



PUBLIC PROTECTION CABINET

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The following guidance is to advise the reader of the current position of the Kentucky Department of Insurance (“the Department”) on the specified issue.

TO: All Insurers Transacting Commercial Insurance Business in the Commonwealth of Kentucky

FROM: Sharon P. Clark, Commissioner
Kentucky Department of Insurance

RE: Limited Waiver of Vacancy Clauses in Commercial Insurance Policies

DATE: May 20, 2020

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The Kentucky Department of Insurance (“Department”) issues this guidance pursuant to Executive Order 2020-220, State of Emergency Relating to Insurance.

On March 6, 2020, Governor Beshear issued Executive Order 2020-215, declaring a State of Emergency due to the COVID-19 pandemic. On March 9, 2020, Governor Beshear issued Executive Order 2020-220, giving the Commissioner of Insurance the authority to temporarily waive, suspend, or modify the operation of any statute or administrative regulation currently in place under the purview of the Kentucky Department of Insurance in order to best serve the interest of public health, safety, and welfare during the State of Emergency related to COVID-19.

Several Executive Orders related to business operations have supplemented Executive Order 2020-215 during the COVID-19 pandemic, including Executive Order 2020-317, Executive Order 2020-243, Executive Order 2020-246, and Executive Order 2020-257. These Executive Orders, among others, are part of Governor Beshear’s Healthy at Home initiative and Healthy at Work initiative. Businesses have cooperated with these Executive Orders by limiting business operations during the State of Emergency.

These sudden and necessary changes in business operations potentially impact vacancy clauses found in many commercial insurance policies. A vacancy clause’s application to these circumstances depends on the policy language; for example, while some policies define vacancy by a lack of people occupying the premises, other policies define vacancy by amount of time

without activity, amount of a building's square footage not in use by business operations, or other factors to signify a premises is unoccupied. Businesses complying with Governor Beshear's Executive Orders may inadvertently meet their commercial insurance policy's definition for vacancy by leaving an otherwise covered building temporarily unoccupied.

Pursuant to the authority granted by Executive Order 2020-220, the Department hereby notifies all insurers that the Department shall enforce a limited waiver of commercial policy vacancy clauses. Vacancy clauses shall be waived to the extent claims denial, policy cancellation, or policy nonrenewal would occur based solely on the insured's business location being temporarily unoccupied because the insured complied with Executive Orders related to the COVID-19 pandemic. The waiver applies to denial, cancellation, and nonrenewal decisions occurring during the period between the closure of nonessential business on March 23, 2020 and the time this guidance is no longer in effect. The waiver shall only apply to businesses that are temporarily unoccupied at the location(s) specified as covered under the commercial policy. The Department reiterates that the waiver is limited only to circumstances where the sole basis of denial, cancellation, or nonrenewal is related to a business's compliance with Executive Orders issued because of the COVID-19 pandemic. This limited waiver does not affect claims denials, cancellations, and non-renewals due to nonpayment of premium.

This guidance will remain in effect for sixty (60) days from the issue date listed above and may be extended as necessary to accommodate extensions to the State of Emergency.

/s/ Sharon P. Clark

Sharon P. Clark, Commissioner
Kentucky Department of Insurance