

MINE SUBSIDENCE INSURANCE

July 1, 1992

This Bulletin is directed to all insurers licensed in the State of Indiana to sell Mine Subsidence Insurance.

In its last Session, the Indiana General Assembly passed House Bill 1104, which made many amendments to Indiana's Mine Subsidence Law. The Commissioner of Insurance wishes to clarify the Department's interpretation of the changes brought about by this Bill.

One of the most important elements of H.B. 1104 is its requirement that all insurers writing mine subsidence insurance are obligated (until July, 1994) to offer such coverage to all policyholders, both at time of first issuance or at renewal, unless a renewing policy already includes such coverage. The Department will provide all affected insurers with the specific language to be used in such offers. Any insurer wishing to use alternate language must contact the Mine Subsidence Program prior to using any such language.

Insurers should note that this mandatory offer is required to be made to insureds to all twenty six (26) Counties originally specified by the Indiana Department of Natural Resources. A list of those Counties is attached. The Department interprets this "mandatory" language to mean any policy with an initial or renewal effective date occurring on or after September 1, 1992.

Under H.B. 1104, the definition of structure has been amended so as to exclude from coverage any structure which is publicly owned or owned by any governmental entity.

As before, an insurer must decline coverage on any structure evidencing ongoing or unrepaired mine subsidence damage. Coverage may be issued once pre-existing damage has been repaired, so long as there is no ongoing subsidence event. Under H.B. 1104, an insurer is not required to do any extraordinary or technical investigation for mine subsidence, however the Department will expect insurers to use all reasonable and customary underwriting standards. The Program will not reimburse an insurer for damage under a policy if the damage or mine subsidence event pre-dated the effective date of the coverage.

Section 8 of the House Bill requires the Commissioner to provide technical expertise, when necessary, to assist insurers in the adjustment of mine subsidence losses. However, the law still requires all insurers to be responsible for the ordinary and customary adjustment of losses. Although the Department will have an engineer available to render technical assistance and support, insurers will be expected to undertake initial adjustment of all losses until such time as it appears that mine subsidence may be present. The Department will not provide technical assistance for purposes of adjustment of claims until such time as the insurer has undertaken all reasonable and customary adjusting and is clearly unable to continue without technical expertise or assistance.

All portions of this amended Act take effect July 1, 1992, with the exception of the mandatory offer provision, which is effective September 1, 1992.

As a final note, it appears that some Companies writing this coverage are doing so in Counties which are not eligible. Please note that the program will reimburse for claims only in the twenty six affected Counties. Companies are not authorized by this Program to write coverage in any other Counties. Furthermore, some Companies have suggested to insureds that the coverage must be included unless waived in writing. Again, this is not a correct statement of the law, and any Company found to have made such a misrepresentation will be subject to Administrative action by this Department.

Any questions regarding the forgoing or the Mine Subsidence Program in general should be directed to the Program Manager at the offices of the Department of Insurance.

LIST OF TWENTY-SIX AFFECTED COUNTIES

CLAY
CRAWFORD
DAVISS
DUBOIS
FOUNTAIN
GIBSON
GREENE
KNOX
LAWRENCE
MARTIN
MONROE
MONTGOMERY
ORANGE
OWEN
PARKE
PERRY
PIKE
POSEY
PUTNAM
SPENCER
SULLIVAN
VANDERBURGH
VERMILLION
VIGO
WARREN
WARRICK

John F. Mortell
Insurance Commissioner