

## CHAPTER 65A

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### STANDARD FIRE INSURANCE POLICY

#### 65A.01 MINNESOTA STANDARD FIRE INSURANCE POLICY.

Subdivision 1. **Designation and scope.** The printed form of a policy of fire insurance, as set forth in subdivisions 3 and 3a, shall be known and designated as the "Minnesota standard fire

insurance policy" to be used in the state of Minnesota. No policy or contract of fire insurance shall be made, issued or delivered by any insurer including reciprocals or interinsurance exchanges or any agent or representative thereof, on any property in this state, unless it shall provide the specified coverage and conform as to all provisions, stipulations, and conditions, with such form of policy, except as provided in sections 60A.08, subdivision 9; 60A.352; 65A.06; 65A.29; 72A.20, subdivision 17; and other statutes containing specific requirements that are inconsistent with the form of this policy. Any policy or contract otherwise subject to the provisions of this subdivision, subdivisions 3 and 3a which includes either on an unspecified basis as to coverage or for a single premium, coverage against the peril of fire and coverage against other perils may be issued without incorporating the exact language of the Minnesota standard fire insurance policy, provided: Such policy or contract shall, with respect to the peril of fire, afford the insured all the rights and benefits of the Minnesota standard fire insurance policy and such additional benefits as the policy provides; the provisions in relation to mortgagee interests and obligations in said Minnesota standard fire insurance policy shall be incorporated therein without change; such policy or contract is complete as to its terms of coverage; and, the commissioner is satisfied that such policy or contract complies with the provisions hereof.

Subd. 2. **Company information.** There shall be printed on the first or front page at the head of said "Minnesota standard fire insurance policy" the name of the insurer or insurers issuing the policy, the location of the home office or United States office of the insurer or insurers, a statement whether said insurer or insurers are stock corporations, mutual corporations, reciprocal insurers or Lloyds Underwriters; there may be added thereto such device or devices as the insurer or insurers issuing said policy may desire. Any company organized under special charter provisions may so indicate upon its policy, and may add a statement of the plan under which it operates in this state.

Subd. 2a. **Facsimile signatures authorized.** On any policy of insurance regulated under this chapter, the signature of an officer or agent of the insurer may be a facsimile signature.

Subd. 3. **Policy provisions.** On said policy following such matter as provided in subdivisions 1 and 2, printed in the English language in type of such size or sizes and arranged in such manner, as is approved by the commissioner of commerce, the following provisions and subject matter shall be stated in the following words and in the following sequence, but with the convenient placing, if desired, of such matter as will act as a cover or back for such policy when folded, with the blanks below indicated being left to be filled in at the time of the issuing of the policy, to wit:

(Space for listing the amounts of insurance, rates and premiums for the basic coverages provided under the standard form of policy and for additional coverages or perils provided under endorsements attached. The description and location of the property covered and the insurable value(s) of any building(s) or structure(s) covered by the policy or its attached endorsements;

also in the above space may be stated whether other insurance is limited and if limited the total amount permitted.)

In consideration of the provisions and stipulations herein or added hereto and of the premium above specified this company, for a term of ..... from ..... (At 12:01 a.m. Standard Time) to ..... (At 12:01 a.m. Standard Time) at location of property involved, to an amount not exceeding the amount(s) above specified does insure ..... and legal representatives .....

(In above space may be stated whether other insurance is limited.) (And if limited the total amount permitted.)

Subject to form No.(s) ..... attached hereto.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such provisions, stipulations and agreements as may be added hereto as provided in this policy.

The insurance effected above is granted against all loss or damage by fire originating from any cause, except as hereinafter provided, also any damage by lightning and by removal from premises endangered by the perils insured against in this policy, to the property described hereinafter while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere. The amount of said loss or damage, except in case of total loss on buildings, to be estimated according to the actual value of the insured property at the time when such loss or damage happens.

If the insured property shall be exposed to loss or damage from the perils insured against, the insured shall make all reasonable exertions to save and protect same.

This entire policy shall be void if, whether before a loss, the insured has willfully, or after a loss, the insured has willfully and with intent to defraud, concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interests of the insured therein.

This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion, or manuscripts.

This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, providing that such fire did not originate from any of the perils excluded by this policy.

This company shall not be liable for loss by fire or other perils insured against in a commercial policy caused, directly or indirectly, by terrorism, unless an endorsement specifically assuming coverage for loss or damage caused by terrorism is attached to the policy.

Other insurance may be prohibited or the amount of insurance may be limited by so providing in the policy or an endorsement, rider or form attached thereto.

Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring:

(a) while the hazard is increased by any means within the control or knowledge of the insured; or

(b) while the described premises, whether intended for occupancy by owner or tenant, are vacant or unoccupied beyond a period of 60 consecutive days; or

(c) as a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

The extent of the application of insurance under this policy and the contributions to be made by this company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirements or proceeding on the part of this company relating to appraisal or to any examination provided for herein.

This policy shall be canceled at any time at the request of the insured, in which case this company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be canceled at any time by this company by giving to the insured a written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

If loss hereunder is made payable, in whole or in part, to a designated mortgagee or contract for deed vendor not named herein as insured, such interest in this policy may be canceled by giving to such mortgagee or vendor a ten days' written notice of cancellation.

Notwithstanding any other provisions of this policy, if this policy shall be made payable to a mortgagee or contract for deed vendor of the covered real estate, no act or default of any person other than such mortgagee or vendor or the mortgagee's or vendor's agent or those claiming under

the mortgagee or vendor, whether the same occurs before or during the term of this policy, shall render this policy void as to such mortgagee or vendor nor affect such mortgagee's or vendor's right to recover in case of loss on such real estate; provided, that the mortgagee or vendor shall on demand pay according to the established scale of rates for any increase of risks not paid for by the insured; and whenever this company shall be liable to a mortgagee or vendor for any sum for loss under this policy for which no liability exists as to the mortgagor, vendee, or owner, and this company shall elect by itself, or with others, to pay the mortgagee or vendor the full amount secured by such mortgage or contract for deed, then the mortgagee or vendor shall assign and transfer to the company the mortgagee's or vendor's interest, upon such payment, in the said mortgage or contract for deed together with the note and debts thereby secured.

This company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved.

In case of any loss under this policy the insured shall give immediate written notice to this company of any loss, protect the property from further damage, and a statement in writing, signed and sworn to by the insured, shall within 60 days be rendered to the company, setting forth the value of the property insured, except in case of total loss on buildings the value of said buildings need not be stated, the interest of the insured therein, all other insurance thereon, in detail, the purposes for which and the persons by whom the building insured, or containing the property insured, was used, and the time at which and manner in which the fire originated, so far as known to the insured.

The insured, as often as may be reasonably required, shall exhibit to any person designated by this company all that remains of any property herein described, and, after being informed of the right to counsel and that any answers may be used against the insured in later civil or criminal proceedings, the insured shall, within a reasonable period after demand by this company, submit to examinations under oath by any person named by this company, and subscribe the oath. The insured, as often as may be reasonably required, shall produce for examination all records and documents reasonably related to the loss, or certified copies thereof if originals are lost, at a reasonable time and place designated by this company or its representatives, and shall permit extracts and copies thereof to be made.

In case the insured and this company, except in case of total loss on buildings, shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. In case either fails to select an appraiser within the time provided, then a presiding judge of the district court of the county wherein the loss occurs may appoint such appraiser for such party upon application of the other party in writing by giving five days' notice thereof in writing to the party failing to appoint. The appraisers shall first select a competent and

disinterested umpire; and failing for 15 days to agree upon such umpire, then a presiding judge of the above mentioned court may appoint such an umpire upon application of party in writing by giving five days' notice thereof in writing to the other party. The appraisers shall then appraise the loss, stating separately actual value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual value and loss. Each appraiser shall be paid by the selecting party, or the party for whom selected, and the expense of the appraisal and umpire shall be paid by the parties equally.

It shall be optional with this company to take all of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss herein required.

There can be no abandonment to this company of any property.

The amount of loss for which this company may be liable shall be payable 60 days after proof of loss, as herein provided, is received by this company and ascertainment of the loss is made either by agreement between the insured and this company expressed in writing or by the filing with this company of an award as herein provided. It is moreover understood that there can be no abandonment of the property insured to the company, and that the company will not in any case be liable for more than the sum insured, with interest thereon from the time when the loss shall become payable, as above provided.

No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy have been complied with, and unless commenced within two years after inception of the loss.

This company is subrogated to, and may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this company; and the insurer may prosecute therefor in the name of the insured retaining such amount as the insurer has paid.

Assignment of this policy shall not be valid except with the written consent of this company.

IN WITNESS WHEREOF, this company has executed and attested these presents.

.....  
(Signature)

.....  
(Signature)

.....  
(Name of office)

.....  
(Name of office)

Subd. 3a. **Cancellation.** (1) There shall be printed in the policy or an endorsement attached to the policy a printed form in the following words:

When this policy has been issued to cover buildings used for residential purposes other than a hotel or motel and has been in effect for at least 60 days, or if it has been renewed, this policy shall not be canceled, except for one or more of the following reasons which shall be stated in the notice of cancellation:

- (a) Nonpayment of premium;
- (b) Misrepresentation or fraud made by or with the knowledge of the insured in obtaining the policy or in pursuing a claim thereunder;
- (c) An act or omission of the insured which materially increases the risk originally accepted;
- (d) Physical changes in the insured property which are not corrected or restored within a reasonable time after they occur and which result in the property becoming uninsurable; or
- (e) Nonpayment of dues to an association or organization, other than an insurance association or organization, where payment of dues is a prerequisite to obtaining or continuing the insurance.

Provided, however, that this limitation on cancellation shall not apply to additional coverages in a divisible policy, other than a policy of fire and extended coverage insurance. If this company cancels the additional coverages, it may issue a new, separate fire policy at a premium calculated on a pro rata basis for the remaining period of the original policy.

(2) The provisions of clause (1)(e) shall not be included in the language of the policy or endorsement unless the payment of dues to an association or organization, other than an insurance association or organization, is a prerequisite to obtaining or continuing the insurance.

Subd. 3b. **Rescission and voidability.** This policy must not be rescinded or voided except where the insured has willfully and with intent to defraud concealed or misrepresented a material fact or circumstance concerning this insurance or the subject of this insurance or the interests of the insured in this insurance. This provision must not operate to defeat a claim by a third party or a minor child of the named insured for damage or loss for which the policy provides coverage.

Subd. 3c. **Time requirements.** (a) In the event of a policy less than 60 days old that is declined, or a policy that it is being canceled for nonpayment of premium, the notice must be mailed to the insured at least 20 days before the effective cancellation date. If a policy is being declined or canceled for underwriting considerations, the insured must be informed of the source from which the information was received.

(b) In the event of a midterm cancellation, for reasons listed in subdivision 3a, or according to policy provisions, notice must be mailed to the insured at least 30 days before the effective cancellation date.

(c) In the event of a nonrenewal, notice must be mailed to the insured at least 60 days before the effective date of nonrenewal, containing the specific underwriting or other reason for the indicated actions.

(d) This subdivision does not apply to commercial policies regulated under sections 60A.36 and 60A.37.

Subd. 4. **Additional provisions permitted.** (1) There may be printed in the policy or an endorsement attached to the policy, in case the assured desires liability to attach to several buildings, divisions or locations under one item, a printed form filed with and approved by the commissioner of commerce.

(2) There may be printed in the policy or an endorsement attached to the policy, a printed form in the following words, to wit:

The insured has relinquished all rights to recover for loss or damage by fire from ..... (here insert name of individual, partnership, association or corporation).

(3) There may be printed upon a policy issued in compliance herewith the words "Minnesota standard fire insurance policy."

(4) A company, if incorporated or formed in this state, may print in the policy any provisions which it is authorized or required by law to insert therein, if not incorporated in this state, it may, with the approval of the commissioner of commerce, print in the policy any provision required by its charter or deed of settlement, or by the laws of its own state or country, not contrary to the laws of this state.

(5) Appropriate forms of other contracts or endorsements, whereby the property described in such policy shall be insured against one or more of the additional perils which the insurer is empowered to assume, and forms of provisions or endorsements which serve to modify the policy or premium in favor of the insured, may be attached to, used in or in connection with the Minnesota standard fire insurance policy when approved by the commissioner of commerce. Such forms of other contracts, provisions or endorsements attached to or printed thereon may contain provisions and stipulations inconsistent with the Minnesota standard fire insurance policy if applicable only to such other perils. There may be placed upon the Minnesota standard fire insurance policy, in such manner and form as is approved by the commissioner of commerce, such data as may be conveniently included for duplication on the daily reports for the office records of the company writing the policy.

(6) A company may print or use on its policy, printed forms covering the maintenance or supervision of security guard's service, automatic sprinkler service or the maintenance of a clear space in lumber yards, when approved by the commissioner of commerce, but no such clause shall contain any provision calling for the lapse or the suspension of the insurance coverage.

(7) A company may print or use in its policy printed forms for insurance against loss of rents and rental value, leasehold values, use and occupancy, and indirect or consequential loss or damage caused by change of temperature resulting from the destruction of refrigeration or cooling apparatus, or any of its connections. It may also use a form specifically excluding the last mentioned hazard.

All contracts of insurance against loss of rents or rental values, use and occupancy, shall contain the following provisions:

The period of indemnity under this contract shall be limited to such length of time (commencing with the date of the fire or lightning and not limited by the date of the expiration of the policy) as would be required through the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property described in said policy as may be destroyed or damaged.

(8) There may be printed in the policy in a convenient place approved by the commissioner of commerce, or on an endorsement attached to the policy, a printed form providing that in the case of loss, such loss shall be payable to the mortgagee, or other persons, as their interest may appear, to wit:

Subject to the stipulations, provisions and conditions contained in this policy, the loss, if any, is payable to ....., mortgagee, as the mortgagee's interest may appear.

Subd. 5. **Provision prohibited, total loss; limiting amount to be paid.** No provision shall be attached to or included in such policy limiting the amount to be paid in case of total loss on buildings by fire, lightning or other hazard to less than the amount of insurance on the same.

Subd. 6. **Clear statement of reasons for cancellation.** When policies covered by this section are subject to limitations or cancellation as provided in subdivision 3a, the notice of cancellation shall include a statement of the reason for cancellation in a sufficiently clear and specific form so that an insured of reasonable intelligence will be able to identify the basis for the company's cancellation without making further inquiry.

**History:** 1967 c 395 art 6 s 1; 1978 c 769 s 1-3; 1979 c 115 s 2; 1983 c 208 s 1; 1983 c 289 s 114 subd 1; 1984 c 592 s 50; 1984 c 655 art 1 s 92; 1986 c 444; 1987 c 337 s 89; 1994 c 435 s 1; 1994 c 485 s 51,65; 1995 c 258 s 46; 1996 c 446 art 1 s 53; 1999 c 177 s 61-63; 2003 c 10 s 1; 2004 c 202 s 1

## PROVISIONS RELATING TO OPERATIONS

### 65A.02 JOINT POLICY.

When two or more authorized companies unite in the issue of a joint policy, the heading thereof may show the severalty of the contract, and the policy shall show the proportion of

premiums to be paid to each, and the proportion of liability which each assumes, and shall contain a provision to the effect that service of process, or any notice or proof of loss required by such policy, upon any of the insurers executing such policy, shall be deemed to be service upon all such insurers.

**History:** 1967 c 395 art 6 s 2

### **65A.03 BINDERS, TEMPORARY INSURANCE.**

Subdivision 1. **Generally.** Binders or other contracts for temporary insurance may be made orally or in writing, and shall be deemed to include all the terms of such standard fire insurance policy and all such applicable endorsements as may be designated in such contract of temporary insurance; except that the clause specifying the hour of the day at which the insurance shall commence, may be superseded by the express terms of such contract of temporary insurance.

Subd. 2. **Evidence for property purchase financing.** A duly authorized binder shall be acceptable as evidence of insurance coverage required as a condition of financing the purchase of real or personal property, provided that a mortgagee or lender shall not be required to accept renewal or extension thereof. This section does not require the approval of a binder by any person, firm, corporation, trustee, director, officer, agent, or employee, where there are reasonable grounds for believing that the insurance evidenced by the binder is unsatisfactory as to placement with an unauthorized insurer, the financial solvency of the insurer, adequacy of the coverage, adequacy of the insurer to assume the risk to be insured, the assessment feature to which the policy is subject, or other grounds which are not arbitrary, unreasonable, or discriminatory, nor does this section forbid the securing of insurance or a renewal thereof at the request of the borrower or because of the borrower's failure to furnish necessary insurance or renewal thereof.

Subd. 3. **Penalty.** If any person, firm, corporation, trustee, director, officer, agent, or employee, refuses to accept a duly authorized binder pursuant to subdivisions 1 and 2, the commissioner of commerce may issue an order requiring acceptance and impose a civil penalty of \$500 per violation.

**History:** 1967 c 395 art 6 s 3; 1984 c 592 s 51; 1987 c 337 s 90

### **65A.04 EFFECT ON SECTION 65A.08.**

Nothing in the preceding sections of this chapter shall be construed to limit the effect of or in any way modify or repeal section 65A.08.

**History:** 1967 c 395 art 6 s 4

**65A.05 NUCLEAR REACTION, RADIATION OR RADIOACTIVE CONTAMINATION; ENDORSEMENT.**

Loss or damage caused by nuclear reaction, nuclear radiation or radioactive contamination, all whether directly or indirectly resulting from an insured peril under the standard policy issued pursuant to sections 65A.01, 65A.02, 65A.03, and 65A.04, may be insured under said policy only by a written endorsement providing such insurance, with such endorsement affixed to said standard policy.

**History:** *1967 c 395 art 6 s 5*

**65A.06 MOTOR VEHICLE, OCEAN AND INLAND MARINE POLICIES.**

Insurance on automobiles, motorcycles, other motor vehicles, or on property insured by ocean marine, and inland marine policies as defined by section 70A.03, clause (3), against loss or damage by fire, when combined in one policy with insurance against one or more of the other hazards mentioned in section 60A.06, subdivision 1, clause (1), need not be in accordance with section 65A.01, but in no event shall this section be applicable to insurance on buildings or structures.

**History:** *1967 c 395 art 6 s 6; 1971 c 24 s 10*

**65A.061 CREDITORS LIMITED TO EXISTING INSURANCE.**

When a creditor requires a debtor to provide insurance on real or personal property security against reasonable risks of loss, damage, or destruction, no insurance shall be sold or placed by or through the creditor if the debtor provides the creditor with a loss payable through existing policies of insurance that the debtor owns or controls. This section does not apply if the existing insurance is in an amount less than the amount of indebtedness to be secured on the real or personal property.

This section does not prevent the disapproval of the insurer or a policy of insurance where there are reasonable grounds for believing that the insurer is insolvent or that the insurance is unsatisfactory as to placement with an unauthorized insurer, adequacy of the coverage, adequacy of the insurer to assume the risk to be insured, the assessment features to which the policy is subject, or other grounds that are based on the nature of the coverage and that are not arbitrary, unreasonable, or discriminatory. This section does not prevent a mortgage lender or mortgage servicer from requiring that a policy of insurance or renewal of the policy be in conformance with standards of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, nor does this section forbid the securing of a policy of insurance or a renewal of the policy at the request of the borrower or because of the borrower's failure to furnish the necessary insurance or renewal.

This section supersedes any inconsistent provision of law to the contrary.

**History:** 1989 c 330 s 25

### **65A.07 CANCELLATION OF FIRE POLICY.**

Any fire insurance company which has not collected the premium on its policy at the time of the delivery thereof may print or endorse, or attach by rider, on its policy the following clause:

"If the insured hereunder shall not have actually paid the premium hereon, or any part thereof, within 60 days from the date of this policy, then this policy may be canceled by the insurer by giving five days' written notice to the insured and to the mortgagee, or other person to whom the policy is made payable, if any, without tendering any part or portion of such premium, anything to the contrary in the policy contract notwithstanding."

**History:** 1967 c 395 art 6 s 7

### **65A.08 SPECIAL PROVISIONS.**

Subdivision 1. [Repealed, 1979 c 175 s 1]

Subd. 2. **Amount collectible.** (a) In the absence of any change increasing the risk, without the consent of the insurer, of which the burden of proof shall be upon it, and in the absence of intentional fraud on the part of the insured, the insurer shall pay the whole amount mentioned in the policy or renewal upon which it receives a premium, in case of total loss, and in case of partial loss, the full amount thereof.

(b) Notwithstanding paragraph (a), on a policy issued by the Minnesota FAIR plan under section 65A.36, the Minnesota FAIR plan may contest the whole amount set forth in the policy in the case of a total loss. If the Minnesota FAIR plan takes the position that the value of the property was less than the whole amount set forth in the policy, the Minnesota FAIR plan has the burden of proving by clear and convincing evidence that the value was less than that set forth in the policy. If the Minnesota FAIR plan pays less than the whole amount mentioned in the policy for a total loss, pursuant to this paragraph, the Minnesota FAIR plan shall refund to the insured the premium paid attributable to the difference between the whole amount mentioned in the policy and the amount paid for the total loss.

Subd. 3. **Agreement as to amount of loss.** Policies on farm buildings or other structures may, in consideration of a reduction in the premium by the company, include a provision determining the amount of loss in connection with repair or replacement of the insured property.

Subd. 4. **Prorating provided.** If there are two or more policies upon the property, each shall contribute to the payment of the whole or partial loss in proportion to the amount specified.

Subd. 5. **Coinsurance provision.** Any policy may contain a coinsurance clause, if the insured requests the same, in writing, of which fact such writing shall be the only evidence, and if, in consideration thereof, a reduction in the rate of premium is made by the company. When

so demanded and attached to the policy, this agreement shall be binding upon both the insured and the company, and, in case of loss, the actual cash value of the property so insured at the time of the loss, including the buildings, shall be the basis for determining the proper amount of the coinsurance, and the amount of loss, notwithstanding any previous valuation of the building.

Subd. 6. **Term of policies.** No company shall knowingly issue any policy upon property in this state for a longer term than five years.

**History:** 1967 c 395 art 6 s 8; 2005 c 66 s 1; 1Sp2005 c 7 s 1

#### **65A.09 INSURANCE IN EXCESS OF REPLACEMENT COST.**

Subdivision 1. **Insurance limited.** No company shall knowingly issue any policy upon property in this state for an amount which, together with any existing insurance thereon, exceeds the replacement cost of the buildings and any other covered improvements on the property. Any company willfully insuring property for more than that amount shall forfeit to the state, for the benefit of the school fund, double the premium collected on the policy.

Subd. 2. **Lenders; excess insurance.** No mortgage company, bank, savings association, finance company, or other mortgage lender of any kind may require insurance coverage in violation of section 72A.31, subdivision 1, clause (4). Any lender that willfully violates this subdivision is subject to penalties available under chapter 45.

**History:** 1967 c 395 art 6 s 9; 2002 c 295 s 1

#### **65A.10 LIMITATION.**

Subdivision 1. **Buildings.** Nothing contained in sections 65A.08 and 65A.09 shall be construed to preclude insurance against the cost, in excess of actual cash value at the time any loss or damage occurs, of actually repairing, rebuilding or replacing the insured property. Subject to any applicable policy limits, where an insurer offers replacement cost insurance: (i) the insurance must cover the cost of replacing, rebuilding, or repairing any loss or damaged property in accordance with the minimum code as required by state or local authorities; and (ii) the insurance coverage may not be conditioned on replacing or rebuilding the damaged property at its original location on the owner's property if the structure must be relocated because of zoning or land use regulations of state or local government. In the case of a partial loss, unless more extensive coverage is otherwise specified in the policy, this coverage applies only to the damaged portion of the property.

Subd. 2. **Personal property.** Subject to applicable policy limits, replacement cost insurance coverage for personal property must cover the cost of replacing or repairing any loss or damaged property. In the case of a partial loss, unless more extensive coverage is otherwise specified in the policy, this coverage applies only to the damaged portion of the property. If a homeowner's policy

does not provide replacement cost coverage for personal property, the declarations page of the policy shall so indicate by containing the term "nonreplacement cost."

**History:** 1967 c 395 art 6 s 10; 1987 c 337 s 91; 1991 c 244 s 1; 1996 c 446 art 1 s 54

#### **65A.11 PAYMENT TO MORTGAGEE.**

When the whole, or any part, of the loss is payable, in terms or otherwise, to or for one or more mortgagees, upon proof before payment of the rights of the parties, the company shall pay the same in the order of priority to the extent of its liability and every such payment to such extent shall be payment and satisfaction of its liability under the policy.

**History:** 1967 c 395 art 6 s 11

#### **65A.12 WAIVER OF RIGHT TO APPRAISAL.**

Subdivision 1. **Right to appraisal.** Any person who shall not, within 20 days after written request, appoint a qualified appraiser, as provided in the policy, shall at the election of the other party be deemed to have waived the right to appraisal, and, if it be the insurer, shall be liable to suit.

Subd. 2. **Appraiser.** No person shall be a qualified appraiser who is not a resident of the state, disinterested, and willing to act.

**History:** 1967 c 395 art 6 s 12

#### **65A.13 LIABILITY OF COMPANY.**

Notwithstanding any penalty prescribed for the making, issuing, or delivery of any policy in violation of any provision of law, every such policy shall be binding upon the company issuing the same.

**History:** 1967 c 395 art 6 s 13

#### **65A.14 PERSON WHO PROCURES AN APPLICATION AGENT OF ISSUING COMPANY.**

Every person who solicits insurance and procures an application therefor shall be held to be the agent of the party afterward issuing insurance thereon or a renewal thereof.

**History:** 1967 c 395 art 6 s 14

#### **65A.15 VIOLATION.**

Every company and every agent who shall willfully make, issue, or deliver a policy in violation of sections 65A.01, 65A.02, and 65A.03 shall be guilty of a gross misdemeanor; but every stipulation of the policy in favor of the insured shall, nevertheless, be binding upon the company issuing the same.

**History:** 1967 c 395 art 6 s 15

**OPTIONAL SPECIAL RESERVE FUND****65A.16 GUARANTY SURPLUS AND SPECIAL RESERVE FUND.**

Any insurance company organized under the laws of this state authorized to transact a fire insurance business may create the funds herein provided for, to be known and designated as the guaranty surplus fund and the special reserve fund, and may avail itself of the provisions of sections 65A.16 to 65A.24, upon complying with the requirements thereof.

**History:** 1967 c 395 art 6 s 16; 1997 c 7 art 1 s 19

**65A.17 ACTION OF STOCKHOLDERS FILED WITH COMMISSIONER.**

Any such insurance company, desiring to create such funds, may do so if such action is authorized by its stockholders, upon the adoption of a resolution to that effect by its board of directors at a regular meeting of the board, or at any special meeting called for that purpose, and filing with the commissioner a copy thereof, declaring the intention of the company to create these funds and to do business under the provisions of sections 65A.16 to 65A.24; and, as soon after the filing of a copy of the resolution as convenient, the commissioner shall make, or cause to be made, an examination of the company, and shall make a certificate of the result thereof, which shall particularly set forth the amount of surplus funds held by the company at the date of the examination, the whole or any part of which, under the provisions of sections 65A.16 to 65A.24, may be equally divided between and set apart to constitute guaranty surplus and special reserve funds, which certificate shall be recorded in the Department of Commerce.

**History:** 1967 c 395 art 6 s 17; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1997 c 7 art 1 s 19

**65A.18 DIVIDENDS DECLARED OUT OF SURPLUS PROFITS.**

After the date of filing any such resolution with the commissioner, the company shall not make or declare or pay in any form any dividend upon its capital stock, exceeding eight percent per annum thereupon and six percent per annum upon the surplus funds to be formed hereunder, until after its guaranty surplus fund and its special reserve fund shall have together accumulated to an amount equal to its capital stock or to the sum of \$2,000,000; and any part of the surplus profits of the company above this annual dividend may be equally divided between and set apart to constitute the guaranty surplus fund and the special reserve fund, which funds shall be held and used as hereinafter provided, and not otherwise. Any company doing business under sections 65A.16 to 65A.24, whose guaranty surplus fund and special reserve fund shall have together accumulated to an amount equal to its capital stock or to the sum of \$2,000,000, may, from time to time, declare dividends out of its surplus profits in such amounts as its board of directors may prescribe, subject only to the limitation that the payment of these dividends shall not deplete its capital, nor reduce the aggregate amount of the guaranty surplus and special reserve funds to an

amount less than the amount of its capital stock, or if its capital stock exceeds \$2,000,000, to an amount less than \$2,000,000; and, subject to the further limitation that no dividends exceeding ten percent upon the capital stock shall be declared in any year if the payment thereof would reduce the aggregate amount of all surplus funds, including guaranty surplus and special reserve funds, below an amount equal to 30 percent of its unearned premiums. Any company doing business under sections 65A.16 to 65A.24, which shall declare or pay any dividend contrary to the provisions herein contained, shall be liable to be proceeded against under chapter 60B for its dissolution.

**History:** *1967 c 395 art 6 s 18; 1969 c 708 s 63; 1997 c 7 art 1 s 19*

#### **65A.19 EXAMINATION.**

When the company shall notify the commissioner that it has fulfilled the requirements already expressed in sections 65A.16 to 65A.24, and that its guaranty surplus fund and its special reserve fund, taken together, equal its capital stock or amount to the sum of \$2,000,000, the commissioner shall make an examination of the company and make a certificate of the result thereof, and file the same in the commissioner's office and, if the commissioner shall find that the combined funds shall equal the capital stock of the company or amount to the sum of \$2,000,000, thereafter the company may continue, out of any subsequent profits of its business, to add to these funds; provided, that when any addition is made to the special reserve fund, an equal sum shall be carried to the guaranty surplus fund.

**History:** *1967 c 395 art 6 s 19; 1986 c 444; 1997 c 7 art 1 s 19*

#### **65A.20 ITEMS CONSIDERED IN ESTIMATING PROFIT.**

In estimating the profit of any such company for the purpose of making a division thereof between the guaranty surplus fund and the special reserve fund, until these funds shall together amount to a sum equal to the capital stock of the company or amount to the sum of \$2,000,000, there shall be deducted from the gross assets of the company, including for this purpose the amount of the special reserve fund, the sum of the following items:

- (1) the amount of all outstanding claims;
- (2) an amount sufficient to meet the liability of the company for the unearned premiums upon its unexpired policies, which amount shall at least equal one-half the premiums received on policies having one year or less to run from the date of policy, and a pro rata proportion of the premiums received on the policies having more than one year to run from the date of policy, and shall be known as the reinsurance liability;
- (3) the amount of its guaranty surplus fund and of its special reserve fund;
- (4) the amount of the capital of the company; and

(5) interest at the rate of eight percent per annum upon the amount of capital, and six percent per annum upon the amount of the said funds for whatever time shall have elapsed since the last preceding cash dividend. The balance shall constitute the net surplus of the company, any portion of which is subject to an equal division between these funds, as herein provided.

**History:** 1967 c 395 art 6 s 20

#### **65A.21 INVESTMENT OF GUARANTY SURPLUS.**

The guaranty surplus shall be held and be invested by the company in the same manner as its capital stock and surplus accumulation may be held and be invested, and shall be liable and applicable in the same manner as the capital stock to the payment generally of the losses of the company.

**History:** 1967 c 395 art 6 s 21

#### **65A.22 INVESTMENT OF SPECIAL RESERVE FUND.**

The special reserve fund shall be invested according to existing laws relating to investments of capital by fire insurance companies and shall be deposited, from time to time, as the same shall accumulate and be invested, with the commissioner in accordance with section 60A.10, subdivision 4, who shall permit the company depositing the same to change these deposits by substituting for those withdrawn others of equal amount and value, and to collect and receive the interest or dividends upon these securities as the same may accrue; and this fund shall not be regarded as any part of the assets in possession of the company, so as to be or render the same liable for any claim for loss by fire, or otherwise, except as provided in sections 65A.16 to 65A.24.

**History:** 1967 c 395 art 6 s 22; 1974 c 425 s 7; 1997 c 7 art 1 s 19

#### **65A.23 WHEN CLAIMS EXCEED GUARANTY SURPLUS AND CAPITAL STOCK.**

(1) When the claims upon the company shall exceed the amount of its capital stock and of guaranty surplus fund, provided for by sections 65A.16 to 65A.24, and of its surplus funds, other than the special reserve fund, the company shall notify the commissioner of the fact, who shall then make, or cause to be made, an examination of the company, and issue a certificate of the result, showing the amounts of capital, of guaranty surplus fund, of special reserve fund, of reinsurance liability, and of other assets, and upon the commissioner's issuing this certificate, in duplicate, one copy to be given to the company and one to be recorded in the Department of Commerce, the special reserve fund shall be immediately held to protect all policyholders of the company, other than such as are claimants upon it at the date of the certificate, and the special reserve fund, together with other assets, certified by the commissioner as equal in value to the amount of the unearned premiums of the company, to be ascertained, as hereinbefore provided, shall constitute the capital and assets of the company for the protection of policyholders, other

than these claimants, and for the further conduct of its business, and any official certificate of the commissioner, herein provided for, shall be binding and conclusive upon all parties interested in the company, whether as stockholders, creditors, or policyholders, and upon the payment to claimants who are such at the date of the certificate, of the full amount of the capital of the company and of its guaranty surplus fund and of its assets at that date, excepting only the special reserve fund and an amount of its assets equal to the liability of the company for unearned premiums, as so certified by such commissioner of commerce, the company shall be forever discharged from any and all further liability to these claimants, and to each of them, and the commissioner shall, after issuing a certificate, upon the demand of the company, transfer to it all such securities as shall have been deposited by the company as a special reserve fund and, if the amount of this special reserve fund be less than 50 percent of the full amount of the capital of the company, if the capital be \$2,000,000, or less, or if the amount of the special reserve fund be less than \$1,000,000, if the capital be over \$2,000,000, a requisition shall be issued by the commissioner upon the stockholders, to make up the capital to that proportion of its full amount, not exceeding \$1,000,000; provided, that any capital so impaired shall be made up at least to the sum of \$100,000, and in case the company, after this requisition, shall fail to make up its capital at least to the sum of \$100,000, as therein directed, the special reserve fund shall still be held as security and liable for any and all losses occurring upon policies of the company.

(2) If, after this application of the special reserve fund and requisition on the stockholders, the par value of outstanding shares of stock shall exceed the new amount of capital so established, outstanding shares, to the amount of the excess, shall be surrendered by the stockholders pro rata.

(3) The company shall, in its annual statement to the commissioner, set forth the amount of the special reserve fund and of its guaranty surplus fund.

(4) If, in consequence of the payment of losses by fires, or of the expenses of the business, or of the interest or dividends payable under the provisions of sections 65A.16 to 65A.24 to stockholders, or from any cause, the guaranty surplus fund shall be reduced in amount below the amount of the special reserve fund, the directors of the corporation shall make no additions to the special reserve fund until the guaranty surplus fund is equal to the special reserve fund.

(5) The policy registers, insurance maps, books of record, and other books in use by the company in its business, and its policy and other blanks, office furniture, fixtures, and supplies are not to be considered as assets, but shall be held by the company for its use in the protection of its policyholders.

(6) If any amount greater than a sum equal to one-half of its capital stock shall, by the company under the provisions of sections 65A.16 to 65A.24, have been deposited with the commissioner, the commissioner shall retain of these securities an amount equal to one-half of what amount the commissioner shall so hold thereof in excess of a sum equal to such one-half of

such capital stock if the capital be \$2,000,000, or less, or in excess of \$3,000,000 if the capital be over \$2,000,000, and the commissioner shall transfer the balance thereof to the company, as herein provided, and the amount so transferred to the company shall, from the time of the transfer, provided the amount thereof shall not be less than \$100,000, constitute the capital stock of the company for the further conduct of its business, as hereinbefore provided, and the securities so retained shall be regarded as the special reserve fund of the company, to which additions may be made, as herein provided, and shall be held in the same manner, and for the same purpose, and under the same conditions, as the original special reserve fund of the company was held. The provisions of this section, providing for discharge of the company from further liability to existing claimants upon application to the payment of such claims of its capital, surplus, and assets, excepting the special reserve fund, and an amount equal to the liability for unearned premiums, shall not be construed to relieve the stockholders of the corporation from any liability imposed by the constitution of this state.

**History:** 1967 c 395 art 6 s 23; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1997 c 7 art 1 s 19

#### **65A.24 STOCKHOLDERS TO MAKE UP IMPAIRMENT.**

If, at any time after the special reserve fund shall have been accumulated by any company, the directors of the company shall present evidence satisfactory to the commissioner that the capital of the company has become impaired, the commissioner shall order the directors to call upon the stockholders to make up this impairment, and the board of directors may thereupon require the necessary payment by the stockholders to make good the whole of the impairment, or they may apply for that purpose the whole or any part of the special reserve fund and require of the stockholders payment of such amount as may be necessary to make up the balance of the impairment not made up out of the special reserve fund. The stock of every stockholder shall be pledged and liable for the amount assessed to make up the impairment, either in whole or in part, and in case any stockholder refuses to pay the assessment, the stock standing in that person's name may be sold at public auction, after 30 days' notice, in such manner as the directors may provide. If the board of directors elect to make good the impairment, or any part thereof, out of the special reserve fund, the commissioner shall, upon request of the board, transfer to the company so much of the special reserve fund as is necessary for the purpose. No company doing business under sections 65A.16 to 65A.24 shall insure any larger amount upon any single risk than is permitted by law to a company possessing the same amount of capital, irrespective of the fund provided for in sections 65A.16 to 65A.24.

**History:** 1967 c 395 art 6 s 24; 1986 c 444; 1997 c 7 art 1 s 19

**65A.25** [Repealed, 1996 c 446 art 1 s 72; 1998 c 339 s 72]

## HAIL INSURANCE

### 65A.26 HAIL INSURANCE, POLICIES, LOSS ADJUSTMENT.

Every policy of insurance against damage by hail issued by any company, however organized, must provide as follows: "In case of loss under this policy, and failure of the parties to agree as to the amount of the loss, it is mutually agreed that, on written demand of either party, the company and the insured each shall select a competent appraiser and notify the other of the appraiser selected within ten days of the demand. The appraisers shall first select a competent and disinterested umpire; and, failing for ten days to agree upon the umpire, then, on request of either appraiser, the umpire shall be selected by a judge of a court of record in the state in which the property covered is located. By mutual agreement the two appraisers may agree to have the umpire selected by a judge of a court of record and waive the ten-day provision.

The appraisers and the umpire shall then appraise the loss. A written award of any two of these persons determines the amount of loss. The written award of a majority of these referees is final and conclusive upon the parties as to amount of loss, and this selection, unless waived by the parties, is a condition precedent to any right of action to recover for a loss. No suit for the recovery of any claim by virtue of this policy may be sustained unless commenced within one year after the loss occurred." The policy must also provide the form, manner, and length of notice to be given to the company by the insured of any loss sustained.

**History:** 1967 c 395 art 6 s 26; 1973 c 363 s 1; 1974 c 161 s 4; 1983 c 208 s 2

## HOMEOWNER'S INSURANCE

### 65A.27 DEFINITIONS.

Subdivision 1. **Scope.** For purposes of sections 65A.27 to 65A.30 the following terms have the meanings given.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 3. **Decline or declination.** "Decline" or "declination" means an agent's refusal to accept an application for homeowner's insurance or an insurer's refusal to issue a policy of homeowner's insurance to a person who has submitted a written application.

Subd. 4. **Homeowner's insurance.** "Homeowner's insurance" means insurance coverage, as provided in section 60A.06, subdivision 1, clause (1)(c), normally written by the insurer as a standard homeowner's package policy or as a standard residential renter's package policy. This definition includes, but is not limited to, policies that are generally described as homeowner's policies, mobile/manufactured homeowner's policies, dwelling owner policies, condominium owner policies, and tenant policies.

Subd. 5. **Insurer.** "Insurer" means any insurer licensed to write insurance, as defined in section 60A.06, subdivision 1, clause (1), and writing homeowner's insurance in this state.

Subd. 6. **Metropolitan area.** "Metropolitan area" means the area defined in section 473.121, subdivision 2.

Subd. 7. **Nonpayment of premium.** "Nonpayment of premium" means a failure of the named insured to pay the premium when due on a policy of homeowner's insurance or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under a premium finance plan or an extension of credit.

Subd. 8. **Renewal or renew.** "Renewal" or "renew" means an insurer's issuance and delivery to the insured of a new insurance policy at the end of the policy period of an existing policy written by the insurer or an insurer's issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term.

**History:** 1979 c 207 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1996 c 326 s 1; 1999 c 177 s 64

#### **65A.28 DISCLOSURE AND FILING REQUIREMENTS.**

Subdivision 1. **Annual report.** Each insurer writing homeowner's insurance for property located in the metropolitan area or a statutory or home rule charter city of the first class shall compile and file annually with the commissioner on or before May 1 a report for the preceding calendar year. This report shall contain the following information reported by postal zip code areas for each zip code area located in a city of the first class which contains property for which the insurer wrote, declined to write, or canceled homeowner's insurance:

- (a) the number of policies written;
- (b) the number of policies canceled;
- (c) the number of policies nonrenewed; and
- (d) the number of applications for homeowner's insurance declined.

If the commissioner determines that additional information is necessary to effectuate the purposes of sections 65A.27 to 65A.29 and 72A.20, subdivision 13, the commissioner may require, by rule:

- (i) that the required information be reported for additional areas of the state, or
- (ii) that additional types of information, including premium and claims data, be reported for some or all of the areas subject to the reporting requirements.

If the commissioner has reason to believe that an insurance company or insurance agent has violated section 72A.20, subdivision 13 or 14, the commissioner may issue an order requiring the

company or agent to compile and submit within a reasonable time information on its homeowner's insurance marketing, underwriting, or rating practices for a specific geographic area or areas. This information may be in addition to the types and categories of information required to be reported by this section or rules promulgated under subdivision 4.

Subd. 2. **Reports available for public inspection.** The commissioner shall make the reports filed pursuant to subdivision 1 available for public inspection.

Subd. 3. **Failure to report; penalty.** Any insurer required to report under this section which fails to file a report, containing the data and within the time prescribed by this section or rules promulgated under subdivision 4, shall be subject to a penalty of \$10 for each day in default. Any penalty imposed under this section may be recovered in a civil action brought by and in the name of the state.

Subd. 4. **Rules.** The commissioner may prescribe rules necessary to carry out the purposes of this section. The rules may provide for classifications, differentiations, adjustments or exceptions, as in the judgment of the commissioner are necessary and proper to effectuate the purposes of, prevent circumvention or evasion of, or to facilitate compliance with this section.

**History:** 1979 c 207 s 3; 1986 c 444

#### **65A.29 CANCELLATION; NONRENEWAL; REFUSAL TO WRITE.**

Subdivision 1. **Cancellation.** No insurer may cancel a policy of homeowner's insurance except for the reasons specified in section 65A.01.

Subd. 2. [Repealed, 1984 c 602 s 6]

Subd. 3. **Refusal to write.** Upon completion in writing of the insurer's application form for homeowner's insurance, any person having an insurable interest in real or tangible property at a fixed location shall be entitled upon written request either (a) to the insurer's offer of coverage, including type, amount and premium cost of coverage, or (b) to a written declination, stating specifically the underwriting or other reason for the refusal to write. For purposes of this subdivision, "insurer" means only an insurer writing or offering to write homeowner's insurance for property in the same statutory or home rule charter city or town in which the applicant's property is located.

Subd. 4. **Form requirements.** Any notice or statement required by subdivisions 1 to 3, or any other notice canceling a homeowner's insurance policy must be written in language which is easily readable and understandable by a person of average intelligence and understanding. The statement of reason must be sufficiently specific to convey, clearly and without further inquiry, the basis for the insurer's refusal to renew or to write the insurance coverage.

The notice or statement must also inform the insured of:

(1) the possibility of coverage through the Minnesota FAIR plan under sections 65A.31 to 65A.42;

(2) the right to object to the commissioner under subdivision 9; and

(3) the right to the return of unearned premium in appropriate situations under subdivision 10.

Subd. 5. **Inclusion in policies after 1980.** Notwithstanding sections 65A.01 and 65A.07, any policy of homeowner's insurance issued after January 1, 1980 shall contain nonrenewal provisions consistent with this section.

Subd. 6. **Immunity of insurer or commissioner.** There shall be no liability on the part of and no cause of action of any nature shall arise against the commissioner or against any insurer, its authorized representative, its agents, its employees or any firm, person or corporation furnishing to the insured information as to reasons for declination, nonrenewal, or cancellation, for any statement made by them in any written notice of declination, nonrenewal or cancellation, for the providing of information relating thereto, or for statements made or evidence submitted at any hearings or investigations conducted in connection therewith. This subdivision shall not apply to any action or proceeding arising under section 72A.20.

Subd. 7. **Renewal; notice requirement.** No insurer shall refuse to renew, or reduce limits of coverage, or eliminate any coverage in a homeowner's insurance policy unless it mails or delivers to the insured, at the address shown in the policy, at least 60 days' advance notice of its intention. The notice must contain the specific underwriting or other reason or reasons for the indicated action and must state the name of the insurer and the date the notice is issued.

Proof of mailing this notice to the insured at the address shown in the policy is sufficient proof that the notice required by this section has been given.

Subd. 8. **Rules.** (a) The commissioner may adopt rules pursuant to chapter 14, to specify the grounds for nonrenewal, reduction in limits of coverage, or elimination of coverage of a homeowner's policy. The rules must limit the grounds to the following factors:

(1) reasons stated for cancellation in section 65A.01, subdivision 3a;

(2) reasons stated in section 72A.20, subdivision 13;

(3) insured's loss experience, not to include natural causes; and

(4) other factors deemed reasonable by the commissioner.

The rules may give consideration to the form and content of the termination notice to the insured, a statement as to what constitutes receipt of the termination notice, and the procedure by which the insured may appeal a termination notice.

The rules adopted under this subdivision may provide for imposition of a monetary penalty not greater than \$500 per occurrence upon insurers who are found to be in violation of the law or the rules.

(b) In addition to any rules adopted under this subdivision, an insured may appeal any nonrenewal under this section to the commissioner of commerce. If the commissioner finds that the nonrenewal is unjustified, arbitrary, or capricious, the commissioner shall order the insurer to reinstate the insured's policy. The commissioner's order may be appealed pursuant to chapter 14. The insured's policy shall continue in force pending the conclusion of the appeal to the commissioner. The insurer must notify the insured of the insured's right to appeal the nonrenewal to the commissioner in the notice of nonrenewal required under subdivision 7.

**Subd. 9. Notice of right to complain.** A named insured who believes a nonrenewal, reduction in the limits of coverage, elimination of coverage, or cancellation under section 65A.01, subdivision 3a, is in violation of the law or the rules may, within 30 days after receipt of the notice, file in writing an objection to the action with the commissioner.

Upon receipt of a written objection, the commissioner shall notify the insurer of receipt of the objection and of the right of the insurer to file a written response within ten days of receipt of the notification. Within 30 days of receipt of written objection by an insured, the commissioner shall approve or disapprove the insurer's action and shall notify the insured and insurer of the final decision. A decision which disapproves the insurer's action constitutes a charge that the insurer has violated the law or the rules. Either party may institute proceedings for judicial review of the commissioner's decision. The commissioner's decision is binding pending judicial review.

**Subd. 10. Return of unearned premium.** Cancellation of a policy of homeowner's insurance pursuant to this section is not effective unless any unearned premium due the insured is returned to the insured with the notice of cancellation or is delivered or sent by mail to the insured so as to be received by the insured not later than the effective date of cancellation. If the premium has been paid by the insured's agent and debited to the agent's account with the company, upon cancellation, the unearned premium must be credited to the agent's account with the company.

**Subd. 11. Nonrenewal.** Every insurer shall establish a plan that sets out the minimum number and amount of claims during an experience period that may result in a nonrenewal. For purposes of the plan, the insurer may not consider as a claim the insured's inquiry about a hypothetical claim, or the insured's inquiry to the insured's agent regarding a potential claim.

No homeowner's insurance policy may be nonrenewed based on the insured's loss experience unless the insurer has sent a written notice that any future losses may result in nonrenewal due to loss experience.

Any nonrenewal of a homeowner's insurance policy must, at a minimum, comply with the requirements of subdivision 8 and the rules adopted by the commissioner.

Subd. 12. [Repealed, 1999 c 177 s 88]

**History:** 1979 c 207 s 4; 1983 c 94 s 1; 1984 c 602 s 2-4; 1986 c 444; 1987 c 337 s 92; 1989 c 260 s 9-11; 1992 c 564 art 4 s 13; 1994 c 485 s 52; 1996 c 337 s 1; 1999 c 177 s 65; 2001 c 215 s 28; 2003 c 40 s 4; 2005 c 132 s 18

### **65A.295 HOMEOWNER'S INSURANCE COVERAGE.**

(a) Every insurer writing homeowner's insurance in this state shall make available at least one form of homeowner's policy for each level of peril coverage offered by the insurer in which the insured has the option to specify the dollar amount of coverage provided for structures other than the dwelling and for personal property. The premium must be reduced to reflect the reduced risk of lesser coverage.

(b) Coverage for structures other than the dwelling is the coverage provided under "Coverage B, Other Structures" in the standard homeowner's policy. Coverage for personal property is the coverage provided under "Coverage C, Personal Property" in the standard homeowner's package policy.

(c) "Level of peril" refers to basic, broad, and all risk levels of coverage.

**History:** 1987 c 293 s 1; 1996 c 446 art 1 s 55

### **65A.296 PROOF OF LOSS.**

Subdivision 1. **Notice from insurer.** After receiving written notice of a claim by an insured on a homeowner's insurance policy, the insurer may notify the insured that the insurer may deny the claim unless a completed proof of loss is received by the insurer within 60 days of the date on which the written notice under this subdivision was received by the insured. The notice given by the insurer must be sent by certified mail, return receipt requested, and must include a proof of loss form to be completed by the insured together with accompanying instructions for completing the form. The proof of loss form and the accompanying instructions must meet the readability standards of chapter 72C.

Subd. 2. **Failure to complete timely proof of loss.** In an action for the recovery of a claim on a homeowner's insurance policy, an insured's failure to comply with the 60-day proof of loss requirement:

(1) is a bar to recovery if the insured received the notice specified in subdivision 1, unless the insured demonstrates to the court's satisfaction that the insured had good cause for failing to comply;

(2) is not a bar to recovery if the insured did not receive the notice specified in subdivision 1, unless the insurer demonstrates to the court's satisfaction that its rights were prejudiced by the insured's failure to comply.

Subd. 3. **Definitions.** For purposes of this section, the terms "insurer" and "homeowner's insurance" have the meanings given them in section 65A.27.

Subd. 4. **Effect on other law.** This section supersedes any inconsistent provision of section 65A.01, 72A.201, or other law.

**History:** 1996 c 285 s 1; 1997 c 77 s 1

### **65A.297 ACTIVE DUTY MEMBER OF ARMED SERVICES RESERVE OR NATIONAL GUARD; USE IN UNDERWRITING PROHIBITED.**

No insurer, including the Minnesota FAIR plan, shall refuse to renew, decline to offer or write, reduce the limits of, cancel, or charge differential rates for equivalent coverage for any coverage in a homeowner's policy because the dwelling is vacant or occupied by a caretaker if the insured's absence is caused solely by the insured being called to active duty as a member of the armed services reserve or the National Guard.

**History:** 2005 c 132 s 19

### **65A.30 DAY CARE SERVICES; COVERAGE.**

Subdivision 1. **No coverage.** There shall be no coverage under a day care provider's homeowner's insurance for losses or damages arising out of the operation of day care services unless:

- (1) specifically covered in a policy; or
- (2) covered by a rider for business coverage attached to a policy.

For purposes of this section, "day care" means "family day care" and "group family day care" as defined in Minnesota Rules, part 9502.0315. "Day care" does not include care provided by an individual who is related, as defined in Minnesota Rules, part 9502.0315, to the person being cared for or care provided by an unrelated individual to persons from a single family of persons related to each other.

Subd. 2. **Prohibited underwriting practices.** No insurer shall refuse to renew, or decline to offer or write, homeowner's insurance coverage solely because the property to be covered houses day care services for five or fewer children.

**History:** 1996 c 326 s 2; 2004 c 239 s 1

**65A.301 ADULT FOSTER CARE SERVICES; COVERAGE.**

Subdivision 1. **No coverage.** There shall be no coverage under a foster care for adults provider's homeowner's insurance policy for losses or damages arising out of the operation of foster care for adults services unless:

- (1) specifically covered in a policy; or
- (2) covered by a rider for business coverage attached to a policy.

For purposes of this section, "foster care for adults" has the meaning given in section 245A.02, subdivision 6c.

Subd. 2. **Prohibited underwriting practices.** No insurer shall refuse to renew, or decline to offer or write, homeowner's insurance coverage solely because the property to be covered houses foster care for adults services for five or fewer adult residents.

**History:** 2006 c 215 s 1

**65A.302 FLOOD INSURANCE COVERAGE; DISCLOSURE OF NONCOVERAGE.**

Every insurer shall annually provide a written notice to the policyholder entitled "Important Information About Damage Caused by Flooding." This title must be in at least 18-point type. The notice must disclose that the policy does not cover damage caused by flooding and disclose sufficient information to allow the policyholder to contact the National Flood Insurance Program to inquire about purchasing flood insurance. The following language satisfies the notice requirements of this section:

"The policy does not cover damage to your property caused by flooding. Flood insurance is available to communities and property that participate in the National Flood Insurance Program ("NFIP"). Not all communities participate in the NFIP. Flood insurance may be available even if you do not live in a flood hazard area as defined by the NFIP. If your community does not participate in the NFIP, you may contact your insurance agent or broker to see if there is other flood insurance coverage available to you."

The disclosure may also inform the policyholders that the insurer offers flood insurance as a participant in the NFIP's "Write Your Own" program.

**History:** 2008 c 293 s 1

**MINNESOTA FAIR PLAN ACT****65A.31 MINNESOTA FAIR PLAN ACT.**

Sections 65A.31 to 65A.42 shall be known and may be cited as the "Minnesota FAIR Plan Act."

**History:** 1969 c 483 s 1; 1993 c 248 s 2

**65A.32 PURPOSES.**

The purposes of sections 65A.31 to 65A.42 are:

(1) to encourage stability in the property and liability insurance market for property located in this state;

(2) to encourage maximum use, in obtaining property and liability insurance, as defined in sections 65A.31 to 65A.42, of the normal insurance market provided by the private property and casualty insurance industry;

(3) to encourage the improvement of the condition of properties located in this state and to further orderly community development generally;

(4) to provide for an organization known as the Minnesota FAIR plan, which will assure fair access to insurance requirements in order that no property is denied property or liability insurance through the FAIR plan due to the condition of the property, except after a physical inspection of the property and a fair evaluation of its individual underwriting characteristics;

(5) to publicize the purposes and procedures of the FAIR plan to the end that no one may fail to seek its assistance through lack of knowledge of its existence; and

(6) to provide for the formulation and administration by the Minnesota FAIR plan of a reinsurance arrangement whereby property and casualty insurers share equitably the responsibility for insuring insurable property for which property and liability insurance cannot be obtained through the normal insurance markets.

**History:** 1969 c 483 s 2; 1986 c 455 s 42; 1993 c 248 s 3; 1999 c 120 s 1; 2003 c 40 s 5

**65A.33 DEFINITIONS.**

Subdivision 1. **Scope.** As used in sections 65A.31 to 65A.42, unless the context otherwise requires, the terms defined in this section have the following meanings given to them.

Subd. 2. **Insurer.** "Insurer" means any insurance company or other organization licensed to write and engaged in writing property or liability insurance business, including the property or liability insurance components of multiperil policies, on a direct basis, in this state, except where such insurer is specifically exempted by statute from participation in this program.

Subd. 3. **Property or liability insurance.** "Property or liability insurance" means the coverage against direct loss to real or tangible personal property at a fixed location that is provided in the standard fire policy, extended coverage endorsement, homeowners insurance, as defined in section 65A.27, subdivision 4, cooperative housing insurance, condominium unit owners insurance, builders risk, and such vandalism and malicious mischief insurance and such other classes of insurance as may be added to the program with respect to said property by amendment as hereinafter provided. Property or liability insurance does not include automobile, commercial

liability, or such manufacturing risks as may be excluded by the commissioner.

Subd. 4. **Minnesota FAIR plan.** "Minnesota FAIR plan," or "plan," means the organization formed by insurers to assist applicants in securing property or liability insurance and to administer the FAIR plan.

Subd. 5. [Repealed, 2003 c 40 s 21]

Subd. 5a. **Member.** "Member" means any insurer as defined in subdivision 2.

Subd. 6. **Premiums written.** "Premiums written" means direct written premiums charged during the second preceding calendar year with respect to property in this state for fire, allied lines, homeowners, the nonliability component of farm policies, and the nonliability component of commercial multiperil policies, as reported by the members to the NAIC.

Subd. 7. **Commissioner.** "Commissioner" means the commissioner of commerce of the state of Minnesota.

Subd. 8. [Repealed, 1993 c 248 s 17]

Subd. 9. **Board.** "Board" means the governing board of directors of the Minnesota FAIR plan.

Subd. 10. **NAIC.** "NAIC" means the National Association of Insurance Commissioners.

**History:** 1969 c 483 s 3; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 455 s 43; 1989 c 260 s 12; 1993 c 248 s 4-6; 1994 c 465 art 2 s 1; 1999 c 120 s 2,3; 2003 c 40 s 6-10

#### **65A.34 PLAN COVERAGE.**

Subdivision 1. **Application.** Any person having an insurable interest in real or tangible personal property who has been canceled, nonrenewed, or otherwise rejected for coverage in the private market may submit an application for coverage to the plan. If an inspection of the premises is performed, it must be done at no cost to the applicant.

Subd. 2. **Inspections.** Before the plan may deny coverage due to the condition of the property or write coverage with a condition charge, it must first inspect the property for which coverage has been requested. The manner and scope of the inspections of Minnesota FAIR plan business must be prescribed by the plan with the approval of the commissioner.

Subd. 3. **Initial inspection report.** An inspection report must be made for each property inspected. The report must cover pertinent structural and occupancy features as well as the general condition of the building and surrounding structures. A representative photograph of the property may be taken during the inspection.

Subd. 4. **Condition charges.** Either during the inspection or immediately after the

inspection, an employee of the FAIR plan shall inform the applicant as to the features that result in a condition charge if the risk is accepted. No inspector has the authority to advise whether the plan will provide the coverage.

Subd. 5. **Completed inspection report.** Within ten business days after the inspection, the FAIR plan shall prepare or have prepared a completed inspection report that includes conditions that are subject to a condition charge under the rating plan approved by the commissioner. A copy of the inspection report must be made available to the applicant or the applicant's agent upon request.

Subd. 6. [Repealed by amendment, 2003 c 40 s 11]

**History:** 1969 c 483 s 4; 1986 c 444; 1986 c 455 s 44; 1993 c 248 s 7; 1999 c 120 s 4-6; 2003 c 40 s 11

### **65A.35 ADMINISTRATION.**

Subdivision 1. **Membership.** Each insurer authorized to write and engaged in writing within this state, on a direct basis, property or liability insurance or any component of this insurance contained in a multiperil policy, including homeowners and commercial multiperil policies, shall participate in the plan as a condition of its authority to write such kinds of insurance within this state.

Subd. 2. **Purposes.** The purposes of the Minnesota FAIR plan are:

(1) to formulate and administer, subject to the approval of the commissioner, a plan assuring fair access to insurance requirements in order that no property is denied property or liability insurance through the FAIR plan due to the condition of the property, except after a physical inspection of the property and a fair evaluation of its individual underwriting characteristics; and

(2) to formulate and administer, subject to the approval of the commissioner, a reinsurance arrangement whereby the members of the Minnesota FAIR plan share equitably the responsibility for insuring property which is insurable but for which property or liability insurance cannot be obtained through normal insurance markets.

Subd. 3. **Plan of operation.** The plan of operation of the Minnesota FAIR plan, consistent with the provisions of sections 65A.31 to 65A.42 and the purpose of the plan must provide for the FAIR plan, the reinsurance arrangement, and the economical and efficient administration of the Minnesota FAIR plan, including, but not limited to, management of the plan, establishment of necessary facilities within this state, assessment of members to defray losses and expenses, commission arrangements, reasonable underwriting standards, acceptance and cession of reinsurance, and procedures for determining amounts of insurance to be provided.

The plan of operation is subject to approval by the commissioner.

Subd. 4. **Amendment of plan of operation.** The Minnesota FAIR plan shall amend the plan of operation on its own initiative, subject to prior approval by the commissioner, or at the direction of the commissioner.

Subd. 5. **Administration.** (1) The Minnesota FAIR plan is administered by a board of nine directors, five of whom are elected by the members of the plan and four who represent the public. Public directors may include licensed insurance agents. Public directors are appointed by the commissioner. No less than two elected directors must be representatives of domestic insurers. In the election of directors, each member of the Minnesota FAIR plan is allotted votes bearing the same ratio to the total number of votes to be cast as its degree of participation in the plan bears to the total participation.

(2) Any vacancy among the elected directors must be filled by a vote of the other elected directors.

(3) If at any time the members fail to elect the required number of directors to the board, or a vacancy remains unfilled for more than 15 days, the commissioner may appoint the directors necessary to constitute a full board of directors.

(4) Vacancies among directors appointed by the commissioner must be filled by appointment by the commissioner. A person so appointed serves until the end of the term of the director the person is replacing.

(5) All public directors serve for a period of two years. The terms of all public directors begin on July 1 of the year their appointments begin.

(6) The plan of operation must provide for adequate compensation of public directors. A per diem amount and a procedure for reimbursement of expenses incurred in the discharge of their duties must be included in the plan. Private directors are not eligible for compensation.

Subd. 6. **Participation.** All members of the Minnesota FAIR plan shall participate in its expenses, losses, and equity distribution in the proportion that the premiums written as defined in this subdivision, but excluding that portion, if any, of premiums attributable to the reinsurance arrangement maintained by the facility, by each such member during the second preceding calendar year bear to the aggregate premiums written in this state by all members of the plan. Participation by each member in the plan is determined annually by the plan on the basis of such premiums written during the second preceding calendar year as disclosed in the annual statements and other reports filed by the member with the NAIC.

**History:** 1969 c 483 s 5; 1979 c 207 s 5; 1986 c 444; 1986 c 455 s 45,46; 1987 c 337 s 93; 1993 c 248 s 8; 2003 c 40 s 12

**65A.36 UNDERWRITING.**

Subdivision 1. **Evaluation of risk.** Agents are not permitted to bind coverage. The Minnesota FAIR plan shall issue a policy if the risk meets preliminary underwriting requirements. The plan may request an inspection report to obtain further underwriting information. If the inspection reveals that the applicant is not eligible for the coverage applied for, the plan shall inform the applicant within 59 days of the inception of the policy that the policy will be rescinded under section 65A.01, subdivision 3, paragraph (b), or canceled under section 65A.38. If the applicant is eligible for other coverage provided by the plan, the plan will offer to replace the rescinded or canceled policy with a policy providing coverage for which the applicant is eligible.

Before the 60th day after the inception of the policy, the FAIR plan shall advise the applicant that:

(1) the risk is acceptable with or without a condition charge or adjustment of policy limits. If a condition charge applies, the plan will tell the insured what improvements are necessary in order to remove the charge;

(2) the risk is not acceptable unless improvements noted by the plan are made by the applicant and confirmed by the plan; or

(3) the risk is not acceptable for the reasons stated by the plan.

Subd. 2. **Premium invoice.** If the risk is accepted, an invoice will be delivered to the applicant requiring remittance of the appropriate premium.

Subd. 3. **Declining a risk.** In the event a risk is declined because it fails to meet reasonable underwriting standards, the applicant must be so notified. Reasonable underwriting standards include, but are not limited to:

(1) the physical condition of the property, such as its construction, heating, wiring, evidence of previous fires, significant unrepaired damage, or general deterioration;

(2) the present use or housekeeping of the property such as vacancy, overcrowding, storage of rubbish, or flammable materials; or

(3) other specific characteristics of ownership, condition, occupancy, or maintenance which are violative of public policy and result in increased exposure to loss.

Neighborhood or area location or any environmental hazard beyond the control of the property owner are not acceptable criteria for declining a risk.

Subd. 4. **Appeal of plan decision.** In the event that a risk is declined on the basis that it does not meet reasonable underwriting standards, or the coverage will be written on condition that the property be improved, the plan shall, within five business days, send copies of the inspection report to the applicant and the commissioner, and shall advise the applicant of the right to and the

procedure for an appeal to the governing board and to the commissioner.

Subd. 5. **Action on completed application.** The plan must within five business days of the receipt of a completed application advise the applicant that the risk has been declined, the risk has been accepted, or that the limit of coverage has been adjusted to reflect the insurable value of the subject property.

**History:** 1969 c 483 s 6; 1986 c 444; 1993 c 248 s 9; 1999 c 120 s 7,8; 2003 c 40 s 13

#### **65A.37 POLICY FORMS.**

All policies must be on standard policy forms issued for a term of one year and approved by the commissioner.

**History:** 1969 c 483 s 7; 1986 c 455 s 47; 1993 c 248 s 10; 1999 c 120 s 9; 2003 c 40 s 14; 2008 c 344 s 41

#### **65A.375 RATES.**

The commissioner shall set the insurance rates for cooperative housing, organized under chapter 308A, and for neighborhood real estate trusts, characterized as nonprofit ownership of real estate with resident control. The rates must be actuarially sound. All other rates used by the Minnesota FAIR plan must be approved by the commissioner prior to use.

**History:** 1987 c 337 s 94; 1989 c 356 s 5; 1993 c 248 s 11; 2003 c 40 s 15

#### **65A.38 POLICY CANCELLATION.**

Subdivision 1. **Reasons.** The Minnesota FAIR plan shall not cancel a policy issued under sections 65A.31 to 65A.42 except:

(1) for cause which would have been grounds for nonacceptance of the risk under the program had the cause been known to the plan at the time of acceptance;

(2) for nonpayment of premium; or

(3) with the approval of the governing board.

Subd. 2. **Notice and statement of reasons.** Except as otherwise required under subdivision 4 or 5, at least 15 days' notice of cancellation together with a statement of the reason therefor shall be sent to the insured with a copy sent to the commissioner.

Subd. 3. **Statement of appeal rights.** Any cancellation notice or notice of refusal to renew to the insured shall be accompanied by a statement that the insured has a right of appeal as hereinafter provided.

Subd. 4. **Homeowner's insurance.** Cancellation of homeowner's insurance, as defined in sections 65A.27 to 65A.29, is subject to the provisions of those sections.

Subd. 5. **Commercial property insurance.** Cancellation of a commercial property insurance policy issued by the Minnesota FAIR plan must comply with sections 60A.35 to 60A.38.

**History:** 1969 c 483 s 8; 1993 c 248 s 12; 1994 c 485 s 65; 1999 c 120 s 10; 2003 c 40 s 16,17

#### **65A.39 APPEALS.**

(a) Any applicant or participating insurer shall have the right of appeal to the board of directors, which shall promptly determine the appeal. A decision of the board may be appealed to the commissioner within 30 days from notice of the action or decision. The commissioner shall promptly determine the appeal. Each denial of insurance shall be accompanied by a statement that the applicant has the right of appeal to the board and the commissioner and setting forth the procedures to be followed for the appeal. A final action of the commissioner is subject to judicial review as provided in chapter 14.

(b) In lieu of the appeal to the commissioner under paragraph (a), an applicant or insurer may seek judicial review of the board's action.

**History:** 1969 c 483 s 9; 1987 c 337 s 95; 1993 c 248 s 13

#### **65A.40 EDUCATION PROGRAMS.**

The plan will undertake a continuing public education program, in cooperation with producers and others, to assure that the Minnesota FAIR Plan Act receives adequate public attention.

**History:** 1969 c 483 s 10; 1993 c 248 s 14; 2003 c 40 s 18

#### **65A.41 AGENTS.**

Subdivision 1. **Generally.** A person licensed under chapter 60K may submit an application for coverage to the Minnesota FAIR plan and receive a commission from the plan for premiums paid for coverage. However, the licensee is not an agent of the Minnesota FAIR plan for purposes of state law. All checks or similar instruments submitted in payment of plan premiums must be made payable to the Minnesota FAIR plan and not the agent.

Subd. 2. **Duty to submit application.** An agent or broker shall not refuse to submit an application for basic property insurance coverage to the Minnesota FAIR plan if licensed to write and actively engaged in writing such insurance.

**History:** 1969 c 483 s 11; 1986 c 444; 1993 c 248 s 15; 2003 c 40 s 19

#### **65A.42 IMMUNITY FROM LIABILITY.**

There is no civil or criminal liability on the part of, and no cause of action of any nature arises against insurers, the Minnesota FAIR plan, the governing board, or employees of the plan

or the commissioner or the commissioner's authorized representatives, for any acts or omissions by them if the acts or omissions were in good faith and within the scope of their responsibilities under sections 65A.31 to 65A.42. The inspection reports and communications of the inspection vendors and the Minnesota FAIR plan are not public documents.

**History:** 1969 c 483 s 12; 1971 c 24 s 11; 1986 c 444; 1993 c 248 s 16; 1999 c 120 s 11; 2003 c 40 s 20

**65A.43** [Repealed, 1993 c 248 s 17]

## RESIDENTIAL RENTER'S POLICIES

### 65A.44 DEFINITIONS.

Subdivision 1. **Application.** The definitions in this section apply to this section and section 65A.45.

Subd. 2. **Insurer.** "Insurer" means an insurer licensed to write insurance and writing residential renter's insurance in this state.

Subd. 3. **Residential renter's insurance policy.** "Residential renter's insurance policy" means insurance coverage normally written by the insurer as a standard residential renter's package policy.

**History:** 1991 c 244 s 2

### 65A.45 RESIDENTIAL RENTER'S INSURANCE POLICY.

No insurer shall refuse to issue a single residential renter's insurance policy for the purpose of providing coverage to up to four individuals residing in the same household, if all of the individuals are named insureds on the policy and meet the insurer's normal underwriting requirements.

**History:** 1991 c 244 s 3

## REAL PROPERTY FIRE LOSS ESCROW ACCOUNT

### 65A.50 TRUST OR ESCROW ACCOUNTS; INSURED REAL PROPERTY FIRE OR EXPLOSION LOSS PROCEEDS.

Subdivision 1. **Definitions.** (a) "Municipality" means statutory or home rule charter city or town.

(b) "Final settlement" means a determination of the amount due and owing to the insured, for a loss to insured real property, by any of the following means:

(1) acceptance of a proof of loss by the insurer;

- (2) execution of a release by the insured;
- (3) acceptance of an arbitration award by both the insured and the insurer; or
- (4) judgment of a court of competent jurisdiction.

Subd. 2. **Partial withholding from settlement payments; notice.** Except as otherwise provided in this section, with respect to insured real property located in a municipality which has elected to apply this section as provided in subdivision 12, when a claim is filed for a loss to insured real property due to fire or explosion and a final settlement is reached on the loss to the insured real property, an insurer shall withhold from payment 25 percent of the actual cash value of the insured real property at the time of the loss or 25 percent of the final settlement, whichever is less. At the time that 25 percent of the settlement or judgment is withheld, the insurer shall give notice of the withholding to the treasurer of the municipality in which the insured real property is located, to the insured, and to any mortgagee having an existing lien or liens against the insured real property, if the mortgagee is named on the policy. In the case of a judgment, notice shall also be provided to the court in which judgment was entered. The notice shall include all of the following:

- (1) the identity and address of the insurer;
- (2) the name and address of each policyholder, including any mortgagee;
- (3) location of the insured real property;
- (4) the date of loss, policy number, and claim number;
- (5) the amount of money withheld;
- (6) a statement that the municipality may have the withheld amount paid into a trust or escrow account established for the purposes of this section if it shows cause, pursuant to subdivision 3, within 30 days that the money should be withheld to protect the public health and safety, otherwise the withheld amount shall be paid to the insured at the expiration of 30 days; and
- (7) an explanation of the provisions of this section and a verbatim reproduction of subdivision 16.

Subd. 3. **Escrow procedure.** In order for a municipality to escrow the amount withheld by the insurer, and to retain that amount, the following procedure shall be used.

(a) An affidavit prepared by the chief fire official or another authorized representative of the municipality designated by the governing body of the municipality that the damaged insured structure violates existing named health and safety standards requiring the escrow of the withheld amount as surety for the repair, replacement, or removal of the damaged structure shall constitute cause for the escrowing of the withheld amount.

(b) In the case of a settlement, the affidavit shall be sent to the insurer, the insured, and any mortgagees. Upon receipt of the affidavit, the insurer shall forward the withheld amount to the treasurer of the municipality and shall provide notice of the forwarding to the insured and any mortgagees.

(c) In the case of a judgment, the affidavit shall be sent to the insurer, the insured, any mortgagees, and the court in which the judgment was entered. Upon receipt of the affidavit, the insurer shall forward the withheld amount to the treasurer of the municipality and shall provide notice of the forwarding to the insured, any mortgagees, and the court in which judgment was entered.

**Subd. 4. Deposit in trust or escrow account; release of proceeds to mortgagee.** Upon receipt of money and information from an insurer as prescribed in subdivisions 2 and 3, the local treasurer shall record the information and the date of receipt of the money and shall immediately deposit the money in a trust or escrow account established for purposes of this section. The account may be interest-bearing. If the mortgage on the insured property is in default, the treasurer of the municipality, upon written request from a first mortgagee of property with respect to which policy proceeds were withheld and placed into a trust or escrow account under subdivisions 2, 3, and this subdivision, shall release to the mortgagee all or any part of the policy proceeds received by the municipality with respect to that property, not later than ten days after receipt of the written request by the mortgagee, to the extent necessary to satisfy any outstanding lien of the mortgagee.

**Subd. 5. Commingling of funds; retention of interest.** Except as provided in subdivision 8, money deposited in an account pursuant to subdivision 4 shall not be commingled with municipal funds. Any interest earned on money placed in a trust or escrow account shall be retained by the municipality to defray expenses incurred under this section.

**Subd. 6. Release of deposited proceeds to insured.** Except as provided in clause (3), the policy proceeds deposited under subdivision 4 shall immediately be forwarded to the insured when the chief fire official or another authorized representative of the municipality designated by the governing body of the municipality receives or is shown reasonable proof of any of the following:

(1) that the damaged or destroyed portions of the insured structure have been repaired or replaced, except to the extent that the amount withheld under this subdivision is needed to complete repair or replacement;

(2) that the damaged or destroyed structure and any and all remnants of the structure have been removed from the land on which the structure or the remnants of the structure were situated, by the owner or by any other person, in compliance with the local code requirements of the municipality in which the structure was located; or

(3) that the insured has entered into a contract to perform repair, replacement, or removal services with respect to the insured real property and that the insured consents to payment of funds directly to the contractor performing the services. Funds released under this clause may be forwarded only to a contractor performing services on the insured property.

Subd. 7. **Reasonable proof.** Reasonable proof required under subdivision 6 shall include any of the following:

(1) originals or copies of pertinent contracts, invoices, receipts, and other similar papers evidencing both the work performed or to be performed and the materials used or to be used by all contractors performing repair, replacement, or removal services with respect to the insured real property, other than a contractor subject to clause (2);

(2) an affidavit executed by the contractor which has performed the greatest amount of repair or replacement work on the structure, or which has done most of the clearing and removal work if structure repair or replacement is not to be performed. The contractor shall attach to the affidavit all pertinent contracts, invoices, and receipts and shall swear that these attached papers correctly indicate the nature and extent of the work performed to date by the contractor and the materials used; or

(3) an inspection of the insured real property to verify that repair, replacement, or clearing has been completed in accordance with subdivision 6.

Subd. 8. **Use of retained proceeds.** If with respect to a loss, reasonable proof is not received by or shown to a fire official or another authorized representative of the municipality designated by the governing body of the municipality within 45 days after the policy proceeds portion was received by the treasurer, the municipality shall use the retained proceeds to secure, repair, or demolish the damaged or destroyed structure and clear the property in question, so that the structure and property are in compliance with local code requirements and applicable ordinances of the municipality. If, before the lapse of the 45 days after the proceeds portion was received by the treasurer, the municipality has secured, repaired, or demolished the damaged or destroyed structure under chapter 299F or 463 or other applicable law or ordinance, once the 45 days lapse, the municipality may release the special assessment placed on the property, if any, and reimburse itself from the retained funds. No more than 15 percent of the policy proceeds used by the municipality under this subdivision may be attributed to the municipality's administrative expenses, which must be directly related to the actions authorized under this subdivision. Any unused portion of the retained proceeds shall be returned to the insured.

Subd. 9. **Proceeds not included.** A final settlement shall not include the payment of policy proceeds for personal property or contents damage or for additional coverage not contained in the fire coverage portion of the fire insurance policy.

Subd. 10. **Immunity from liability.** There shall not be liability on the part of, and a cause of action shall not arise against, an insurer or an agent or employee of an insurer for withholding or transferring money in the course of complying or attempting to comply with this section.

Subd. 11. **Application of section; amount of settlement.** This section applies only to final settlements which exceed 49 percent of the insurance on the insured real property.

Subd. 12. **Application of section; election; list of electing municipalities.** This section applies only to property located in a municipality if the municipality, pursuant to a resolution by the governing body, notifies the commissioner in writing that the municipality has established a trust or escrow account to be used as prescribed in this section and intends to uniformly apply this section with respect to all property located within the municipality following written notification to the commissioner. The commissioner shall prepare and distribute a list of all municipalities which have elected to apply this section to all insurance companies transacting property insurance in this state.

Subd. 13. **Retention on list.** (a) A municipality shall remain on the list until a written request for deletion has been received by the commissioner, or until the municipality has failed to comply with paragraph (b), and the amended list has been prepared pursuant to this subdivision.

(b) Municipalities on the list shall report every two years to the commissioner in writing regarding the extent of the municipality's use of this section and the effect of this section on arson fires in that municipality. The report must be filed with the commissioner no later than 90 days after the two-year anniversary of the municipality's placement on the list and thereafter no later than 90 days after each subsequent two-year period. If the commissioner has not received a report required under this paragraph, the commissioner shall promptly provide the municipality a written reminder notice. If the commissioner has not received the report within 30 days after providing the written notice, the municipality shall be treated as having made a written request for deletion under paragraph (a).

Subd. 14. **Addition to list.** A municipality may apply to be added to the list by making a written request for addition to the commissioner. When a written request for addition from a municipality has been received by the commissioner, an amended list shall be prepared and distributed indicating the addition. The addition shall be effective on the date specified by the commissioner in the amendment. The commissioner shall notify the municipality and insurance companies of the effective date of the addition which shall be effective not less than 30 days after receipt of notice by the insurance company. A municipality shall not apply this section with respect to any loss which occurred before the effective date of the addition.

Subd. 15. **Deletion from list.** A municipality may cease to apply this section for a period of not less than six months upon not less than 30 days' written notice to the commissioner. After

receipt of request to be deleted from the list, the commissioner shall prepare and distribute an amendment to the list indicating the deletion. The deletion shall be effective on the date specified by the commissioner in the amendment. The commissioner shall notify the municipality and insurance companies of the effective date of the deletion which shall be effective not less than 30 days after receipt of the notice by the insurance company. A municipality shall continue to apply this section with respect to any loss which occurred before the effective date of the deletion, notwithstanding the deletion.

Subd. 16. **Exceptions to withholding requirements.** The withholding requirements of this section do not apply if all of the following occur:

(1) within 30 days after agreement on a final settlement between the insured and the insurer, the insured has filed with the insurer evidence of a contract to repair as described in subdivision 7;

(2) the insured consents to the payment of funds directly to the contractor performing the repair services. Funds released under this clause may be forwarded only to a contractor performing the repair services on the insured property; and

(3) on receipt of the contract to repair, the insurer gives notice to the municipality in which the property is situated that there will not be a withholding under this section because of the repair contract.

Subd. 17. **Demolition costs or debris removal costs as part of final settlement; withholding.** If the insured and the insurer have agreed on the demolition costs or the debris removal costs as part of the final settlement of the real property insured claim, the insurer shall withhold one of the following sums, whichever sum is the largest, and shall pay that sum in accordance with this section:

(1) the agreed cost of demolition or debris removal;

(2) 25 percent of the actual cash value of the insured real property at the time of loss; or

(3) 25 percent of the final settlement of the insured real property claim.

**History:** 1995 c 170 s 1; 1997 c 47 s 1-5; 1997 c 77 s 2