

NOTE

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Department of Business Regulation
233 Richmond Street
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Underwriting Restrictions Based on Age or Geographic Location of Property

Property & Casualty insurers should remain mindful of the restrictions in underwriting prescribed by the legislature in R.I. Gen. Laws § 27-29-4(7)(iii) which provides:

Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk, unless:

- (A) The refusal, cancellation, or limitation is for a business purpose that is not a pretext for unfair discrimination; or
- (B) The refusal, cancellation, or limitation is required by law or regulation.

R.I. Gen. Laws § 27-29-4(7)(iv) contains identical language except for the substitution of the phrase “age of the residential property” for “geographic location of the risk”.

The Department takes this opportunity to clarify what is meant by “business purpose which is not a pretext for unfair discrimination.” This phrase does not allow an insurer to refuse to issue, renew, cancel or limit coverage because costs or loss ratios are higher for properties of a certain age or geographic location. Insurers may not refuse to issue or renew, nor may they cancel or limit coverage because of age or geographic location unless the insurer demonstrates one of the following:

- (1) The refusal, cancellation or limitation is required by law or regulation; or
- (2) (i) The refusal, cancellation or limitation is for a business purpose that is not a pretext for unfair discrimination; and

- (ii) (a) no meaningful rate can be calculated to cover the risk by using available statistical tools, or
- (b) the insurance premium can be calculated but would be so high as to equal or exceed the amount insured.

The prohibitions discussed in this Bulletin do not limit insurers' ability to underwrite by requiring compliance with certain conditions on a nondiscriminatory basis before the insurer will issue or renew the policy. For example, while an insurer may not refuse to issue or renew, nor may they cancel or limit coverage because a property was built before a certain date, the insurer may require certification of lead or asbestos abatement. The underwriting requirements may be tied to properties of a certain age such as properties built prior to the time lead or asbestos was barred from building materials.

Insurers may not require that the insured produce a "Lead Free" certificate in order to certify lead abatement. Lead abatement is defined by R.I. Gen. Laws § 42-128.1-4 as either "Lead Free" or "Lead Safe". Since "Lead Free" certificates are not generally available for pre-1978 properties, the Department considers an underwriting policy that mandates a "Lead Free" certificate to violate R.I. Gen. Laws § 27-29-4(7). Insurers must accept a "Lead Safe" certificate as proof of abatement.

The Department expects that all insurers will review their underwriting guidelines and immediately bring their practices into compliance with this Bulletin. This Bulletin is an interpretation of existing law. The Department expects that insurers will not only comply prospectively but will also attempt to remedy unlawful activity (i.e. nonrenewals and declinations) in violation of this Bulletin. The Department will investigate all consumer complaints to ascertain compliance with this Bulletin. In addition, future market conduct examinations by the Department will ascertain compliance with applicable laws, regulations and this Bulletin.

Marilyn Shannon McConaghy
Director, Department of Business Regulation
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