

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 South Spring St.
Los Angeles, CA 90013**

**REG-2010-00001
2/11/10 Workshop Draft**

ADD

New Section 2188.65 to Article 6.5 of Subchapter 1 of Chapter 5 of Title 10 of the California Code of Regulations, as follows.

Comment: This section is intended to set forth the recommended curricula required under CIC Section 1749.85(a). This section mostly aligns with the outline submitted by the Curricula Committee to the Commissioner (revised 1/19/09).

2188.65 Broker-agent Training on Estimating Replacement Value

(a) As used in this section 2188.65 and in California Insurance Code section 1749.85 the following terms have the following meanings:

1. "Homeowners' insurance policy" shall have the same meaning as "policy of residential property insurance" as defined in subdivision (a) of Insurance Code section 10087.
2. "Replacement value" shall have the same meaning as "replacement cost" and is defined as the amount it would cost to repair, rebuild or replace a completely damaged or destroyed structure, without a deduction for physical depreciation.
3. "Fire and casualty broker-agent" and "personal lines broker-agent" shall be the holders of the licenses defined in Insurance Code sections, 1625 and 1625.5, respectively. Fire and casualty broker-agents and personal lines broker-agents shall also be referred to as "broker-agent" in this section.

(b) Effective [Month/Date/Year], every fire and casualty broker-agent and personal lines broker-agent shall satisfactorily complete one three-hour training course prior to soliciting individual consumers in order to sell dwelling fire or homeowners' insurance. For resident broker-agents, this requirement shall be part of, and not in addition to, the continuing education requirements of California Insurance Code Section 1749.3.

(c) The training required by this section shall be approved by the commissioner and shall consist of topics related to dwelling, fire, and homeowners' insurance. Any course taken to satisfy the requirements stated in Section 1749.85 of Insurance Code shall use subject matter described in this article.

(d) The broker-agent shall be trained on the differences Between Homeowners' insurance coverage and other Fire, and Dwelling Property policies, which differences may necessitate differences in coverage or coverage levels. The broker-agent shall also be trained on the basic concepts of property insurance and estimating replacement value, which includes:

1. How loss settlement provisions in an insurance policy apply to major claims and the potential causes and effect that underinsurance may have on settlement;

2. The differences in the measure of indemnity between Actual Cash Value coverage and Replacement Cost coverage, as summarized in California Insurance Code sections, 2051, 2051.5, and 10102, including:

(A) Different Types of Structures

(B) California Residential Property Insurance Disclosure, as described in California Insurance Code section 10102;

(C) Depreciation and how it is applied under a homeowners' insurance policy;

3. The several components of a structure necessary to determine Replacement Value, including but not limited to:

(A) Types of Foundations

(B) Types of Roofs and Roofing Materials

(C) Types of Siding

(D) Geographic location of property being built on

(E) Appurtenant Structures coverage/values

(F) Other areas affecting replacement value, like the size of the structure, number of stories, cost of demolition and debris removal, architect plans, engineering reports, and permits;

4. The Effects of Catastrophes on Replacement Cost, which includes how shortages of construction labor, building supplies, fuel, and transportation issues effect the amount of insurance coverage needed to address this contingency;

5. Review of the significant enhancements and endorsements to the homeowners' insurance policy, which includes:

(A) what is included and excluded in Building Code Upgrade (Ordinance and Law) Coverage, as defined in California Insurance Code section 10102;

(B) the various types and levels of replacement cost, as defined in California Insurance Code section 10102;

6. Review of the California Standard Form Fire Policy and FAIR Plan coverages, as described in California Insurance Code sections 2071 and 10090, respectively;

7. Review of the Types of Basic Building Construction, including. Tilt –Up, Cinderblock, Conventional Frame, Brick and Masonry, and Metal Frame.

8. Review of the Various Methodologies of Determining Replacement Value including:

- (A) Proprietary replacement cost valuation tools
- (B) Real Estate Appraisals
- (C) Insurance Company’s Valuation Software
- (D) Contractor’s and Architect’s estimates or opinions
- (E) Cost per square footage estimates
- (F) Insured’s opinion;
- (G) Elements of a custom home and how its construction can affect the replacement value;
- (H) Different cost factors that can affect the replacement value due to location or type of construction of a structure, such as building on a slope or hillside.

9. Review of Fire Mitigation and how it effects insurance costs to include:

- (A) Define, recognize, and describe the fire problem in the wildland urban interface.
- (B) Discuss the areas that affect the risk and hazard such as topography, fuels type and locations, weather, and construction.
- (C) Discuss current state and local laws and regulations that address efforts to mitigate. Those include defensible space requirements, building construction, land use and planning.
- (D) Discuss how to mitigate the risk and hazard using a complete fire protection approach that recognizes sound engineering (building construction) and land use (defensible space and vegetation modifications);

(e) The training required by this section 2188.65 shall ensure that the broker-agent is familiar with the provisions of sections 2695.182 and 2695.183.

(f) Any course or seminar that is disapproved under the provisions of this section shall be presumed invalid for credit towards the continuing education requirement of this section unless it is approved in writing by the commissioner.

NOTE: Authority cited: Sections 790.04, 790.10, 1749.7, 1749.85, and 2051.5, Insurance Code. Reference: Sections 790.03, 790.04, 1625, 1625.5, 1749.85, 2051.5, and 10087, Insurance Code.

AMEND

Section 2190.2 of Article 7 of Subchapter 1 of Chapter 5 of Title 10 of the California Code of Regulations, as follows.

Comment: This section adds subsection (q) to Section 2190.2 to refer to the record keeping requirements of new Section 2695.182.

Section 2190.2. Required Records.

Wherever applicable, the following records shall be maintained by every agent or broker or surplus lines broker or special lines' surplus lines broker with respect to each and every insurance transaction for at least five years after expiration or cancellation date of the policy to which the records pertain:

- (a) Name of insured,
- (b) Name of insurer,
- (c) Policy number,
- (d) Effective date, termination date and mid-term cancellation date of coverage,
- (e) Amount of gross premium,
- (f) Amount of net premium,
- (g) Amount of commission and basis on which computed,
- (h) Names of persons who receive, or are promised, any commissions or other valuable consideration related to the transaction,
- (i) Amount of premium received including itemization of any partial payments or additional premium,
- (j) Date premium received by agent or broker,
- (k) Date deposited in bank account or bank depository into which premiums are deposited or maintained in accord with Section 1733 of the Insurance Code, including but not limited to trustee accounts maintained pursuant to Section 1734 of the Insurance Code,
- (l) Name and address of bank and number of account in which premium is deposited or maintained in accord with Section 1733 of the Insurance Code, including but not limited

to trustee accounts maintained pursuant to Section 1734 of the Insurance Code,

(m) Date premium paid by agent or broker to the person entitled thereto and identification of the means of transmittal,

(n) Amount of net and gross return premium,

(o) Date return premium is received from insurer by agent or broker which may be the date the credit is taken from the insurer or the date the check or draft is received, and

(p) Date gross return premium is remitted to person entitled thereto by agent or broker and identification of means of transmittal.

(q) Any documents required to be maintained pursuant to Section 2695.182.

NOTE: Authority cited: Sections 1727, 1763 and 1768, Insurance Code. Reference: Sections 1760.5(b), 1763 and 1764.1, Insurance Code.

AMEND

Section 2190.3 of Article 7 of Subchapter 1 of Chapter 5 of Title 10 of the California Code of Regulations, as follows.

Comment: This section adds subsection (f) to Section 2190.3 to refer to the record keeping requirements of new Section 2695.182.

Section 2190.3. Records by File.

(a) Wherever applicable, the following records shall be maintained by every agent or broker and surplus lines broker and special lines' surplus lines broker in a file pertaining to a particular insured for a period of eighteen months after the transaction described by such records:

(1) Identity of each person who transacted the insurance, renewals and any change in coverage,

(2) Records of all binders, whether written or oral, showing the names of insured and insurer, nature of coverage, effective and termination dates and premium for binder or policy to be issued,

(3) Copy of application or memorandum of request for insurance,

(4) Correspondence received, copies of correspondence sent, memoranda, notes of conversation, or any other record necessary to describe the transaction.

(b) The following records of surplus line transactions shall be maintained by every agent and broker and surplus lines broker and special lines' surplus lines broker for a period of at least five years after expiration or cancellation date of the policy to which the records pertain: forms, reports or statements required to be maintained or filed under Sections 1763 and 1764.1 of the Insurance Code.

(c) The agent, broker, surplus line broker or special lines' surplus lines broker who signs the form, report or statement under Insurance Code Section 1763 shall maintain the original. The agent, broker, surplus lines broker or special lines' surplus lines broker who receives the originally signed disclosure statement under Insurance Code Section 1764.1 shall maintain the original.

(d) The agent, broker, surplus line broker or special lines' surplus lines broker who signs the diligent search form under Insurance Code Section 1763 or receives the originally signed disclosure statement under Insurance Code Section 1764.1 shall send copies to all other agents, brokers, surplus lines brokers or special lines' surplus lines brokers involved in the transaction.

(e) The agent, broker, surplus line broker or special lines' surplus lines broker who receives copies of documents pursuant to 2190.3(d), shall maintain the copies which show the signature of the agent, broker, surplus lines broker, special lines' surplus lines broker or applicant who signed it.

(f) An agent or broker who provides an estimate of replacement cost used to set or recommend a policy limit for an applicant or insured, shall maintain records as mandated by Section 2695.182.

NOTE: Authority cited: Sections 1727, 1763 and 1768, Insurance Code. Reference: Sections 1760.5(b), 1763 and 1764.1, Insurance Code.

ADD

New Article 1.3: Valuation of Homes to Subchapter 7.5 of Chapter 5 of Title 10 of the Insurance Code, as follows.

Article 1.3. Valuation of Homes.

2695.180 Definitions

As used in this article and in California Insurance Code section 1749.85 the following terms have the following meanings:

- (a) “Homeowners’ insurance policy” shall have the same meaning as “policy of residential property insurance” as defined in subdivision (a) of Insurance Code section 10087.
- (b) “Replacement value” shall have the same meaning as “replacement cost” and is defined as the amount it would cost to repair, rebuild or replace a completely damaged or destroyed structure, without a deduction for physical depreciation.
- (c) “Fire and casualty broker-agent” and “personal lines broker-agent” shall be the holders of the licenses defined in Insurance Code sections 1625 and 1625.5, respectively. Fire and casualty broker-agents and personal lines broker-agents shall also be referred to as “broker-agent” in this article.
- (d) "Licensee" means (1) any person or entity that holds a license or certificate of authority issued by the Department of Insurance, (2) a broker-agent, or (3) any other entity for whom the Insurance Commissioner's consent is required before transacting business in the State of California or with California residents.

NOTE: Authority cited: Sections 790.10, 1749.7, 1749.85, and 2051.5 of the California Insurance Code. Reference: Sections 790.03, 1625, 1625.5, 1749.85, 2051.5, and 10087 of the California Insurance Code.

2695.181 Standards for Real Estate Appraisers

Comment: CIC 1749.85(d) permits the Commissioner to establish standards for real estate appraisers who want to estimate replacement value. This section sets forth those standards.

- (a) California Insurance Code subsection 1749.85(d) provides that if the Department of Insurance, by adopting a regulation, establishes standards for the calculation of estimates of replacement value of a structure by appraisers, then on and after the effective date of the regulation a real estate appraiser's estimate of replacement value shall be calculated in accordance with the regulation. A real estate appraiser shall not estimate replacement value of a structure and explain levels of coverage under a homeowners' insurance policy

unless the estimate of replacement value complies with the provisions of subdivisions (a) through (d) of section 2695.183;

NOTE: Authority cited: Sections 1749.7, 1749.85, and 2051.5, Insurance Code.
Reference: Sections 1625, 1625.5, 1749.85, 2051.5, and 10087 of the California Insurance Code.

2695.182 Documentation of Person Estimating Replacement Value

Comment: CIC 1749.85(b) permits only certain types of persons to estimate replacement value. This proposed section is intended to allow the CDI to implement and enforce this statute by requiring documentation from our licensees to support that only the persons allowed by the statute actually perform these estimates. The goal is to protect the public from those persons not permitted by law to perform these estimates.

(a) subdivisions (b) and (d) of Insurance Code section 1749.85 provide that only certain types of persons may estimate the replacement value of a structure, or explain various levels of coverage under a homeowners' insurance policy. In the event an estimate of replacement cost is used by a licensee to set or recommend a policy limit for an applicant or insured, the licensee shall document and maintain in the applicant's or insured's file the following information:

1. The status of the person providing the estimate of replacement value, as the insurer underwriter or actuary or other person identified by the insurer, a broker-agent, a contractor, an architect, a real estate appraiser, or other person or entity permitted to make such an estimate by Insurance Code section 1749.85;
2. The name, job title, address, telephone number, and license number, if applicable, of the person providing the estimate of replacement value;
3. The source or method of how replacement value was determined, to include a replacement cost calculator, contractor's estimate, architectural report, real estate appraisal, or other method; and
4. A copy of any reports, inspection reports, contractor's estimates, or other documents used to estimate replacement value.

(b) Licensees subject to subdivision (a) of this section 2695.182 shall maintain in the applicant's or insured's file the records specified in subdivision (a) of section 2695.182 for the entire term of the insurance policy and for five (5) years after the policy is terminated.

NOTE: Authority cited: Sections 730, 790.04, 790.10, 1727, 1749.7, and 1749.85, of the California Insurance Code. Reference: Sections 730, 790.03, 790.04, and 1749.85 of the California Insurance Code.

2695.183 Standards to Be Used when a Licensee Estimates Replacement Cost

Comment: This section seeks to set forth standards for how insurers, agents, and brokers (licensees) estimate replacement cost and/or use replacement cost calculators. This section also provides that a licensee should regularly evaluate its methods for estimating replacement cost, to ensure that these estimates are up-to-date. Authority: CIC Sections 790.03(a), 1861.05 and 2051.5.

No licensee shall estimate replacement cost, or shall rely on an estimate of replacement cost, to set or recommend a policy limit on a homeowners' insurance policy for an applicant or insured, unless all of the following requirements and standards are met:

(a) The estimate of replacement cost shall include all expenses that would reasonably be incurred to rebuild the insured structure(s) in its entirety, including but not limited to:

1. Cost of labor, building materials and supplies;
2. Overhead and Profit;
3. Cost of permits, architect plans, engineering reports, and other plans and reports reasonably necessary to effectuate a complete rebuilding of the structure; and
4. Cost of demolition and debris removal.

(b) The estimate of replacement cost shall include all components and features of the insured structure(s), including, but not limited to:

1. Quality and type of foundation;
2. Quality and type of frame;
3. Quality and type of roofs and roofing materials;
4. Quality and type of siding;
5. Whether structure is located on a slope;
6. Quality and type of appurtenant structures;
7. Size of the structure, including square footage of the living spaces;
8. Geographic location of property;
9. Height and number of stories of the structure; and
10. Quality and type of kitchens, bathrooms, floor coverings, cabinetry, countertops, and other interior features.

(c) The estimate of replacement cost shall be based an estimate of the cost to rebuild or replace the structure taking into account the cost to reconstruct the single property being evaluated, as compared to the cost to build multiple, or tract, properties;

(d) The estimate of replacement cost shall not be based upon the resale value of the land, or upon amount or outstanding balance of any loan.

(e) For purposes of this subdivision (e) "demand surge" is a phenomenon characterized by a substantial increase in the cost of construction due to unusually high demand for contractors, building supplies and construction labor. Demand surge typically occurs

after a disaster, such as a wildfire, earthquake, or other natural disaster, in which large numbers of structures are destroyed within a specific geographic area. If a replacement cost estimate, generated by or on behalf of a licensee, does not include consideration for demand surge, the licensee shall disclose this fact to the applicant or insured in the notice or report provided under subdivision (h) of this section.

(f) The provisions of this article are binding upon licensees, notwithstanding the fact that information, data or statistical methods used or relied upon by a licensee to estimate replacement cost may be obtained through a third party source. Any and all information received by the Department pursuant to this article shall be accorded the degree of confidential treatment required by section 735.5 of the Insurance Code or Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code, commencing at section 11180.

(g) A licensee that estimates replacement cost, or that relies upon an estimate of replacement cost produced by another, shall take reasonable steps to verify that the sources and methods used to estimate replacement cost are kept current to reflect changes in the costs of reconstruction and rebuilding, including changes in labor, building materials, and supplies, based upon the geographic location of the insured structure.

(h) If a licensee uses an estimate of replacement cost to set or recommend a policy limit on a homeowners' insurance policy for an applicant or insured, the licensee must provide a copy of the replacement cost estimate to the applicant or insured at the time the policy limit is set or recommended. If the estimate of replacement cost is updated or changed by, or on behalf of, the licensee, the licensee shall provide a copy of the revised estimate of replacement cost to the applicant or insured within thirty (30) calendar days from the time the estimate is generated. Each component used to estimate the replacement cost must be itemized on the copy.

(i) Licensees shall maintain (1) a record of the information supplied by the applicant or insured that is used by the licensee to generate the replacement cost estimate and (2) a copy of the replacement cost estimate supplied to the applicant or insured pursuant to subdivision (h) of this section. These records and copies shall be maintained in every applicant's file for five years and, if the policy is issued, in every insured's file for the entire term of the insurance policy and for five years after the policy is terminated.

NOTE: Authority cited: Sections 730, 790.03, 790.04, 790.10, 1749.7, 1749.85, 1861.05, and 2051.5, Insurance Code. Reference: Sections 730, 790.03, 790.04, 735.5 and 1749.85, Insurance Code.