

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

INSURANCE BUREAU

FIRE INSURANCE--WITHHOLDING

(By authority conferred on the commissioner of insurance by section 2845 of Act No. 218 of the Public Acts of 1956, as amended, being S500.2845 of the Michigan Compiled Laws)

R 500.1261 Definitions.

Rule 1. As used in these rules:

(a) "Act" means Act No. 495 of the Public Acts of 1980, being SS500.2836 and 500.2845 of the Michigan Compiled Laws.

(b) "Arbitration," as used in section 2845(16)(c) of the act, refers to the appraisal provisions of the Michigan standard policy contained in lines 123 to 147 of the standard form of policy prescribed in section 2832 of Act No. 218 of the Public Acts of 1956, as amended, being S500.2832 of the Michigan Compiled Laws.

(c) "Commissioner" means the commissioner of insurance and his or her designee.

(d) "Explosion loss" means loss from explosions covered under Michigan's standard fire policy contained in section 2832 of Act No. 218 of the Public Acts of 1956, as amended, being S500.2832 of the Michigan Compiled Laws, and excludes explosion losses under boiler and machinery policies or other explosion coverages not contained in section 2832.

(e) "Insurer" means an insurer as defined by section 106 of Act No. 218 of the Public Acts of 1956, as amended, being S500.106 of the Michigan Compiled Laws.

(f) "Mortgagee" means a mortgagee named under the mortgage clause of a standard fire policy provided in section 2832 of Act No. 218 of the Public Acts of 1956, as amended, being S500.2832 of the Michigan Compiled Laws.

(g) "Municipality" means a city, village, or township eligible to participate in the withholding program specified in the act.

(h) "Policy" means the Michigan standard fire policy set forth in section 2832 of Act No. 218 of the Public Acts of 1956, as amended, being S500.2832 of the Michigan Compiled Laws, and policies specifically incorporating the standard fire policy, which insure against fire or explosion losses to insured real property.

History: 1982 AACS.

R 500.1262 Participating municipalities; preparation of list by commissioner required.

Rule 2. Before March 1, 1982, the commissioner shall prepare a list of all cities, villages, or townships which have established a trust account and intend to apply the provisions of section 2845 of the act. The list shall include the name, address, and telephone number of the municipal official responsible for the administration of the municipality's program under section 2845 of the act. The list shall be forwarded to all insurers transacting property insurance in this state and shall be effective April 1, 1982.

History: 1982 AACCS.

R 500.1263 Amount of withholding.

Rule 3. (1) The amount withheld by the insurer under section 2845 of the act shall not exceed 15% of the actual cash value of the insured's real property at the time of the loss or 15% of the final settlement, whichever is less. For the purposes of section 2845(8) of the act, the final settlement shall not include additional funds paid as a result of settlement on a replacement cost basis. Where the amount of loss is calculated on a replacement cost basis, an insurer shall determine the actual cash value of the claim in determining the amount to be withheld.

(2) Withholding can only take place when the actual cash value of the damage exceeds 49% of the insurance on the structure damaged by fire or explosion.

(3) Insurers can only withhold with respect to property within the official geographic boundaries of municipalities which have elected to participate in the act.

History: 1982 AACCS.

R 500.1264 Affidavits to insurers; timeliness.

Rule 4. Affidavits submitted to an insurer by the chief fire official or other authorized representative shall be postmarked not later than date specified by the insurer in its notice of withholding to municipalities pursuant to R 500.1267 or else the municipality will no longer be entitled to claim the withheld funds and the insurer shall immediately forward the withheld funds to the insured. This rule applies even if the insurer receives an affidavit while the withheld funds are still in its possession.

History: 1982 AACCS.

R 500.1265 Notice of withholding; time.

Rule 5. For purposes of section 2845(1) of the act, an insurer shall notify the insured, the municipality, and mortgagees of the 15% withholding within 15 days of a settlement or judgment subject to the withholding.

History: 1982 AACCS.

R 500.1266 Notice of withholding to insureds and mortgagees; content.

Rule 6. For purposes of section 2845(1)(g) of the act, the explanation that must accompany the notice of withholding to insureds and mortgagees shall contain all of the following:

(a) A statement that the insurer is withholding a portion of a final settlement for loss to the insured real property in accordance with the provisions of the act.

(b) A statement that the purpose of the act is to assure that proceeds of insurance claims will be used to repair or remove property damaged by fire or explosion.

(c) A statement that the act applies only in those communities whose governing bodies have established a program to apply the act to insured fire losses, and that the insured's property is located in one of those communities.

(d) A description of the insured real property, including all of the following information:

- (i) Location.
- (ii) Name of each policyholder.
- (iii) Address of each policyholder.
- (iv) Name of mortgagee.
- (v) Address of mortgagee.
- (vi) Date of loss.
- (vii) Policy number.
- (viii) Claim number.
- (ix) Amount withheld.

(e) A statement that the amount withheld is 15% of the actual cash value of the insured's real property at the time of the loss or 15% of the final settlement, whichever is less, which is the percentage insurers are required by the act to withhold.

(f) A statement that the insurer will forward the amount withheld to the municipality where the property is located upon receipt of an affidavit from the chief fire official or other authorized representative of the municipality that the structure violates existing named health and safety standards.

(g) A statement that the affidavits submitted by the chief fire official or other authorized representative shall be postmarked not later than a specified date or else the municipality will no longer be entitled to claim the withheld funds.

(h) A statement informing the insured that the municipality shall deposit the funds in a separate escrow account.

(i) A statement that if the municipality wants to retain the funds, it shall apply to a court of competent jurisdiction for the right to do so within 30 days after receiving the funds or else the municipality shall return the proceeds to the insured.

(j) A statement that the funds shall be returned to the insured if, within 445 days from the date the municipality receives the funds from the insurer, the insured can show that any of the following has occurred:

- (i) The structure has been repaired or replaced.
- (ii) The structure has been removed.
- (iii) The insured has entered into a contract to have the repair or removal completed.

(k) A statement that the municipality may require any of the following as reasonable proof of repair, replacement, or removal:

- (i) Originals or copies of contracts, invoices, or receipts evidencing work performed.
- (ii) Affidavits executed by a contractor that work has been performed.
- (iii) An inspection of the property.

(l) A statement that where work has not been performed, but contracts have been entered into, the funds shall be forwarded to the contractor and only the unused portion will be forwarded to the insured.

(m) A statement that if the municipality receives a written request from a first mortgagee, and if the mortgage on the insured's property is in default, the municipality shall release the

funds, or a portion sufficient to satisfy the outstanding debt, not later than 10 days after receipt of the request.

History: 1982 AACCS.

R 500.1267 Notice of withholding to municipality; content.

Rule 7. For purposes of section 2845(1)(g) of the act, the explanation that must accompany the notice of withholding to municipalities shall contain all of the following:

(a) A statement that the insurer is withholding a portion of a final settlement for loss to the insured real property in accordance with the provisions of the act.

(b) A description of the insured real property, including all of the following information:

- (i) Location.
- (ii) Name of each policyholder.
- (iii) Address of each policyholder.
- (iv) Name of mortgagee.
- (v) Address of mortgagee.
- (vi) Date of loss.
- (vii) Policy number.
- (viii) Claim number.
- (ix) Amount withheld.

(c) A statement that the insurer will forward the amount withheld to the municipality upon receipt of an affidavit from the chief fire official or other authorized representative of the municipality that the structure violates existing named health and safety standards.

(d) A statement that the affidavits submitted by the chief fire official or other authorized representative shall be delivered or postmarked within 15 days after receipt of the notice of withholding by the municipality.

(e) A statement that in determining the 15 days, the date of receipt by the municipality shall be excluded and the date of receipt by the insurer included. If the fifteenth day falls on a Saturday or Sunday or holiday, the fifteenth day shall be considered the next business day.

(f) A statement that municipalities shall be deemed to have received a notice of withholding 2 business days after the date of mailing by the insurer.

(g) A statement that if the insurer does not receive an affidavit within the prescribed time limits, the municipality will no longer be entitled to claim the withheld funds and the insurer shall immediately forward the withheld funds to the insured. This subdivision applies even if the insurer receives an affidavit while the withheld funds are still in its possession.

(h) A statement informing the chief fire official or other authorized representative where affidavits requesting withheld funds shall be mailed to, including all of the following information:

- (i) The name of the insurer.
 - (ii) Insurer's address.
 - (iii) The person to whom affidavits should be addressed.
- (i) A copy of the notice sent to insureds and mortgagees pursuant to R 500.1266.

History: 1982 AACCS.

R 500.1268 Notice of forwarding of final insurance settlement.

Rule 8. For purposes of section 2845(2)(b) of the act, the information provided to insureds and any mortgagee informing them that the insurer has forwarded the withheld amount to the municipality shall include all of the following:

(a) A statement that the insurer has forwarded a specified amount to a specified municipal official at the official's specified address, including telephone number.

(b) A statement that the amount is a portion of the insured's final settlement for property described by all of the following:

- (i) Location.
- (ii) Name of each policyholder.
- (iii) Address of each policyholder.
- (iv) Date of loss.
- (v) Policy number.
- (vi) Claim number.

History: 1982 AACCS.

R 500.1269 Amendatory policy endorsements.

Rule 9. Insurers subject to the provisions of the act shall file with the Michigan insurance bureau any endorsements to modify the loss payable clauses of affected policies. Companies shall attach amendatory endorsements only to policies issued on and after April 1, 1982.

History: 1982 AACCS.

R 500.1270 Blanket policies.

Rule 10. For purposes of determining the final settlement subject to the 15% withholding, section 2845(8) of the act excludes policy proceeds for personal property, contents damage, or additional coverage not contained in the Michigan standard policy. In cases where a blanket policy is issued on real and personal property without a separate designation of specific amounts or limits for the real property, an insurer shall use the standards or methods it normally uses to determine actual damage and loss for purposes of paying claims.

History: 1982 AACCS.

R 500.1271 Interest liability.

Rule 11. An insurer complying with the provisions of the act shall not be liable for the 12% interest required by section 2006 of Act No. 218 of the Public Acts of 1956, as amended, being S500.2006 of the Michigan Compiled Laws, for that portion of the benefits legally subject to the 15% withholding which are not paid within 60 days.

History: 1982 AACCS.