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OF ORIGINAL FILED
Los Angeles Superior Court

JUN 08 2011

John A. Magan, Executive Officer/Clerk
by Dorothy Swain Deputy
DOROTHY SWAIN

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF LOS ANGELES

BC463124

14 ASSOCIATION OF CALIFORNIA
15 INSURANCE COMPANIES and PERSONAL
16 INSURANCE FEDERATION OF
17 CALIFORNIA,

18 Plaintiffs,

19 v.

20 DAVE JONES in his capacity as Commissioner
21 of the California Department of Insurance,

22 Defendant.

CASE NO.

VERIFIED COMPLAINT FOR
DECLARATORY RELIEF

BY FAX

23 This Complaint is filed on behalf of the Association of California Insurance Companies
24 and the Personal Insurance Federation of California against Defendant Dave Jones in his
25 capacity as Insurance Commissioner. Plaintiffs allege as follows:

26 INTRODUCTION

27 1. Plaintiffs bring this action for a declaratory judgment that the Commissioner
28 exceeded his statutory authority and acted inconsistently with the California and United States
Constitutions in adopting the regulation, 5 CCR Section 2695.183, attached as Exhibit "A."
That regulation sets out a single, detailed method for estimating replacement costs for
homeowner insurance. Replacement cost estimates may be used by the homeowner to

1 determine how much insurance to buy, and by the insurance company to determine the
2 minimum amount of insurance the homeowner must buy for the company to cover the risk and
3 to offer other coverages.

4 2. When an insurance company decides whether to provide basic coverage, or offer
5 additional coverages, and when it determines the minimum amount of insurance applicable to a
6 particular house, it is engaged in insurance underwriting. No statutory provision in the
7 Insurance Code gives the Commissioner authority to regulate the underwriting of homeowner
8 insurance as set out in Section 2695.183.

9 3. Perhaps in recognition that he has no authority to regulate underwriting as he
10 has done in Section 2695.183, the Commissioner contends that he is authorized to mandate a
11 single, detailed method for estimating replacement costs for homeowner insurance by a
12 statutory provision that prohibits insurance companies from making untrue, deceptive, or
13 misleading statements about the business of insurance. The Commissioner's premise is that
14 only one way exists to prepare an estimate of the replacement cost of a house and that any
15 deviation from any of the multi-faceted details set out in Section 2695.183 results in a faulty
16 estimate that is misleading when communicated to an insured or an applicant for insurance.
17 The adoption of Section 2695.183 is a transparent attempt to impose on all homeowner insurers
18 a single method--the Commissioner's method--for preparing an estimate of the replacement
19 cost of a house. The Commissioner, again, lacks authority to impose such a method; hence, he
20 attempts to circumvent the absence of authority by characterizing any estimating methodology
21 other than his as a misleading statement. His attempt fails. The statute, Insurance Code section
22 790.03(b), does not provide authority for Section 2695.183. Further, a regulation that prohibits
23 an insurance company from communicating the estimated replacement cost of a house to an
24 insured or an applicant for insurance unless the estimate is prepared pursuant to a single
25 method denies that insurance company its right to free speech as guaranteed by the California
26 and United States Constitutions.

27 4. Accordingly, Plaintiffs ask this court to declare Section 2695.183 invalid
28 because: (1) the Commissioner lacks authority to regulate the underwriting of homeowner

1 insurance; (2) Section 790.03 does not authorize the imposition of a single, detailed method for
2 estimating the replacement cost of houses; and (3) Section 2695.183 denies insurance
3 companies their free speech rights as guaranteed by the California and United States
4 Constitutions.

5 PARTIES

6 5. The Association of California Insurance Companies ("ACIC") is a trade
7 organization existing to promote the interests of insurance companies doing business in
8 California. Its membership is composed of more than 300 insurance companies that write all
9 property/casualty lines of business in California.

10 6. The Personal Insurance Federation of California ("PIFC") is a trade organization
11 existing to promote the interests of insurance companies doing business in California. Its
12 membership is composed of insurance companies that underwrite residential property insurance
13 within the state of California.

14 7. Defendant is the Commissioner of the California Department of Insurance.
15 During 2010, the time that most of the events set out in this complaint occurred, the
16 Commissioner was Steve Poizner. Dave Jones became Commissioner on January 3, 2011. The
17 Commissioner is the head of the California Department of Insurance and is responsible for
18 implementing the specific statutory provisions of the Insurance Code.

19 THE REGULATION

20 8. In 2010, the Commissioner, Steve Poizner at that time, adopted Section
21 2695.183 to become effective on June 27, 2011. Section 2695.183 imposes on homeowner
22 insurers a single, detailed method for estimating the replacement cost of a house. Section
23 2695.183 provides: "No licensee shall communicate an estimate of replacement cost to an
24 applicant or insured in connection with an application for or renewal of a homeowners'
25 insurance policy that provides coverage on a replacement cost basis, unless the requirements
26 and standards set forth in subdivisions (a) through (e) below are met:".

27 9. Subdivision (a) of Section 2695.183 provides as follows:

28 "(a) The estimate of replacement cost shall include the expenses that would reasonably
be incurred to rebuild the insured structure(s) in its entirety, including at least the following:

- 1 (1) Cost of labor, building materials and supplies;
2 (2) Overhead and profit;
3 (3) Cost of demolition and debris removal;
4 (4) Cost of permits and architect's plans; and
5 (5) Consideration of components and features of the insured structure, including at least
6 the following:
7 (A) Type of foundation;
8 (B) Type of frame;
9 (C) Roofing materials and type of roof;
10 (D) Siding materials and type of siding;
11 (E) Whether the structure is located on a slope;
12 (F) The square footage of the living space;
13 (G) Geographic location of property;
14 (H) Number of stories and any nonstandard wall heights;
15 (I) Materials used in, and generic types of, interior features and finishes, such as, where
16 applicable, the type of heating and air conditioning system, walls, flooring, ceiling, fireplaces,
17 kitchen, and bath(s);
18 (J) Age of the structure or the year it was built; and
19 (K) Size and type of attached garage.”

12 10. Subdivisions (b) through (e) provide as follows:

13 “(b) The estimate of replacement cost shall be based on an estimate of the cost to
14 rebuild or replace the structure taking into account the cost to reconstruct the single property
15 being evaluated, as compared to the cost to build multiple, or tract, dwellings.

15 (c) The estimate of replacement cost shall not be based upon the resale value of the
16 land, or upon the amount or outstanding balance of any loan.

16 (d) The estimate of replacement cost shall not include a deduction for physical
17 depreciation.

17 (e) The licensee shall no less frequently than annually take responsible steps to verify
18 that the sources and methods used to generate the estimate of replacement cost are kept current
19 to reflect changes in the costs of reconstruction and rebuilding, including changes in labor,
20 building materials, and supplies, based upon the geographic location of the insured structure.
21 The estimate of replacement cost shall be created using such reasonably current sources and
22 methods.”

21 11. In addition, subdivision (g)(2) provides: “An estimate of replacement cost
22 provided in connection with an application for or renewal of a homeowners’ insurance policy
23 that provides coverage on a replacement cost basis must itemize the projected cost for each
24 element specified in paragraphs (a)(1) through (4), and shall identify the assumptions made for
25 each of the components and features listed in paragraphs (a)(5), of this Section 2695.183.”

26 12. Subdivision (j) provides: “To communicate an estimate of replacement value not
27 comporting with subdivisions (a) through (e) of this Section 2695.183 to an applicant or
28 insured in connection with an application for or renewal of a homeowners’ insurance policy

1 that provides coverage on a replacement cost basis constitutes making a statement with respect
2 to the business of insurance which is misleading and which by the exercise of reasonable care
3 should be known to be misleading, pursuant to Government Code section 790.03.”

4 13. Subdivision (l) provides as follows: “This Section 2695.183 applies to all
5 communications by a licensee, verbal or written, with the sole exception of internal
6 communications within an insurer, or confidential communications between an insurer and its
7 contractor, that concern the insurer’s underwriting decisions and that never come to the
8 attention of an applicant or insured.”

9 14. Subdivision (p) provides, in relevant part, as follows: “For purposes of this
10 subdivision (p), ‘minimum amount of insurance’ shall mean the lowest amount of insurance
11 that an insurer requires to be purchased in order for the insurer to underwrite the coverage on a
12 particular property, based upon an insurer’s eligibility guidelines, underwriting practices and/or
13 actuarial analysis. An insurer may communicate to an applicant or insured that an applicant or
14 insured must purchase a minimum amount of insurance that does not comport with
15 subdivisions (a) through (e) of this Section 2695.183; however, if the minimum amount of
16 insurance that is communicated is based in whole or in part on an estimate of replacement
17 value, the estimate of replacement value shall also be provided to the applicant or insured and
18 shall comply with all applicable provisions of this article.”

19 15. Section 2695.183 repeatedly uses the phrase “estimate of replacement cost.”
20 That phrase is defined in Section 2695.180, adopted at the same time as section 2695.183. That
21 definition is in subdivision (e) of Section 2695.180 and reads as follows: “Estimate of
22 replacement value” shall have the same meaning as ‘estimate of replacement cost’ and means
23 any estimate, statement, calculation, approximation or opinion, whether expressed orally or in
24 writing, regarding the projected replacement value of a particular structure or structures.”

25 **BACKGROUND**

26 16. Most homeowner insurance policies provide some form of replacement cost.
27 The replacement cost coverages provided under Insurance Code Section 10102 are as follows:

28 (a) Guaranteed replacement cost with full code upgrades.

- 1 (b) Guaranteed replacement cost with limited or no code upgrades.
- 2 (c) Limited replacement cost with extended coverage, that is, a percentage amount over
- 3 the policy limits.
- 4 (d) Limited replacement cost up to the policy limits with no extended coverage.
- 5 (e) Actual cash value that pays the fair market value of a dwelling or the cost to repair,
- 6 rebuild, or replace the dwelling.

7 Most insurance companies also offer building code upgrade coverage to pay for certain

8 costs to bring the dwelling up to code when the damage is caused by a covered loss.

9 17. Since homeowner insurance essentially provides some form of replacement cost

10 coverage, an estimate of the replacement cost is necessary to the insurance transaction. It is

11 necessary to the homeowner because it is the homeowner who is responsible for determining

12 how much insurance to buy, that is, to determine the policy limits. (*Everett v. State Farm*, 162

13 *Cal.App.4th* 649 (2008).)

14 18. Estimating replacement cost and encouraging customers to insure to value (i.e.,

15 to select a coverage amount that is at least equal to the estimated replacement cost) is also

16 necessary to the insurance company for a number of reasons, such as avoiding adverse

17 selection and lawsuits if customers find themselves underinsured. If the homeowner wants to

18 buy a policy with limits too far below the insurance company's estimated replacement cost, the

19 company may decline to cover the risk, or it may decline to provide extended coverage, that is,

20 a percentage amount over the policy limits, or it may decline to provide code upgrade coverage.

21 On the other hand, if the homeowner wants to buy a policy with limits too far above the

22 insurance company's estimated replacement cost, the company may also decline to cover the

23 risk because of a concern about fraudulent claims.

24 19. A replacement cost estimate in homeowner insurance is necessary to both the

25 homeowner and the insurance company. It is integral to the homeowner in deciding how much

26 coverage to buy. It is integral to the insurance company in underwriting homeowner insurance

27 to determine whether to cover the risk, and whether the risk would qualify for an offer of

28 additional coverages. An insurance company communicating, for example, to an applicant for

1 insurance that the insurance company will not cover the risk or will not offer supplemental
2 coverages because the applicant has chosen a policy limit that is too low invokes application of
3 the regulation. In fact, an insurance company communicating that the coverage limits chosen
4 by the applicant is acceptable and the insurance company will cover the risk invokes
5 application of the regulation.

6 20. The Commissioner admits in subdivision (l) of Section 2695.183 that the
7 regulation controls underwriting decisions. It acknowledges that the regulation controls all
8 communications about replacement cost “with the sole exception of internal
9 communications...that concern the insurer’s underwriting decisions and that never come to the
10 attention of an applicant or insured.” Hence, subdivision (l) confirms that the regulation
11 controls underwriting decisions that come to the attention of an applicant or insured through
12 “any estimate, statement, circulation, approximation, or opinion, whether expressed orally or in
13 writing.”

14 21. Lacking statutory authority to regulate underwriting as Section 2695.183 does,
15 the Commissioner asserts that a provision in Insurance Code section 790.03 provides authority.
16 Section 790.03 contains a list of prohibited unfair business practices. The Commissioner relies
17 specifically on subdivision (b), making a statement about the business of insurance that is
18 misleading.

19 22. Nothing in subdivision (b) or any other part of Section 790.03 relates to the
20 underwriting of homeowner insurance or estimating the replacement cost of a house. A statute
21 prohibiting misleading statements about the business of insurance provides no authority for a
22 regulation mandating a singular method for estimating the replacement cost of a house to the
23 exclusion of all other methods. Further, such a regulation is inconsistent with insurance
24 companies’ right to free speech, guaranteed by the California and United States Constitutions.

25 23. An insurance company can provide to an insured or applicant for insurance on a
26 replacement cost basis an estimate that is not misleading without preparing the estimate in
27 accordance with Section 2695.183. For example, appraisals based on replacement cost are used
28 throughout the financial services industry and considered to be reliable to make significant

1 financial transactions without calculating replacement cost in accordance with the provisions of
2 Section 2695.183. Further, communicating that an estimate is exactly that, an estimate,
3 discloses that the estimate is not precise, that actual replacement cost may be more or less when
4 a loss occurs. Also, disclosing that the estimate is provided to the insured or applicant for
5 insurance, not as a guarantee, but to assist that person in deciding how much insurance to buy--
6 a decision that is the sole responsibility of the insured or applicant--makes clear that the
7 insured or applicant is not to rely on the estimate as a guarantee and eliminates its potential to
8 be misleading. See, for example, the disclosures mandated by Insurance Code Section 10102.
9 In other words, an estimate, however prepared, can be communicated as an estimate and
10 disclaimers made without it being misleading.

11 **THE COMMISSIONER'S AUTHORITY IS LIMITED BY STATUTE**

12 24. The Commissioner is charged with performing all duties imposed by the
13 provisions of this code and other laws regulating the business of insurance in this state.
14 Insurance Code section 12921.

15 25. Each regulation adopted, to be effective, shall be within the scope of authority
16 conferred. Government Code section 11342.1.

17 **CAUSE OF ACTION FOR DECLARATORY RELIEF**

18 26. Plaintiffs incorporate by reference each and every allegation contained in
19 paragraphs 1 through 23.

20 27. An actual controversy has arisen and now exists between Plaintiffs and the
21 Commissioner concerning whether the Commissioner had authority to adopt Section 2695.183.

22 28. Plaintiffs contend, and the Commissioner disputes, that Section 2695.183 is
23 invalid and may not be implemented or enforced because the Commissioner lacked authority to
24 adopt it.

25 29. Specifically, Plaintiffs contend, and the Commissioner disputes, as follows:

26 (a) The Commissioner has no authority to regulate underwriting as he has done in
27 Section 2695.183.
28

1 (b) The factors set out in subdivisions (a) through (e) of Section 2695.183 are
2 imposed on the underwriting decision.

3 (c) Paragraph (2) of subdivision (g) of Section 2695.183 relating to itemized costs
4 for each element specified in paragraphs (a)(1) through (4) is imposed on the underwriting
5 decision.

6 (d) Subdivision (p) of Section 2695.183 relating to the minimum amount of
7 insurance is imposed on the underwriting decision.

8 (e) Insurance Code section 790.03, prohibiting insurance companies from making
9 misleading statements about the business of insurance provides the Commissioner with no
10 authority to require insurance companies to estimate replacement costs solely in accordance
11 with subdivisions (a) through (e) of Section 2695.183.

12 (f) Insurance Code section 790.03 provides the Commissioner with no authority to
13 require insurance companies in communicating an estimated replacement cost to itemize the
14 projected cost for each element specified in paragraphs (1) through (4) of subdivision (a) of
15 Section 2695.183, and to identify the assumptions made for each of the components and
16 features listed in paragraph (5) of subdivision (a) of Section 2695.183.

17 (g) Section 2695.183 is inconsistent with the California and United States
18 Constitutions in that the regulation denies insurance companies of their right to communicate
19 truthfully and freely to insureds and applicants for insurance.

20 30. Plaintiffs have no plain, speedy and adequate remedy at law other than this
21 proceeding for a declaration that Section 2695.183 is unlawful, void, and unenforceable.
22 Unless such a declaration is granted, Plaintiffs' member companies will be required to use
23 specific criteria set forth in Section 2695.183 to determine replacement cost for homeowners'
24 insurance. They will be prohibited from conducting analysis of replacement cost value for
25 homeowners' insurance based on other methodology or criteria even if the insurer's alternate
26 methodology or criteria is more appropriate. Further, unless such a declaration is granted, the
27 ability of Plaintiffs' member companies to make underwriting determinations will be restricted.
28 Additionally, Plaintiffs' member companies will be subject to liability for "misleading"

1 statements and unfair business practices if they fail to follow the specific criteria in the
2 regulation concerning the calculation of replacement cost value. Their operations will be
3 limited and will continue to be disadvantaged until such as time as the Court declares that
4 Section 2695.183 is unlawful, void and unenforceable.

5 **PRAYER**

6 WHEREFORE, Plaintiffs pray for relief as follows:

7 1. For a judicial declaration that Title 10, California Code of Regulations section
8 2695.183 is invalid and may not be implemented or enforced, and specifically for a declaration
9 that:

10 (a) The Commissioner has no authority to regulate underwriting as he has done in
11 Section 2695.183.

12 (b) The factors set out in subdivisions (a) through (e) of Section 2695.183
13 constitutes underwriting.

14 (c) Paragraph (2) of subdivision (g) of Section 2695.183 relating to itemized costs
15 for each element specified in paragraphs (a)(1) through (4) constitutes underwriting.

16 (d) Subdivision (p) of Section 2695.183 relating to the minimum amount of
17 insurance constitutes underwriting.

18 (e) Insurance Code section 790.03, prohibiting insurance companies from making
19 misleading statements about the business of insurance provides the Commissioner with no
20 authority to require insurance companies to estimate replacement costs solely in accordance
21 with subdivisions (a) through (e) of Section 2695.183.

22 (f) Insurance Code section 790.03 provides the Commissioner with no authority to
23 require insurance companies in communicating an estimated replacement cost to itemize the
24 projected cost for each element specified in paragraphs (1) through (4) of subdivision (a) of
25 Section 2695.183, and to identify the assumptions made for each of the components and
26 features listed in paragraph (5) of subdivision (a) of Section 2695.183.

1 (g) Section 2695.183 is inconsistent with the California and United States
2 Constitutions in that the regulation denies insurance companies of their right to communicate
3 truthfully and freely to insureds and applicants for insurance.

4 2. That the Court award Plaintiffs their attorneys fees and costs pursuant to section
5 1021.5 of the California Code of Civil Procedure.

6 3. That the Court grant and issue such further and additional relief as the Court deems
7 just and proper.

8 Respectfully submitted,

9 DATED: May 27, 2011

GREENBERG TRAURIG, LLP

10
11 By: 

12 GENE LIVINGSTON
13 Attorneys for Plaintiffs Association of
14 California Insurance Companies and
15 Personal Insurance Federation of
16 California
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VERIFICATION

I, Mark Sektnan, declare:

I am the President of the Association of California Insurance Companies. I have read the foregoing Complaint and know the contents thereof. I believe that the same are true and correct to the best of my knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 27th day of May, 2011, at Sacramento, California.


Mark Sektnan

Exhibit “A”



Welcome to the online source for the California Code of Regulations

10 CA ADC § 2695.183

§ 2695.183. Standards for Estimates of Replacement Value.

Term

10 CCR § 2695.183

Cal. Admin. Code tit. 10, § 2695.183

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 1.3. Valuation of Homes \(Refs & Annos\)](#)

➔ **§ 2695.183. Standards for Estimates of Replacement Value.**

No licensee shall communicate an estimate of replacement cost to an applicant or insured in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis, unless the requirements and standards set forth in subdivisions (a) through (e) below are met:

(a) The estimate of replacement cost shall include the expenses that would reasonably be incurred to rebuild the insured structure(s) in its entirety, including at least the following:

- (1) Cost of labor, building materials and supplies;
- (2) Overhead and profit;
- (3) Cost of demolition and debris removal;
- (4) Cost of permits and architect's plans; and
- (5) Consideration of components and features of the insured structure, including at least the following:
 - (A) Type of foundation;
 - (B) Type of frame;
 - (C) Roofing materials and type of roof;
 - (D) Siding materials and type of siding;
 - (E) Whether the structure is located on a slope;
 - (F) The square footage of the living space;
 - (G) Geographic location of property;
 - (H) Number of stories and any nonstandard wall heights;

(I) Materials used in, and generic types of, interior features and finishes, such as, where applicable, the type of heating and air conditioning system, walls, flooring, ceiling, fireplaces, kitchen, and bath(s);

(J) Age of the structure or the year it was built; and

(K) Size and type of attached garage.

(b) The estimate of replacement cost shall be based on an estimate of the cost to rebuild or replace the structure taking into account the cost to reconstruct the single property being evaluated, as compared to the cost to build multiple, or tract, dwellings.

(c) The estimate of replacement cost shall not be based upon the resale value of the land, or upon the amount or outstanding balance of any loan.

(d) The estimate of replacement cost shall not include a deduction for physical depreciation.

(e) The licensee shall no less frequently than annually take reasonable steps to verify that the sources and methods used to generate the estimate of replacement cost are kept current to reflect changes in the costs of reconstruction and rebuilding, including changes in labor, building materials, and supplies, based upon the geographic location of the insured structure. The estimate of replacement cost shall be created using such reasonably current sources and methods.

(f) Except as provided in subdivision (k) of this Section 2695.183, the provisions of this article are binding upon licensees, notwithstanding the fact that information, data or statistical methods used or relied upon by a licensee to estimate replacement cost may be obtained through a third party source. Any and all information received by the Department pursuant to this article shall be accorded the degree of confidential treatment required by section 735.5 of the Insurance Code or Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code, commencing at section 11180.

(g)(1) If a licensee communicates an estimate of replacement cost to an applicant or insured in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis, the licensee must provide a copy of the estimate of replacement cost to the applicant or insured at the time the estimate is communicated. However, in the event the estimate of replacement cost is communicated by a licensee to an applicant to whom the licensee determines an insurance policy shall not be issued, then the licensee is not required pursuant to the preceding sentence to provide a copy of the estimate of replacement cost. In the event the estimate of replacement cost is communicated by telephone to an insured, the copy of the estimate shall be mailed to the insured no later than three business days after the time of the telephone conversation. In the event the estimate of replacement cost is communicated by telephone to an applicant, the copy of the estimate shall be mailed to the applicant no later than three business days after the applicant agrees to purchase the coverage.

(2) An estimate of replacement cost provided in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis must itemize the projected cost for each element specified in paragraphs (a)(1) through (a)(4), and shall identify the assumptions made for each of the components and features listed in paragraph (a)(5), of this Section 2695.183.

(h) If an estimate of replacement cost is updated or revised by, or on behalf of, the licensee and the revised estimate of replacement cost is communicated to the applicant or insured in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis, the licensee shall provide a copy of the revised or updated estimate of replacement cost to the applicant as provided in paragraph (g)(1) of this Section 2695.183, or to the insured simultaneously with the renewal offer, as the case may be. This subdivision (h) shall not apply when the update or revision to the estimate of replacement cost or the policy limit results solely from the application of an inflationary provision in a policy or an inflation factor. This subdivision (h) shall not obligate a licensee to recalculate an estimate of replacement cost on an annual basis.

(i) Licensees shall maintain (1) a record of the information supplied by the applicant or insured that is used by the licensee to generate the estimate of replacement cost, and (2) a copy of any estimate of replacement cost supplied to the applicant or insured pursuant to paragraph (g)(1), or subdivision (h), of

this Section 2695.183. If a policy is issued, these records and copies shall be maintained for the entire term of the insurance policy or the duration of coverage, whichever terminates later in time, and for five years thereafter. However, if the estimate of replacement cost is provided to an applicant to whom an insurance policy is never issued, the records and copies referred to in the first sentence of this subdivision (i) shall be maintained for the period of time the licensee ordinarily maintains applicant files in the normal course of business, provided that such period of time shall be at least sufficient to ensure that the licensee is able to comply with the provisions of this subdivision in the event the policy is issued to the applicant.

(j) To communicate an estimate of replacement value not comporting with subdivisions (a) through (e) of this Section 2695.183 to an applicant or insured in connection with an application for or renewal of a homeowners' insurance policy that provides coverage on a replacement cost basis constitutes making a statement with respect to the business of insurance which is misleading and which by the exercise of reasonable care should be known to be misleading, pursuant to Insurance Code section 790.03.

(k) When an insurer identifies one or more specific sources or tools that a broker-agent must use to create an estimate of replacement cost,

(1) the insurer shall prescribe complete written procedures to be followed by broker-agents when they use the sources or tools,

(2) the insurer shall provide the broker-agent with the training and written training materials necessary to properly utilize the sources or tools according to the insurer's prescribed procedures, and

(3) the insurer, and not the broker-agent, shall be responsible for any noncompliance with this Section 2695.183 that results from the failure of the estimate to satisfy the requirements of subdivisions (a) through (e), unless that noncompliance results from failure by the broker-agent to follow the insurer's prescribed written procedures when using the source or tool.

(l) This Section 2695.183 applies to all communications by a licensee, verbal or written, with the sole exception of internal communications within an insurer, or confidential communications between an insurer and its contractor, that concern the insurer's underwriting decisions and that never come to the attention of an applicant or insured.

(m) No provision of this article shall be construed as requiring a licensee to estimate replacement cost or to set or recommend a policy limit to an applicant or insured. No provision of this article shall be construed as requiring a licensee to advise the applicant or insured as to the sufficiency of an estimate of replacement cost.

(n) No provision of this article shall limit or preclude a licensee from providing and explaining the California Residential Property Insurance Disclosure, as cited in Insurance Code section 10102, explaining the various forms of replacement cost coverage available to an applicant or insured, or explaining how replacement cost basis policies operate to pay claims.

(o) No provision of this article shall limit or preclude an applicant or insured from obtaining his or her own estimate of replacement cost from an entity permitted to make such an estimate by Insurance Code section 1749.85.

(p) For purposes of this subdivision (p), "minimum amount of insurance" shall mean the lowest amount of insurance that an insurer requires to be purchased in order for the insurer to underwrite the coverage on a particular property, based upon an insurer's eligibility guidelines, underwriting practices and/or actuarial analysis. An insurer may communicate to an applicant or insured that an applicant or insured must purchase a minimum amount of insurance that does not comport with subdivisions (a) through (e) of this Section 2695.183; however, if the minimum amount of insurance that is communicated is based in whole or in part on an estimate of replacement value, the estimate of replacement value shall also be provided to the applicant or insured and shall comply with all applicable provisions of this article. Nothing in this article shall limit or preclude an insurer from agreeing to provide coverage for a policy limit that is greater than or less than an estimate of replacement cost provided pursuant to this article.

(q) This article shall apply only to estimates of replacement value that are prepared, communicated or used by a licensee on or after June 27, 2011.

Note: Authority cited: Sections 730, 790.03, 790.04, 790.10, 1749.7, 1749.85, 1861.05 and 2051.5,

Insurance Code. Reference: Sections 730, 790.03, 790.04, 735.5 and 1749.85, Insurance Code.

HISTORY

1. New section filed 12-29-2010; operative 6-27-2011 pursuant to Government Code section 11343.4(b) (Register 2010, No. 53).

10 CCR § 2695.183, **←10 CA ADC § 2695→.←183→**

This database is current through 5/13/11 Register 2011, No. 19

END OF DOCUMENT



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