF CALIFORNIA**



**CALIFORNIA DEPARTMENT OF INSURANCE  
MARKET CONDUCT DIVISION  
FIELD CLAIMS BUREAU**

## NOTICE

**The provisions of Section 735.5(a) (b) and (c) of the California Insurance Code (CIC) describe the Commissioner's authority and exercise of discretion in the use and/or publication of any final or preliminary examination report or other associated documents. The following examination report is a report that is made public pursuant to California Insurance Code Section 12938(b)(1) which requires the publication of every adopted report on an examination of unfair or deceptive practices in the business of insurance as defined in Section 790.03 that is adopted as filed, or as modified or corrected, by the Commissioner pursuant to Section 734.1.**

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**DEPARTMENT OF INSURANCE**

Consumer Services and Market Conduct Branch  
Field Claims Bureau, 11th Floor  
300 South Spring Street  
Los Angeles, CA 90013



December 16, 2015

The Honorable Dave Jones  
Insurance Commissioner  
State of California  
300 Capitol Mall  
Sacramento, California 95814

Honorable Commissioner:

Pursuant to instructions, and under the authority granted under Part 2, Chapter 1, Article 4, Sections 730, 733, 736, and Article 6.5, Section 790.04 of the California Insurance Code; and Title 10, Chapter 5, Subchapter 7.5, Section 2695.3(a) of the California Code of Regulations, an examination was made of the claims handling practices and procedures in California of:

**First American Home Buyers Protection Corporation**

**NAIC # H3358**

**Group NAIC # 0070**

Hereinafter, the Company listed above also will be referred to as FAHBPC, or the Company.

This report is made available for public inspection and is published on the California Department of Insurance website ([www.insurance.ca.gov](http://www.insurance.ca.gov)) pursuant to California Insurance Code section 12938(b)(1).

## FOREWORD

The examination covered the claims handling practices of the aforementioned Company on Home Protection claims closed during the period from April 16, 2012 through April 15, 2013. The examination was made to discover, in general, if these and other operating procedures of the Company conform to the contractual obligations in the policy forms, the California Insurance Code (CIC), the California Code of Regulations (CCR) and case law.

The report is written in a “report by exception” format. The report does not present a comprehensive overview of the subject insurer’s practices. The report contains a summary of pertinent information about the lines of business examined, details of the non-compliant or problematic activities that were discovered during the course of the examination and the insurer’s proposals for correcting the deficiencies. When a violation that reflects an underpayment to the claimant is discovered and the insurer corrects the underpayment, the additional amount paid is identified as a recovery in this report. While this report contains violations of law that were cited in this report by the examiners, additional violations of CIC § 790.03, or other laws, not cited in this report may also apply to any or all of the non-compliant or problematic activities that are described herein.

All unacceptable or non-compliant activities may not have been discovered. Failure to identify, comment upon or criticize non-compliant practices in this state or other jurisdictions does not constitute acceptance of such practices.

Alleged violations identified in this report, any criticisms of practices and the Company’s responses, if any, have not undergone a formal administrative or judicial process.

## **SCOPE OF THE EXAMINATION**

To accomplish the foregoing, the examination included:

1. A review of the guidelines, procedures, training plans and forms adopted by the Company for use in California including any documentation maintained by the Company in support of positions or interpretations of the California Insurance Code, Fair Claims Settlement Practices Regulations, and other related statutes, regulations and case law used by the Company to ensure fair claims settlement practices.

2. A review of the application of such guidelines, procedures, and forms, by means of an examination of a sample of individual claims files and related records.

3. A review of the California Department of Insurance's (CDI) market analysis results; a review of consumer complaints and inquiries about this Company closed by the CDI during the period April 16, 2012 through April 15, 2013, and a review of previous CDI market conduct claims examination reports on this Company; and a review of prior CDI enforcement actions.

The review of the sample of individual claims files was conducted at the offices of the Company in Van Nuys, California.

## **EXECUTIVE SUMMARY OF CLAIMS SAMPLE REVIEWED**

The Home Protection claims reviewed were closed from April 16, 2012 through April 15, 2013, referred to as the “review period”. The examiners randomly selected 140 claims files for examination. The examiners cited 30 alleged claims handling violations of the California Insurance Code and other specified codes from this sample file review.

Findings of this examination included the Company’s failure to adopt and implement reasonable standards for the prompt investigation and processing of claims; failure upon receiving proof of claim, to accept or deny the claim within 40 calendar days; failure to conduct and diligently pursue a thorough, fair and objective investigation of a claim; misrepresenting to claimants pertinent facts or insurance policy provisions relating to any coverage at issue; and attempting to settle a claim by making a settlement offer that was unreasonably low.

## **RESULTS OF REVIEWS OF MARKET ANALYSIS, CONSUMER COMPLAINTS AND INQUIRIES, AND PREVIOUS EXAMINATIONS, AND PRIOR ENFORCEMENT ACTIONS**

The Company was the subject of 118 California consumer complaints and inquiries closed from April 16, 2012 through April 15, 2013 in regard to the lines of business reviewed in this examination. The CDI alleged 11 violations of law. Of the complaints and inquiries, the CDI determined 11 complaints were justified for improper denial of claims in five instances; a failure to conduct a thorough and diligent investigation in four instances; and claim handling delays in two instances. The examiners focused on these issues during the course of the file review

The previous claims examination reviewed a period from October 4, 2004 through June 4, 2005. The most significant noncompliance issues identified in the previous examination report included the Company's failure to adopt and implement reasonable standards for the prompt investigation and processing of claims and the failure to transmit denial letters. These issues were identified as problematic in the current examination.

## DETAILS OF THE CURRENT EXAMINATION

Further details with respect to the examination and alleged violations are provided in the following tables and summaries:

<b>SAMPLE FILES REVIEW</b>			
<b>LINE OF BUSINESS / CATEGORY</b>	<b>CLAIMS IN REVIEW PERIOD</b>	<b>SAMPLE FILES REVIEWED</b>	<b>NUMBER OF ALLEGED VIOLATIONS</b>
Home Protection/Condominium (Paid )	22,426	10	4
Home Protection/Condominium (Denied)	1,737	8	0
Home Protection/Single Family Residence (Paid)	137,171	58	11
Home Protection/Single Family Residence (Denied)	13,363	60	15
Home Protection/Multi-Unit Residence (Paid)	5,156	2	0
Home Protection/Multi-Unit Residence (Denied)	510	2	0
<b>TOTALS</b>	<b>180,363</b>	<b>140</b>	<b>30</b>

## TABLE OF TOTAL ALLEGED VIOLATIONS

Citations	Description of Allegation	Number of Alleged Violations
CIC §790.03(h)(3)	The Company failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.	11
CCR §2695.7(b) *[CIC §790.03(h)(4)]	The Company failed, upon receiving proof of claim, to accept or deny the claim within 40 calendar days.	8
CCR §2695.7(d) *[CIC §790.03(h)(3)]	The Company failed to conduct and diligently pursue a thorough, fair and objective investigation of a claim.	5
CCR §2695.7(g) *[CIC §790.03(h)(5)]	The Company attempted to settle a claim by making a settlement offer that was unreasonably low.	2
CCR §2695.3(a) *[CIC §790.03(h)(3)]	The Company failed to maintain all documents, notes and work papers in the claims file.	2
CCR §2695.5(e)(2) *[CIC §790.03(h)(3)]	The Company failed to provide necessary forms, instructions, and reasonable assistance within fifteen (15) calendar days.	1
CCR §2695.7(b)(3) *[CIC §790.03(h)(3)]	The Company failed to reference the California Department of Insurance in its claims denial.	1
<b>Total Number of Alleged Violations</b>		<b>30</b>

### \*DESCRIPTORS OF APPLICABLE UNFAIR CLAIMS SETTLEMENT PRACTICES

- |                   |  |
|-------------------|--|
| CIC §790.03(h)(3) | The Company failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.             |
| CIC §790.03(h)(5) | The Company failed to effectuate prompt, fair, and equitable settlements of claims in which liability had become reasonably clear.                                 |
| CIC §790.03(h)(4) | The Company failed to affirm or deny coverage of claims within a reasonable time after proof of loss requirements had been completed and submitted by the insured. |

**TABLE OF ALLEGED VIOLATIONS BY LINE OF BUSINESS**

<p align="center"><b>Home Protection</b>                      2012 Written Premium: \$17,185,830</p> <p><b>AMOUNT OF RECOVERIES                      \$ 605.00</b></p>	<p align="center"><b>NUMBER OF ALLEGED VIOLATIONS</b></p>
CIC §790.03(h)(3)	11
CCR §2695.7(b) [CIC §790.03(h)(3)]	8
CCR §2695.7(d) [CIC §790.03(h)(3)]	5
CCR §2695.7(g) [CIC §790.03(h)(5)]	2
CCR §2695.3(a) [CIC §790.03(h)(3)]	2
CCR §2695.5(e)(2) [CIC §790.03(h)(3)]	1
CCR §2695.7(b)(3) [CIC §790.03(h)(3)]	1
<b>TOTAL</b>	<b>30</b>

## SUMMARY OF EXAMINATION RESULTS

The following is a brief summary of the criticisms that were developed during the course of this examination related to the violations alleged in this report.

In response to each criticism, the Company is required to identify remedial or corrective action that has been or will be taken to correct the deficiency. The Company is obligated to ensure that compliance is achieved.

Any noncompliant practices identified in this report may extend to other jurisdictions. The Company was asked if it intends to take appropriate corrective action in all jurisdictions where applicable. The Company intends to implement corrective actions in all jurisdictions

Money recovered within the scope of this report was \$605.00 as described in section number four below.

### **HOME PROTECTION**

**1. In 11 instances, the Company failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies.** The Company's claims handling policies and procedures reflect a failure to implement a minimum standard for the settlement of claims as to indicate a general business practice of non-compliance. The Department's examination revealed the following:

- a) In six instances, the Company did not require partner/technicians to submit itemized invoices or photographs documenting the covered and non-covered items. The Company has eliminated its Customer Upgrade Awareness Sheet, which required its technicians to specify what service was not covered, and show the price the technician proposed to charge the contract holder/homeowner. Further, the Company's website communications with technicians does not provide equal access for the contract holders /homeowners.
- b) In three instances, home owners specifically wanted to register formal complaints regarding the claim handling. The Company does not have a consistent process for its claim representatives or supervisors to reflect and record homeowners' complaints, regardless of the method of delivery. The Company tracks only

complaints received from the Department of Insurance or from consumer protection agencies.

- c) In one instance, the Company failed to identify a partner (technician) violation when customer reported work was delayed and not completed.
- d) In one instance, the Company denied a portion of a claim and failed to follow up with its partner/technician for a copy of the invoice and payment for a covered water heater.

The Department alleges these acts are in violation of CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges the findings and has addressed the issues as follow:

- a) To address the concern raised by the Department that contract holders/homeowners are not clearly apprised of coverage determinations related to non-covered items, the Company has updated its procedures and processes in the fourth quarter of 2014 with respect to covered and non-covered service items. The updated procedures now require the technicians to communicate all technical issues directly to the Company's authorization department; the authorization department then reviews the home protection contract and makes a coverage determination. The Company's coverage authorizer is thereafter required to call the contract holder (placing the responsibility on the Company and not the technician) to inform the contract holder of the basis of any non-covered cost or denial. Before the technician commences any work related to non-covered work, the technician must advise the contract holder of the work being performed, the charges related thereto and inform the contract holder that the non-covered work can be performed by any technician of their own choosing. Thereafter, the Company's authorization department will follow up with written confirmation to the contract holder confirming its coverage determination. The Company provided the Department with a sample template correspondence/letter of such notification to a contract holder/homeowner on August 18, 2015.

As to the Department's reference to an obsolete "*Contract Holder Upgrade Awareness Sheet*", the Company acknowledges that this form was mistakenly referenced in internal documents. However this form was never actually implemented because it purported to delegate the non-delegable function of having the contractor make a coverage determination. The Company asserts that the form was not in use at any time during the period covered by this examination, and any reference to it in its internal documents, including the Partner Portal Reference Guide and technician contracts was Company error.

Finally, the Company is enhancing its interactive "Customer Portal" which is anticipated to be launched in the second quarter of 2016. The upgrade will

make the portal easier to use and contract holders will have access to lodge written complaints and reach the Company in this Customer Portal.

- b) Regarding complaint management and contract holders/homeowners' grievances, the Company agrees with the Department that every complaint must be documented. The Company indicates that every complaint received directly by the Company has been documented and retained in its claims management system. Due to the nature of the Home Buyers Protection business, the Company has utilized separate portals to catalogue contract holder complaints depending upon the nature of the complaint, and depending on which department is assigned to address the complaint.

Specifically, complaints involving a technician are entered into the Partner/Technician Portal which is monitored and addressed by contractor relations managers. The Company reviews and addresses the complaints and discontinues using "bad actor" technicians who either violate Company policy and/or generate a disproportionate number of complaints. As to call-in complaints from contract holders relating to an underlying claim or work order, the customer intake department will generate a "work item." Once created, the "work item" is immediately assigned to a Claims Resolution Specialist (CRS) who develops a workflow to resolve the complaint. This log-in mechanism and workflow requires the assigned department to manage each claim/complaint to conclusion. If a complaint is not resolved, the complaint is escalated and reviewed with a CRS supervisor for handling to conclusion. Complaints on claims handling are also referred to supervisors for resolution.

More formalized complaints are addressed by the Company designated Claim Evaluation Department (CED) which handles complaints arising from the following channels: regulatory agencies, law firms, small claims law suits, and social media. Each claim is individually addressed based on its merits and resolved as appropriate.

- c) The Company agrees in one instance that a partner (technician) violation should have been filed for a work order delay or a job not completed. The Claims staff failed to identify this partner violation. The Company has initiated a "chargeback" for the non-completion of the job.
- d) The Company acknowledges that on occasion a dispute will arise between the technician and the contract holder regarding the technician's determination of the issue ultimately impacting coverage. In these "he said/she said" circumstances, a Customer Resolution Specialist (CRS) will review the issue and, as appropriate, request additional evidence to support the technician's findings. When no supporting documentation is provided or if additional documentation cannot definitively resolve the underlying coverage issue, an alternative technician may be authorized to go out for a second opinion. The information obtained to resolve the issue, i.e. photographs,

drawings, etc. will be uploaded into the claims management system and included in the claim file.

In its continuing effort to improve the customer/contract holder experience the Company has proactively engaged a third party vendor to ascertain contract holder experience based on a randomly selected list of closed claims. Based on the responses, the Company will follow up with those contract holders who have been identified as having had an unsatisfactory experience. The Company will utilize these responses to identify trends which may result in changes to procedures, policies and systems to improve service.

**2. In eight instances, the Company failed, upon receiving proof of claim, to accept or deny the claim within 40 calendar days.** In five instances, the Company failed to issue denial letters for non-covered charges. In three instances, the Company failed to accept or deny claims after additional proof of loss was received. The Department alleges these acts are in violation of CCR §2695.7(b) and are unfair practices under CIC §790.03(h)(4)

**Summary of the Company's Response:** The Company agrees with the Department that in five instances, denial notices should have been sent out as appropriate on non-covered charges. The Company has updated its procedures and processes in the fourth quarter of 2014. The Company will now require its technicians to communicate all technical issues directly to the Company's authorization department; the authorization department then reviews the home protection contract and makes a coverage determination. The Company's authorization department will send the denial notices on claims whether wholly or partially denied, including circumstances where the contract holder has requested non-covered repairs for services that are not contractually covered in the home protection contract.

The Company also acknowledges that in three instances, claims staff failed to send the regulatory denial letters. The Company's management has been apprised of these errors and the pertinent employees were counseled and were reinforced with training.

**3. In five instances, the Company failed to conduct and pursue a thorough, fair and objective investigation of a claim.**

- a) In one instance, the Company failed to follow up with a homeowner experiencing continued problems with a dishwasher.
- b) In one instance, a homeowner requested a second opinion regarding a garbage disposal denied claim due to an alleged missing part [reset button]. The Company failed to dispatch a second technician until after the homeowner submitted an invoice with diagnosis from an outside contractor confirming that the reset button was non-operational. The Company's initial diagnosis of a "missing part" [reset button] was not supported with any photographs or other evidence.

- c) In one instance, the assigned plumber sent to determine the cause of a stoppage was contracted with FAHBPC to charge \$75.00 for the first hour and \$18.75 for each additional 15 minutes. This technician charged more than the contracted amount and the Company failed to investigate this charge which was applied against the homeowner's cash out limit. The file failed to reflect or document an approved pre-authorization order or any contractual language pertaining to specific allowable amounts under its "Plumbing Stoppages" provision.
- d) In one instance, a homeowner reported a water heater leak. It took the Company two days to send a technician for this emergency water claim. By the time the technician sent by the Company arrived, the homeowner had already contracted with her own plumber to replace a leaking pipe in the wall. The Company failed to advise the homeowner to submit her invoice for the leaky pipe repair which was covered under the warranty.
- e) In one instance, the Company failed to follow up on leak repairs until the discovery of the error prompted by this examination.

The Department alleges these acts are in violation of CCR §2695.7(d) and are unfair practices under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company acknowledges the findings and has addressed the issues as follows:

- a) In one instance, the Company acknowledges that it failed to follow up in written correspondence with a homeowner to determine if the problem with her dishwasher was resolved. The Company agrees that its procedure to monitor and assess its contractors was not followed in this instance. This was an isolated error by an employee who had been counseled and is no longer with the Company.
- b) In one instance pertaining to a garbage disposal, the Company sent another technician out to replace the garbage disposal and the homeowner was reimbursed the cost for the outside contractor's diagnosis. In this instance, the Company elected to reimburse for the garbage disposal replacement although it believes there was a non-covered missing part [reset button] on the garbage disposal.
- c) The contract in question provided for a \$500 cap including diagnosis. The technician's contract with the Company was a "bid contract" agreement with a limitation on labor charges only. The technician bid \$275 for use of a video camera to ascertain the source of the slab leak; the bid for service was accepted by the Company (preauthorized) as a reasonable, accurate and efficient means of determining the source of the slab leak. When the leak location was ascertained and the damages determined to exceed the cap, the

diagnostic charges were properly applied against the cash out limit contained in the home protection contract. The Company notes that this pre-authorized bid charge was reasonable for a video sewer inspection. The typical costs for a residential video sewer inspection is \$100-\$800, with the average being \$250-500, depending upon specific variables.

The Company will ensure supporting documentation are part of its claim files on pre-authorized bids or work orders.

- d) The Company agrees that the technician sent by the Company appeared at the subject property within two days and the repairs had already been completed by contract holder's own technician. The contract holder has subsequently declined to provide the Company with a copy of the invoice in this instance.
- e) In one instance, the Company failed to follow up on leak repairs until prompted by the Department of Insurance. Company agrees with this finding and the Claims resolution department was counseled on this particular claim.

While the Company may have some differences in opinion over the specific findings as noted above, the Company believes there is always room for improvement. In a continual effort to improve customer relations and make the claims process more transparent, the Company has implemented changes to address the crux of the issues presented, which relates to controlling the costs of technician services that fall outside the ambit of the home protection contract. Specifically at the end of the fourth quarter 2014, the Company updated its processes and procedures to ensure that contract holders are advised both orally and in writing of the basis for any denials for non-covered services. The Company's contract with its technicians precludes the technicians from charging more than a "fair and reasonable charge" for technician's recommended services that fall outside of the Company's contractual obligations with the contract holder. In addition, the technicians are obligated to advise the contract holder that the contract holder has a right to bring in a technician of their own choosing to perform the services which are not covered by the Company.

**4. In two instances, the Company attempted to settle a claim by making a settlement offer that was unreasonably low.** In two instances, the Company failed to pay for the accepted or approved portion of the claims which was covered under the policy. Specifically, these claims had both a covered portion, and a denied portion under the home protection contract. The Company closed the claims without paying for the undisputed covered items. The Department alleges these acts are in violation of CCR §2695.7(g) and are unfair practices under CIC §790.03(h)(5).

**Summary of the Company's' Response:** The Company agrees to the two findings that it failed to pay for the approved items consisting of a water heater and a motor on a garage door opener. While the Company acknowledged that these claims had denied components, it agrees that it should have kept the claims open for the

covered items. As a result of the examination, the Company reopened the claims and issued payments to two homeowners in the amount of \$605.00. The Company's internal compliance department discussed these findings with the appropriate manager for reinforcement. Training was conducted with the claims staff to reiterate this compliance requirement.

**5. In two instances, the Company failed to maintain all documents, notes and work papers in the claims file.** In two instances involving homeowner complaints, the claim files were missing the work orders and/or the technician notes. The homeowners complained of poor performance by the vendors/technicians which necessitated secondary visits from the technicians to correct the problems. The Company was unable to produce documentary proof of the work allegedly performed and invoiced by its technicians. The Department alleges these acts are in violation of CCR §2695.3(a) and are unfair practices under CIC §790.03(h)(3).

**Summary of the Company's Response:** The Company agrees with the findings. In one instance, the technician's notes were not retained into the Company's online invoice system. In the other instance, a recall work order was missing. The Company's internal compliance department discussed these findings with the appropriate manager for reinforcement. Training was conducted with the claims staff to reiterate this compliance requirement.

**6. In one instance, the Company failed to provide necessary forms, instructions, and reasonable assistance within fifteen (15) calendar days.** In one instance, the Company failed to assist a homeowner in perfecting her claim. The Company denied coverage for a garage door opener as allegedly the old garage door opener failed to meet current safety standards. The Company did not specify nor disclose to the homeowner the specific safety standard that failed, and/or any remedy that may be available. The Department alleges this act is in violation of CCR §2695.5(e)(2) and is an unfair practice under CIC §790.03(h)(3).

**Summary of Company Response:** The Company states that it denied the claim as the garage door opener did not meet current safety standards. The Company relied on their contractors who are independent entities from FAHBP, to discuss the scope and cost of non-covered repairs directly with the homeowners. On a going-forward basis, denial letters for garage door opener will now include "entrapment door protection" as a reason to support its denial when applicable.

**7. In one instance, the Company failed to include a statement in its claim denial that, if the claimant believes the claim has been wrongfully denied or rejected, he or she may have the matter reviewed by the California Department of Insurance.** A denial notice failed to include the required referral language for review by the California Department of Insurance. The Department alleges this act is in violation of CCR §2695.7(b)(3) and is an unfair practice under CIC §790.03(h)(3).

**Summary of Company Response:** The Company agrees with the finding and indicates that this was an inadvertent oversight. The Company has reinforced the need to include reference to the California Department of Insurance in all denial notices with its staff.