Cal. Admin. Code tit. 10, § 2695.12

Barclays Official California Code of Regulations Currentness
Title 10. Investment
Chapter 5. Insurance Commissioner
Subchapter 7.5. Unfair or Deceptive Acts or Practices in the Business of Insurance
Article 1. Fair Claims Settlement Practices Regulations (Refs & Annos)

§ 2695.12. Penalties.

(a) In determining whether to assess penalties and if so the appropriate amount to be assessed, the Commissioner shall consider admissible evidence on the following:

(1) the existence of extraordinary circumstances;

(2) whether the licensee has a good faith and reasonable basis to believe that the claim or claims are fraudulent or otherwise in violation of applicable law and the licensee has complied with the provisions of Section 1872.4 of the California Insurance Code;

(3) the complexity of the claims involved;

(4) gross exaggeration of the value of the property or severity of the injury, or amount of damages incurred;

(5) substantial mischaracterization of the circumstances surrounding the loss or the alleged default of the principal;

(6) secreting of property which has been claimed as lost or destroyed.

(7) the relative number of claims where the noncomplying act(s) are found to exist, the total number of claims handled by the licensee and the total number of claims reviewed by the Department during the relevant time period;

(8) whether the licensee has taken remedial measures with respect to the noncomplying act(s);

(9) the existence or nonexistence of previous violations by the licensee;

(10) the degree of harm occasioned by the noncompliance;

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

(11) whether, under the totality of circumstances, the licensee made a good faith attempt to comply with the provisions of this subchapter;

(12) the frequency of occurrence and/or severity of the detriment to the public caused by the violation of a particular subsection of this subchapter;

(13) whether the licensee's management was aware of facts that apprised or should have apprised the licensee of the act(s) and the licensee failed to take any remedial measures; and

(14) the licensee's reasonable mistakes or opinions as to valuation of property, losses or damages.

(b) This section shall not bar, obstruct or restrict any right to administrative due process an insurer may be afforded under California Insurance Code Sections 790.05, 790.06, and 790.07.

Note: Authority cited: Sections 704, 780-784, 790.035, 790.07, 790.08, 790.09, 790.10, 1011, 1065, 1872.4, 11690, 12340-12417, inclusive, 12921, 12926 and 12928.6, Insurance Code; and Sections 11152 and 11342.2, Government Code. Reference: Sections 790.03(h), 790.035(a), 790.04, 790.05, 790.06, 790.08 and 790.10, Insurance Code.

HISTORY

1. New section filed 12-15-92; operative 1-14-93 (Register 92, No. 52).

2. Renumbering and amendment of former section 2695.12 to new section 2695.11, and renumbering and amendment of former section 2695.14 to new section 2695.12, including amendment of section heading and Note, filed 1-10-97; operative 5-10-97 (Register 97, No. 2).

3. Amendment of section heading and section filed 4-24-2003; operative 7-23-2003 (Register 2003, No. 17).

4. Change without regulatory effect filed 8-4-2004 depublishing the amendments to the insurance claims handling practices regulations that were approved by OAL 4-24-2003, but were enjoined in Personal Insurance Federation and The Surety Association of America v. John Garamendi, and reinstating replacement regulations that were either (1) in effect prior to OAL's 4-24-2003 approval of the amendments to the regulations or (2) were found by the court to be valid, as amended, all pursuant to a court-approved settlement agreement dated 6-7-2004 (Register 2004, No. 32).

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

Cal. Admin. Code tit. 10, § 2695.12

5. Amendment of subsections (a) and (a)(7) and new subsection (b) filed 6-1-2006; operative 8-30-2006 (Register 2006, No. 22).

10 CCR § 2695.12, 10 CA ADC § 2695.12

This database is current through 8/31/12 Register 2012, No. 35

END OF DOCUMENT

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.