**Section 919.80**  **Required** **Claim Practices** – **Private Passenger Automobile –** **Property and Casualty Companies**

a) All companies shall report vexatious or unreasonable delay findings by a court of law to the Director within 30 days after such findings and enclose with that report a copy of said findings and penalties, if any, pursuant to Section 155 of the Code [215 ILCS 5/155].

b) Unreasonable Delays.

1) The period used in computing the "median payment period" shall mean the period measured from the date of notification of loss to the date of final payment or the rendering of the repaired automobile to the insured or third party claimant.

2) An unreasonable delay to pay automobile collision claims exists when the median payment period exceeds 40 calendar days. If a first party physical damage automobile claim remains unresolved for more than 40 calendar days from the date it is reported, the company shall provide a reasonable written explanation for the delay to the insured. Notice of Availability of the Department of Insurance shall accompany the written explanation.

3) An unreasonable delay to pay automobile property damage liability claims exists when a median payment period exceeds 60 calendar days. If an automobile property damage liability claim remains unresolved in excess of 60 calendar days from the date it is reported, the company shall provide a reasonable written explanation for the delay to the third party claimant. Notice of Availability of the Department of Insurance shall accompany the written explanation.

4) Written explanations under subsections (b)(2) and (3) shall be considered reasonable if they exhibit a rational basis for the delay and are not frivolous.

c) Total Loss Vehicle Claims.

When the insured vehicle has been determined a total loss, and the insurance policy provides for the adjustment and settlement of first party vehicle claims on the basis of actual cash value or replacement, the company shall establish a procedure to provide the insured with, at a minimum, the information contained inExhibit A of this Part within 7 days after this determination, and shall follow one of the following methods:

1) The company may elect to replace the insured vehicle, providing that it is:

A) Comparable in that it will be by the same manufacturer, same year, similar body style, and similar options and price range as the insured vehicle and in as good or better overall condition and available for inspection at a licensed dealer within a reasonable distance of the insured's residence. The file must contain a description of the replacement vehicle, including the vehicle identification number and a schedule of options.

B) Replacement vehicles of the current model plus the 3 previous model years must be purchased through licensed dealers. This requirement may be waived in writing by the insured. The signed waiver must be maintained in the file.

C) Once the replacement vehicle is located, the insured shall be advised of the location of the vehicle and the replacement value, including the applicable taxes, license and transfer fees. In the event the insured elects a cash settlement instead of such replacement vehicle, the company need pay only the amount it would have otherwise paid on the replacement vehicle. As a condition precedent to this method of settlement, the company must first offer the replacement vehicle to the insured and the insured must reject the offer. Evidence of such must be apparent in the file.

D) In the event that a replacement vehicle meeting the requirements of subsection (c)(1)(A) is not available or the insured rejects a replacement vehicle or the insured wants another available vehicle substantially similar in value, the option to replace the insured vehicle may be exercised provided the company has the insured's written waiver in the claim file that the acceptance of another vehicle is of his or her own free will and choice. The company need pay only the amount it would have otherwise paid on the replacement vehicle, including the applicable taxes, and transfer fees.

2) The company may elect to pay a cash settlement. The company shall use one of the following methodologies to determine the market value of the insured vehicle: The cash settlement may be based upon the retail value of the vehicle as determined from one of the following sources:

A) A source or sources which are published on a regular basis, at least once every 2 months, and contain the average retail, wholesale and finance value for all makes and models for at least each of the last 5 model years, as well as a listing and price for all major options; or

B) An electronically computerized source or sources:

i) That compute statistically valid retail values, including all major options and equipment, and applicable allowances for mileage and condition, for at least 85% of all makes and models for at least each of the last 15 model years;

ii) By which the retail value so generated shall be based on data from the area immediately surrounding the location where the insured vehicle was principally garaged and such value shall be based upon data compiled on at least 1.5 million passenger vehicles;

iii) That compile, maintain and provide, upon request, a record of valuations and monthly summaries of the average retail value, option value, and mileage for each general metropolitan area for the preceding 24 month period.

C) The settlement may be based upon an electronically computerized service. Such settlement must include at least 2 currently available vehicles from licensed dealers in Illinois or 2 vehicles that have been sold by licensed dealers in Illinois, one of which was sold within the past 30 days and one of which was sold within the past 90 days. The location of the licensed dealer for each available or recently sold vehicle shall be within 50 miles of the general metropolitan area where the data is gathered. The name and location of the licensed dealers, as well as the vehicle identification numbers (VINs), shall be maintained in the claim file. If the electronically computerized service does not include a sufficient number of vehicles to satisfy the requirements of this subsection (c)(2)(C), the service may provide an average from at least 2 published sources that comply with subsection (c)(2)(A).

D) If the insured vehicle is not quoted in the source or sources used by the company, the company shall then base the settlement upon at least two written dealers' quotations. The company shall furnish the names and locations of the dealers used to determine the market value to the insured, and a copy of the dealers' quotations.

E) In subsection (c)(2)(A), (B), (C) and (D), the claim file shall contain documentation of how the market value of the insured automobile was determined.

F) Right of Recourse - If within 30 days after the receipt of the claim draft, the insured cannot purchase a comparable vehicle in excess of such market value, the company will reopen its claim file and the following procedure(s) shall apply:

i) The company may locate a comparable vehicle by the same manufacturer, same year, similar body style and similar options and price range for the insured for the market value determined by the company at the time of settlement. Any such vehicle must be available through licensed dealers; or

ii) The company shall either pay the insured the difference between the market value before applicable deductions and the cost of the comparable vehicle of like kind and quality which the insured has located, or negotiate and effect the purchase of this vehicle for the insured; or

iii) The company may elect to offer a replacement in accordance with the provisions set forth in subsection (c)(1); or

iv) The company may conclude the loss settlement as provided for under the appraisal section of the insurance contract in force at the time of loss. This appraisal shall be considered as binding against both parties, but shall not preclude or waive any other rights either party has under the insurance contract or at common law.

v) The company is not required to take action under this subsection (c)(2)(F) if its documentation to the insured at the time of settlement included written notification of the availability and location of a specified and comparable vehicle of the same manufacturer, same year, similar body style and similar options in as good or better condition as the total loss vehicle which could have been purchased for the market value determined by the company before applicable deductions. The documentation shall include the vehicle identification number.

3) Provisions applicable to subsections (c)(1) and (c)(2).

A) If a replacement vehicle is provided, the company is required to pay the applicable sales tax and transfer and title fees.

i) If a cash settlement is provided, and if within 30 days after the receipt of the settlement by the insured, the insured has purchased or leased a vehicle, the company is required to reimburse the insured for the applicable sales taxes and transfer and title fees incurred on account of the purchase or lease of the vehicle, but not exceeding the amount payable on account of the value of the total loss vehicle. If the insured purchases or leases a vehicle with a market value less than the amount of the settlement, then the company is required to reimburse only the amount of the applicable sales tax and transfer and title fees incurred by the insured. If the insured cannot substantiate such purchase and the payment of such taxes and fees, by submission to the company of appropriate documentation within 33 days after the receipt of settlement, the company shall not be required to reimburse the insured for the sales taxes or transfer or title fees. In lieu of this reimbursement procedure, the company may directly pay the required amounts of sales taxes and transfer and title fees to the insured at the time of settlement. With respect to leased vehicles, sales taxes and transfer and title fees shall be deemed to be incurred by the insured at the time the lease is entered into, but only if such sales taxes and transfer and title fees are included in the cost of the lease or are paid directly by the insured.

ii) Any form required by the company for applying for the reimbursement must be furnished by the company with either the notice or at the time of settlement.

B) Deductions of the kind commonly referred to as "get ready to go" and "dealer prep", or dealer preparation, charges are prohibited.

d) Practices Concerning Travel, Loss of Use, Storage/Towing and Betterment, Replacement Crash Parts and Automobile Repairs.

1) Unreasonable Travel.

A) The company shall not require the insured or claimant to travel unreasonably to inspect a replacement vehicle, nor shall the company require the insured or claimant to locate a replacement vehicle.

B) The company shall not require the insured or claimant to travel unreasonably either to obtain a repair estimate or to have the vehicle repaired at a specific repair shop that is recommended by the company.

C) The Department will consider availability and cost consideration in determining reasonable travel requirements.

2) Loss of Use. In automobile property damage liability claims in which liability is reasonably clear, the company shall pay for the reasonable and necessary costs, in direct proportion to the extent of its liability, incurred in the rental of another automobile provided that the loss of use claim is submitted and substantiated. In those cases where the company pays a flat rental amount per day, week or month, it must disclose to the claimant where the claimant can obtain a vehicle for the amount of its payment.

3) Storage and Towing. The company shall provide reasonable notice to an insured prior to termination of payment for automobile storage charges and document such notice in the claim file. Reasonable notice shall constitute sufficient notice to the insured to allow them to remove the vehicle from storage prior to the termination of payment. Unless the company has provided an insured with the name of a specific towing company prior to the insured's use of another towing company, the company shall pay any and all reasonable towing charges irrespective of the towing company used by the insured. A company shall make no advance charge deductions for storage and towing charges unless excessive charges have resulted from the insured's own actions. The company shall itemize each advance charge deduction and maintain in the claim file documentation of the reasons and dollar amounts involved in each deduction. Any determination of reasonable towing charges shall consider policy coverage as well as the cost and distances involved in each claim.

4) Betterment deductions are allowable only if:

A) The deductions:

i) Reflect a measurable decrease in market value attributable to the poorer condition of, or prior damage to, the insured vehicle;

ii) Are for prior wear and tear, missing parts and rust damage that is reflective of the general overall condition of the vehicle considering its age, any such deductions for this type of damage may not exceed $500; and

iii) Are measurable, itemized, specified as to dollar amount and documented in the claim file; and

B) The company does not require the insured or claimant to supply parts for replacement.

5) Replacement Crash Parts.

A) Purpose.

The purpose of this subsection (d)(5) is to set forth standards for the prompt, fair and equitable settlements applicable to automobile insurance with regard to the use of replacement crash parts. It is intended to regulate the use of replacement crash parts in automobile damage repairs which insurers pay for on their insured's vehicle. It also requires that all replacement crash parts, as defined in this Section, be identified and be of the same quality as the original part.

B) Identification.

All replacement crash parts, which are subject to this Section and manufactured after March 17, 1986, shall carry sufficient permanent non-removable identification so as to identify its manufacturer. Such identification shall be accessible to the extent possible after installation.

C) Like Kind and Quality.

No insurer shall require the use of replacement crash parts in the repair of an automobile unless the replacement crash part is at least equal in like kind and quality to the original part in terms of fit, quality and performance. Insurers specifying the use of replacement crash parts shall consider the cost of any modifications which may become necessary when making the repair.

6) Vehicle Repairs.

If partial losses are settled on the basis of a written estimate prepared by or for the company, the company shall supply, upon request of the insured, a copy of the estimate upon which the settlement is based. The estimate prepared by or for the company shall be reasonable, in accordance with applicable policy provisions, and of an amount which will allow for repairs to be made in a workmanlike manner. If the insured subsequently claims, based upon a written estimate which he obtains, that necessary repairs will exceed the written estimate prepared by or for the company, the company shall review and respond promptly to the insured and provide the insured with the name of a repair shop that will make the repairs in a workmanlike manner. Failure of the company to so inform the insured of the name of such a repair shop shall require the company to provide written notice to the insured that any and all reasonable costs incurred for repair or replacement related to the partial loss in excess of the company's estimate will be reimbursed by the company. The company shall maintain documentation of all such communications.

7) Required Practices - Fire and Extended Coverage Claims.

A) An unreasonable delay to pay claims on policies of fire and extended coverage insurance, as defined in Section 143.13 of the Code [215 ILCS 5/143.13], exists when a median payment period exceeds 40 calendar days.

B) If a claim on a policy of fire and extended coverage insurance, as defined in Section 143.13 of the Code [215 ILCS 5/143.13], remains unresolved for more than 75 calendar days from the date it is reported, or 25 calendar days after receipt of proof of loss, whichever is less, the company shall provide a reasonable written explanation for the delay to the insured. Notice of Availability of the Department of Insurance shall accompany the written explanation to the insured.

C) If partial losses are settled on the basis of a written estimate prepared by or for the company, the company shall supply upon request of the insured, a copy of the estimate upon which the settlement is based. The estimate prepared by or for the company shall be reasonable, in accordance with applicable policy provisions, and of an amount which will allow for repairs to be made in a workmanlike manner. If the insured subsequently claims, based upon a written estimate which he obtains, that necessary repairs will exceed the written estimate prepared by or for the company, the company shall review and respond promptly in writing to the insured in regard to his written estimate and provide the insured with the name of a repair shop or contractor that will make the repairs in a workmanlike manner. Failure of the company to so inform the insured of the name of a contractor shall require the company to provide written notice to the insured that any and all reasonable costs incurred for repair or replacement related to the partial loss in excess of the company's estimate will be reimbursed by the company.

8) Actual Cash Value Losses.

A) When the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage as defined in Section 143.13 of the Code [215 ILCS 5/143.13], the company shall determine actual cash value, except for instances in which the insured's interest is limited as set forth in subsection (d)(8)(B), as follows: replacement cost of property at time of loss less depreciation, if any. Upon the insured's request, the company shall provide a copy of the claim file worksheet(s) detailing any and all deductions for depreciation, including, but not necessarily limited to, the age, condition, and expected life of the property.

B) In cases in which the insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value as set forth in subsection (d)(8)(A) is not required. In such cases, the company shall provide, upon the insured's request, a written explanation of the basis for limiting the amount of recovery along with the amount payable under the policy.

C) When the period within which the insured may bring suit under a residential fire and extended coverage policy is tolled in accordance with Section 143.1 of the Code [215 ILCS 5/143.1], the company, at the time it denies the claim, in whole or in part, shall advise the insured in writing of the number of days the period was tolled, and how many days are left before the expiration of the time to bring suit.

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