

INSURANCE

Pete Ricketts

Governor

Bruce R. Ramge

Director

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A Message from the Director....

Nebraska's Insured Homeowners Protection Act



Bruce R. Ramge

Whether you are a homeowner, an insurance producer, an insurer or a residential contractor, being familiar with the "Insured Homeowners Protection Act" can be an important step in helping yourself or others deal with post-loss repair issues.

The act applies to the business of contracting or offering to contract to repair or replace a roof system or to perform any other exterior repair, replacement, construction, or reconstruction work on residential real estate or to perform interior or exterior cleanup services on residential real estate.

As a means of protection to homeowners, the act permits homeowners the ability to mail written notice of cancellation of a contract with a residential contractor prior to midnight on the later of the third business day after the person has entered into a contract or received written notice from the person's insurer that all or part of the claim or contract is not a covered loss under the insurance policy. It also permits written notice of cancellation within three days of entering into a contract.

In the event of such a cancellation, the residential contractor is required to return any partial payments or deposits to the homeowner.

The act also prohibits residential contractors from promising to rebate or offset any portion of an insurance deductible as an inducement for the sale of goods or services.

The full provisions of the act are located in Neb. Rev. Stat. §§ 44-8601 to 44-8604.

PRODUCER LICENSING DIVISION

Fees Reduced For Insurance Producer and Insurance Consultant Licenses

Effective January 1, 2017, both licensing fees and the biennial renewal fees will be reduced from \$60 to \$50 for individual insurance producer and insurance consultant licenses.

Effective January 1, 2017, the Department will reduce both licensing fees and the biennial renewal fees from \$60 to \$50 for individual insurance producer and insurance consultant licenses. Department Bulletin CB-38, "Schedule of Fees", will be amended to reflect this change closer to the effective date.

A full copy of the Notice issued by Director Ramge on September 23, 2016 can be found on the Department's website at doi.nebraska.gov/news/notice-reduction-fees-insurance-producers-and-insurance-consultant-licenses.

Continuing Education Requirements

Producers need to complete their continuing education requirements prior to their renewal month in order to give the education provider a reasonable amount of time to upload the education to the producer's transcript.

Producers are reminded to complete their continuing education requirements prior to their renewal month in order to give the education provider a reasonable amount of time to upload the education to the producer's transcript. Education providers have 10 days to upload continuing education transcripts.

A producer will not be allowed to renew his or her license until the transcripts are uploaded to the producer's record. If continuing education is completed in the last month of the renewal period, there may not be enough time for the continuing education to show on the producer's transcript and the producer will not be able to renew online.

Change of Address Reminder

Failure to provide notice of a residential or business address change is subject to a fine of not more than five hundred dollars per violation, suspension of the person's license until the change of address is reported to the Department, or both.

Every person licensed under the Insurance Producer Licensing Act is required to notify the Department within thirty days of any change in such person's residential or business address.

Any person failing to provide such notification is subject to a fine by the Director of not more than five hundred dollars per violation, suspension of the person's license until the change of address is reported to the Department, or both.

A change of home or business address may be completed online at www.nipr.com or by submitting a completed DOI-9110 Request Form to the producer licensing division.

LIFE & HEALTH DIVISION

Tips to Help Expedite the Form Filing Process

The division would like to provide some guidance regarding the filing of forms submitted to the Department. The following tips will help to expedite our review and allow the use of forms sooner.

- The filing description must be completed and should include a detailed description of what is being filed. Please identify whether the filing is a revised form or a new form. There should be an explanation of why the form is being filed and what it will be used for by the company. If the form is to be used with a previously approved form, please include that form number and the date of approval in the filing description. It is also recommended that the filer submit a copy of this previously approved form in SERFF, under the supporting documentation tab, for reference purposes. Alternatively, a cover letter may be attached, but it must provide sufficient detail for the reviewer and contain the aforementioned information.
- A current letter of authorization is required when filings are made on behalf of another company in SERFF. The authorization should be signed by an officer of the company. Filers are also asked to complete the readability score in the Form Schedule Tab in SERFF.
- A company is not required to file advertising forms for all types of insurance with the Department. The Department currently requires the filing in SERFF for Long-Term Care insurance and Medicare Supplement insurance advertising forms. Although some advertising forms are not reviewed by the division, they remain subject to and must comply with all respects of Nebraska's insurance laws and regulations.
- The filer needs to keep track of the time period given for a response to an objection. If your response cannot be completed within the time period given, please contact the analyst through a SERFF "Note to Reviewer" and request an extension. Extension requests may not always be granted.

If the filing has been closed, we may request it be refiled rather than reopened. Below are some general guidelines for reopening a SERFF filing:

- A filing will only be reopened once. If additional problems are found later and it is requested that a filing be opened for a second time, a new filing will need to be submitted.
- A filing will only be reopened within 30 days of the original disposition date. At the analyst's discretion, a filing can be reopened more than 30 days after the original disposition date, if the forms have not yet been issued.
- Please submit an Amendment with a cover letter describing the revision to the closed filing in detail and attach the entire corrected form—not just the page being corrected.
- A filing will retain its original disposition date.
- A filing will only be reopened for minor changes. If the revision will require a complete, new review on the Department's part, the filer will be requested to file it as a new filing.

- If a trend occurs in routinely asking the Department to reopen a filing, the company will be notified that this is not acceptable and it will be at the Department's discretion whether or not to reopen the filing.
- If the Department is requested to reopen a filing when a form has been omitted on the original filing, the omitted form will need to be submitted as a new filing. A filing will not be reopened in this situation.
- A filing will not be reopened for the purpose of changing a form number. This will need to be submitted as a new filing.
- All submissions are handled in date order, including responses.

The division welcomes your feedback. If company filers have suggestions on how to further improve the review process, suggestions may be submitted directly to **deb.maher@nebraska.gov**.

LEGAL DIVISION

Regulation Updates

Adopted Regulation

TITLE 210 NEB. ADMIN. R. & REGS. 88 - CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Chapter 88 was filed with the Secretary of State for adoption on September 22, 2016, with an effective date of September 27, 2016. Chapter 88 establishes procedures for filing the required contents of the Corporate Governance Annual Disclosure, which is an annual filing now required of insurers and insurance groups. The Corporate Governance Annual Disclosure Act and Chapter 88 are based on models promulgated by the National Association of Insurance Commissioners. A full copy of Chapter 88 is on the Department's website found at **doi.nebraska.gov/sites/doi.nebraska.gov/files/doc/final-chp88.pdf**.

Nebraska Hospital-Medical Liability Act Surcharge Set for 2017

On October 12, 2016, a hearing was held before the Director of Insurance, as required by Neb. Rev. Stat. § 44-2830, to consider adjusting the amount of the Nebraska Hospital-Medical Liability Act surcharge for 2017.

On the basis of the public hearing giving due regard to the size of the existing Excess Liability Fund, the number and size of potential claims against the Fund, the number of participating providers, change in the cost of living, and sound actuarial principles, the Director set the surcharge for the year 2017, effective January 1, 2017, at twenty-six percent (26%) for all health care providers.

Actions Taken Against Producers and Agencies

CAUSE NO.	ALLEGATION	DISPOSITION
A-2040 Andrew Sutter Omaha, NE NPN - 17906767	Violated <u>Neb. Rev. Stat. §§ 44-4059(1)(a), 44-4059(1)(b), 44-4059(1)(h) and 44-4065(1)</u> . Provided incorrect or incomplete information on license application; violated any insurance law; and used fraudulent, coercive, or dishonest practices.	Order Producer license revoked 7/18/2016
A-2041 Keyon Anthony Moore Pembroke Pines, FL NPN – 16111380	Violated <u>Neb. Rev. Stat. §§ 44-4059(1)(b), 44-4059(1)(h), 44-4059(i), and 44-4065(1)</u> . Violated any insurance law; used fraudulent, coercive, or dishonest practices; had an insurance license denied, suspended, or revoked in any other state; and failed to report administrative action taken in another jurisdiction.	Order Producer license revoked 8/31/2016
A-2042 Robert Novotne Omaha, NE NPN – 17051155	Violated <u>Neb. Rev. Stat. §§ 44-4059(1)(b), 44-4059(1)(f), 44-4059(1)(h), 44-4059(1)(n), and 44-4065(3)</u> . Violated any insurance law; convicted of a felony; used fraudulent, coercive, or dishonest practices; failed to pay state income taxes; and failed to report criminal prosecution taken in another jurisdiction.	Order Producer license revoked 9/20/2016
A-2044 Jacob Holland Omaha, NE NPN - 18092115	Hearing requested for reconsideration of denial of application for resident producer license.	Order Producer license granted 9/21/2016

Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-2207 Continental Casualty Company (Arkansas)	Violated <u>Neb. Rev. Stat. §§ 44-1539, 44-1540(2), 44-1540(3), 44-1540(4), 44-1540(8), Title 210 Neb. Admin. Code §§ 61-004, 61-006.01, 61-006.03, 61-007.01, 61-008.02, and 61-008.03</u> unfair claims settlement practices.	Consent Order \$50,000 fine 8/22/2016

Case Summaries

Drake-Williams Steel, Inc. v. Continental Cas. Co., 294 Neb. 386, __ N.W.2d __ (August 5, 2016)

The nature of this case between an insured and three insurers involved the meaning of coverage provisions in general liability policies and an umbrella policy insuring a fabricator of steel rebar. Drake-Williams Steel, Inc. (DWS), the fabricator, supplied steel rebar via a purchase agreement to the general contractor hired by the City of Lincoln to build the Pinnacle Bank Arena (PBA). The rebar provided was improperly bent and did not conform to the purchase agreement. DWS replaced the nonconforming rebar that had not yet been cast in concrete, but approximately 52 pile caps, located below ground level, had been cast with the nonconforming rebar. Half of these pile caps were determined to be incapable of soundly supporting the PBA because of the nonconforming rebar.

Engineers determined the most cost-effective solution was to install a reinforcing band around the compromised pile caps. Because DWS originally refused to pay the costs of this remedy, it was paid by the general contractor. Eventually, DWS reimbursed the general contractor and sought coverage from its insurers that provided primary commercial general liability (CGL) policies during the relevant time period, Employers Mutual Casualty and EMCASCO Insurance Company, and its umbrella insurer, Continental Casualty Company. All companies denied the DWS claim and the CGL insurers instituted an action to determine obligations under their policies of insurance. DWS filed a separate action against Continental. These cases were consolidated into one action.

The insurance policies all contained substantially similar relevant policy language. The policies agreed to cover sums DWS becomes legally obligated to pay as damages because of property damage, defined to mean 'physical injury' to tangible property, including loss of use of that property and loss of use of tangible property that is not physically injured. The policies go on to state that the insurance applied to property damage only if the property damage is caused by an occurrence, which is defined as an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

The district court entered summary judgment in favor of the insurers finding that the pile caps were damaged but that the repair restored the pile caps to their intended use and there was no occurrence. Because of this, the district court found that the impaired property exclusion applied. Both DWS and the insurers appealed this decision. Notably, the insurers challenged the district court finding of property damage.

The Nebraska Supreme Court affirmed the order of summary judgment in favor of the insurers, albeit for a different reason than the district court. The Supreme Court determined that the costs for which DWS sought reimbursement were not derived from physical damage to the pile caps or their loss of use, and that there was no property damage and thus no coverage. Because of this holding, the Supreme Court did not determine the applicability of any exclusions.

In reaching this conclusion the court performed an extended analysis of property damage and CGL policies. Citing a California Court of Appeals decision from 2004 and a number of commentaries on CGL policies, the court provided a distinction between non-covered business risks within the insured control and covered risk of liability when faulty products or works cause damage to other property that cannot be corrected. Citing Nebraska case law, specifically *Federated Serv. Ins. Co. v. Alliance Constr.* 282 Neb. 638, 805 N.W.2d 468 (2011), the court stated a CGL policy is intended to cover an insured's tort liability for physical injury, not economic losses due to business risks.

Applying these principles to the facts involving DWS and its nonconforming rebar, the court found that because the defective rebar was discovered before the PBA was completed, no damage occurred to the system. Further, because the pile caps were modified without destroying and rebuilding the pile caps, no physical damage occurred to the pile caps. Additionally, DWS did not claim damages due to temporary loss of use of the PBA during remediation. Instead, the court found that the reinforcement of the pile caps was simply part of DWS' contractual obligation under the purchase agreement to make good on its work. CGL policies are not designed to protect against this liability.

The court goes on to point out that depending on the facts and methods used to correct a defect, a CGL may or may not provide coverage. In this case, an alternative considered by the engineers to correct the problem was the demolition and reconstruction of the pile caps, which would have resulted in property damage to the pile caps. However, this solution was rejected because of the significantly higher cost and impacts to the PBA project schedule.

Finally, the court distinguishes the underlying case with *Auto-Owners Ins. Co. v. Home Pride Cos.*, 268 Neb. 528, 684 N.W.2d 571 (2004). In *Auto-Owners*, faulty workmanship on an apartment complex shingling project caused significant damage to the underlying roof structures and building, resulting in the insurer's obligation to provide coverage. The court distinguishes the DWS case by stating DWS nonconforming rebar did not damage other property and that the amount DWS seeks to recover is the costs incurred by DWS to fulfill its contractual obligations with the general contractor, which is a business risk not covered by CGL policies.

Nebraska Comprehensive Health Insurance Pool Proposed Rate Adjustment

Pursuant to Neb. Rev. Stat. § 44-4227, the Department will hold a public hearing on a proposed rate adjustment of the Nebraska Comprehensive Health Insurance Pool premium rates. The purpose of the hearing is to provide an opportunity for public comment on the proposed rate adjustment.

The public hearing has been scheduled for Thursday, November 17, 2016, at 10:00 a.m., at the Department of Insurance, Fifth Floor Conference Room, Terminal Building, 941 O Street, Lincoln, Nebraska.

A full copy of the notice can be viewed at doi.nebraska.gov/sites/doi.nebraska.gov/files/doc/hearing-rate-adjust-ne-comp-health-ins-pool-prem-rates.pdf.

EXAMINATION DIVISION

Pre-Need Examinations Completed During 3rd Quarter, 2016

Forest Lawn Memorial Park
John E. Johnston & Son
Marshall Funeral Chapels

Financial examination reports become public documents once they have been placed on official file by the Department. The most current report of financial examination can now be found on the Department's website at www.doi.nebraska.gov. Copies can be obtained from the Department at a cost of \$.50 per page.



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Department Calendar

- November 11: NDOI Closed—Veterans’ Day
- November 24-25: NDOI Closed—Thanksgiving
- December 26: NDOI Closed—Christmas Day Observed
- January 2: NDOI Closed—New Year’s Day Observed
- January 16: NDOI Closed—Martin Luther King Day Observed