

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance ("the Department") on the specified issue. The Advisory Opinion is not legally binding on either the department or the reader.

Kentucky Department of Insurance

Advisory Opinion 99-12

In re: Bulletin 98-2 Personal Lines Property Insurance for Earthquake Damages

RELEVANT FACTS AND STATUTES: This advisory opinion is being issued to supplement Bulletin 98-2 regarding Personal Lines Property Insurance for Earthquake Damages, applicable to all personal risks as defined by KRS 304.13-011(4) and pursuant to KRS 304.2-120, 304.12-010, 304.13-041(2), 304.13-051, 304.14-120, 304.14-130 (1) (a) and (b), 304.14-210 and all other applicable law.

The Department has received an increasing number of requests for clarification of the intent of Bulletin 98-2, particularly in regard to permissible deductibles and provision of coverage.

THE DEPARTMENT'S POSITION: In drafting Bulletin 98-2, the Department balanced the concern of policyholders being required to accept unaffordable deductibles with the concern that the occurrence of any significant earthquake could place a personal lines carrier conducting business in this Commonwealth in a hazardous financial condition.

The intent of Bulletin 98-2 was, and is, to allow insurers to offer additional higher deductibles to their applicants in the more earthquake prone locations in the state. (The previous maximum permissible "base" deductible was 10% statewide.) It is the Department's goal that a full array of deductibles be available throughout the state with a commensurate premium. The Department also wants to guard against the wholesale rolling up of existing policies to higher deductibles.

KRS 304.13-011(4) defines "personal risks" as "those covered by property or casualty insurance for personal, family, or household needs." The Bulletin is applicable to all personal lines property policies covering habitational (residential) risks whether buildings or contents. The types of policies include but are not necessarily limited to Homeowners,

Dwelling, Fire and Allied Lines, and the personal residential dwellings covered by a Farmowners policy.

Earthquake coverage is not mandatory. However earthquake coverage must be provided upon request by the policyholder. Item 3 in the Bulletin notes that if an insured under a Homeowners policy requests earthquake coverage, that coverage must be provided regardless of the age or construction of the residential dwelling.

Prior to the Bulletin some insurers sought to reduce or avoid exposures associated with the New Madrid Seismic Zone. In order to maintain the availability of coverage in the Kentucky market, the Department increased the maximum permissible "base" earthquake deductible and the state was partitioned into three regions using information from the scientific community.

It was and is the intent of the Department that a company must offer a deductible no greater than (or at least as low as) 20% in the Far West Region, 15% in the Near West Region, and 10% in the Eastern Region. It was and is the Department's goal that companies would continue to offer lower deductibles as options. Additionally, the Department does allow higher deductibles to be available, but only used when an insured specifically requests a higher deductible for a commensurate premium credit.

Prior approval is required (see Bulletin item 6) should any company's financial position require it to seek "base" deductibles higher than the base regional deductibles provided above. If the writing of additional earthquake coverage may place the insurer in a hazardous financial condition, any insurer may submit a written request to the Commissioner for an exception. Questions can be addressed to the Property and Casualty Division at 502-564-6046.

George Nichols III, Commissioner

Date