



Georgia Rules & Regulations



has broad powers. The Commissioner, Departmental employees and Deputy Commissioners may hold hearings to discover possible violations. They are empowered to subpoena witnesses and ask questions of those commanded to such hearings.

Hearing and Judicial Review

The Commissioner may hold a hearing based upon his belief that there is a possible violation of the Insurance Code or in response to a written demand made by any person who feels they have been wronged under Georgia Insurance Law. After a person has complained and the Commissioner feels that grounds for the hearing exist... the hearing will be held **within 30 days** of the demand. The Commissioner will serve notice of Hearings by registered mails. The Commissioner may preside or assign and designated representative as a hearing officer.

Penalties

The Commissioner has the right to impose any penalty or remedy provided by the law against any person who has been investigated and found responsible for a violation **without a hearing**. If the wrongdoer wishes a hearing them must make such request **within 10 days** of the receipt of the order.

If any licensed insurer, person, or entity authorized by the state of Georgia is found by the Commissioner to

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companies typically do pay dividends to policyowners.

Insurance Transactions

Insurance transactions is a term used throughout our discussion. For example, to engage in insurance transaction in the state of Georgia, you must be licensed. So let's look at what constitutes an insurance transaction under Georgia laws. It includes any of the following:

- Solicitation and inducement;
- Preliminary negotiations;
- Bringing about a contract of insurance; or
- Transaction of matters subsequent to bringing about the contract and arising out of it.

Insurance transactions do not include the investigation and adjustment of a claim in the state.

Authorized/Unauthorized and Certificate of Authority

Every company that acts as an insurance company and transacts insurance business in Georgia must receive a **Certificate of Authority** given by the Commissioner. If a company is granted a certificate of Authority, it is said to be **an Authorized company or Admitted company. If a company does not receive a Certificated of Authority, it is classified as Nonadmitted or Unauthorized insurance company. A Nonadmitted**

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Example: Billy Bob bought a new car three years ago for \$22,000.

Today, it has a book value of \$14,000. According to the principle of indemnity, the insured should receive no more than \$14,000 if the car is demolished because that would represent Billy Bob's financial position before the loss occurred.

The formula for Actual Cash Value is:

$$ACV = \text{Replacement Cost} - (\text{minus}) \text{Depreciation}$$



insurance company (with few exceptions) cannot transact business in the state of Georgia.

Among the exceptions... if an insurance company is **not transacting new business** in Georgia but continues to collect premiums and service policies remaining in force for Georgia residents or for a risk located in Georgia the company **is not required** to have a Certificate of Authority. As you might guess, in the process of claims investigation and adjusting of losses it is not necessary to have a Certificate of Authority. If you are seeking a Property and Casualty license, you will learn about **Surplus Lines transactions** which allow the use of Nonadmitted companies in circumstances where Admitted companies cannot provide the coverage desired.

To qualify for and hold authority to transact insurance business in Georgia, an insurer must be a Stock insurer, Mutual insurer, a Fraternal Benefit society, a hospital service nonprofit corporation. A nonprofit medical service corporation, a farmer's Mutual fire insurance company, a Lloyd's association or Reciprocal insurer.

An insurance company may transact insurance for one kind of insurance or a combination of kinds except:

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The following people **do not** need to hold a Producers license:

1. Officers, directors, or employees of an insurance agency if that person does not receive any commission on policies written or sold to insure risks located in the State of Georgia.
2. Officers, directors, or employees whose activities are executive, administrative, managerial, and clerical or combination of these and are indirectly related to the sale, solicitation or negotiation of insurance.
3. Officers, directors, or employees whose function relates to underwriting, loss control, inspection, adjusting a claim on a contract if insurance.
4. Officer, director, or employee acting as a special agent assisting insurance Producers when such assistance is limited to providing technical advice and does include selling, soliciting or negotiation of insurance.
5. An employer or association or its officers, director, or employees who furnish information concerning the administration or operation of a program of employee benefits, so long as they are not compensated by the insurance company issuing the policies.
6. Employees of insurance companies or organization employed by insurance companies for inspection, rating, or



classifications of risk or training of insurance agents and not individually engage in the sale or solicitation of insurance.

7. A person whose activities are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media not limited to residents of the state.
8. A salaried full-time employee who advises his or her employer relative to insurance interest of the employer provided the employee does not sell, solicit insurance or receive a commission.

Prelicensing Course

The following people are **exempt**:

1. Applicants for lines of Property and Casualty insurance who hold the designation of Chartered Property and Casualty Underwriter (CPCU);
2. Applicants for Life and Health insurance who hold the Chartered Life Underwriters (CLU);
3. Applicants for temporary licenses (discussed later);
4. Applicants for Credit insurance agents licenses;
5. Applicants who can show successful completion on 10 quarter of 10l quarter hours of insurance related courses within the last 12 months at a college or university; or

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- 6. Other applicants as the Commissioner wants to exempt.

Examinations

The following people are **exempt**:

- 1. Applicants for lines of Property and Casualty insurance who hold the designation of Chartered Property and Casualty Underwriter (CPCU);
- 2. Applicants for Life and Health insurance who hold the Chartered Life Underwriters (CLU) designation;
- 3. Applicants for Licenses as counselors who hold the designation of Certified Insurance Counselor (CIC), CPCU, or CLU;
- 4. Applicants holding a PhD in Risk Management;
- 5. Applicants for temporary licenses (discussed later);
- 6. Applicants for Credit Insurance Agent's Licenses;
- 7. Adjusters who are salaried employees of insurance companies; or
- 8. Other applicants as the Commissioner want to exempt.

Continuing Education

All resident agents licensed for **less than 20 years** must complete a minimum of **24 hours** of continuing education **biennially**. The requirement for those with

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licenses of more than 20 years must complete a **minimum of 20 hours biennially**. Of the required hours, **3 hours** must address ethics. Legislative update or Federal or Departmental Regulatory changes, current issues or similar subject matter approved by the Commissioner.

Reciprocity Agreements

A person who applies for an insurance agent's license in Georgia who was previously licensed for the same line of authority in another state shall not be required to complete any Prelicensing education or examination. This exemption only applies if the person is currently licensed in another state of if the application is received within **90 days** of the cancellation of the applicants previous license and if the prior state issues a certification that the applicant was in good standing with the state's regulators.

A person who is licensed in another state as an insurance agent and moves to Georgia must make an application within **90 days** of establishing legal residence.

License Maintenance

Two of the important requirements of maintaining a license involves the submission of the proper renewal forms... with money, of course... and completing the

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Example: The fact that a neighbor's house was on fire at the time of the insured's request to bind coverage would be considered concealment of a material fact and would no doubt void coverage.



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required continuing education classes. Another requirement is maintaining your Certificate of Authority.

If you do not represent **at least one insurer** doing business in the State of Georgia, your license will be put on **inactive status**. For example, suppose that you represented a company that wrote residential property coverage. Due to hurricane activity the company withdrew from writing business in Georgia. Until you can find another company to appoint you and provide a Certificate of Authority, you may not write new business.

One of the unusual things is that while an agent is on an inactive status, he or she can still receive commissions on business written prior to being put on the inactive list. Also, an agent whose license is inactive may countersign endorsements and certificates to continue coverage if the insurance company permits it.

However, while you are on an inactive status **you still must complete the continuing education requirements.**

Example: You cannot go to the school dance or play in sports, but you have to do your homework.

License Suspension/Revocation

General Provisions

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The Commissioner has various ways to control the behavior of insurance agents and companies that do not follow the laws of the State of Georgia and the rules of the Department of Insurance. The commissioner can do the following:

- Place one on **probation** (you can play but we will be watching you).
- Place one on **suspension** (you are put in time out, but you will be able to play when I say so).
- **Revocation** (you can no longer play)
- **Refuse to issue** a license (you cannot play)
- **Refuse to renew** a license (you can no longer play)

Reasons for the Commissioner's Action:

- Providing incorrect, misleading, or materially false information on the license application;
- Obtaining or attempting to obtain the license by misrepresentation, concealment, or other fraud;
- Violating any law, rule, regulation of the State of Georgia relating to insurance, including those of military installation, relating to the transaction of insurance;
- Obtaining or attempting to obtain a license through fraud or misrepresentation;
- Improperly withholding or misappropriating any money or property received while conducting insurance business;

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- Misrepresenting the terms and conditions of an insurance contract;
- Committing fraudulent or dishonest practices;
- Having failed to comply with or has violated any proper order, rule or regulation issued by the Commissioner;
- Failed to pass an examination pursuant to the Insurance Code, or cheated on any exam required for the license;
- Using your license for the purpose of securing rebates or commission on controlled business (business that is owned by the agent, family member or through some other relationship);
- Failing to carry on business in good faith;
- Demonstrating incompetence and untrustworthiness while conducting business;
- Failing or refusing, upon written demand, to pay over to any insurance company, agent, agency, applicant, beneficiary, or insured any moneys which belong to such insurer, agent, applicant, beneficiary, or insured;
- Having an agent's license denied, suspended, or revoked in another state;
- Has failed to provide documentation or records, or refusal to a written demand of the Commissioner;
- Has been convicted of any felony or any crime involving moral turpitude in courts of Georgia or any other state or court of the United States.

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- Has failed to report to the Commissioner any criminal prosecution of the applicant or licensee. Such report must be filed with the application r within **30 days** of the date of arrest.
- Hs had a license to practice a business or profession licensed under the laws of this state or any other state revoked, suspended, or annulled by any lawful licensing authority; has other disciplinary action taken against him or her by any licensing authority.
- Has failed to notify the Commissioner within **60 days** of a violation, conviction of any felony or crime in Georgia or some other state.
- Is not in compliance with an order for child support as defined by Code Section 19-6 of Georgia law.

Notice

Any action to be taken by the Commissioner is communicated in a written notice sent by registered or certified mail to the applicant or the holder of the license and any insurance company or agent whom the applicant or licensee represents. If the applicant wishes a hearing, he or she must request it within **30 days** and when the hearing is set then the Commissioner must give at least **10 days** notice.

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Limitation of Application after refusal or revocation of license

No licensee or applicant whose license or application has been refused or revoked shall be entitled to file another application for a license within **5 years** from the effective date of the refusal or revocation.

Temporary License

If the Commissioner deems that a **temporary license** is necessary for the servicing of an insurance business, the **license can be issued for 6 months without requiring an examination**. The basis for issuance is death of the agent, inability to act as an agent due to service in the armed forces, illness or other disability or termination of license as an agent when there is no other licensed employee in the agency. It may be renewed for 3 month periods at the discretion of the Commissioner, but in no case may the temporary license be extended **more than 15 months** after the first issuance.

A **Temporary Producer's License** can be issued to:

- A surviving spouse or court-appointed personal representative of a licensed insurance agent who dies or becomes physically or mentally disabled thereby allowing adequate time for the sale of the insurance business;

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A nonresident individual agent shall not act as an agent of an insurance company unless the agent becomes an **appointed agent** of that insurance company.

Where are you?

The State of Georgia wants to know where people are located. A nonresident producer who moves from one state to another(e.g., lived in Alabama and moves to South Carolina) or a resident of Georgia who moves to another state must file a change of address and provide certification from the new resident state within 30 days of the change.

Counselors

The Georgia law defines a **Counselor** as any individual who engages or advertises or holds himself out as engaging in the business of **counseling, advising, or rendering opinions** as to the benefits promised under any contract of insurance issued or offered by any insurer or as to the terms, value, effect, advantages, or disadvantages under the contract of insurance other than an actuary or consulting advising insurers. When receiving a fee, commission, or other compensation for this service, such individual shall not receive any compensation from any other source on

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or relating to the same transactions(**i.e., no double-dipping**).

There are two kinds of counselors in terms of licensing:

- 1) Life, Accident and Sickness Counselor and
- 2) Property and Casualty Counselor

As we have seen earlier, those persons who wish to be licensed as Counselors must submit an application to the Commissioner, pass an exam (unless exempt) and pay the appropriate fees. Also, Counselors have a bond requirement as required by rule or regulation of the Commissioner. Before the Commissioner will approve an applicant as Counselors, the applicant must show that he or she wither has had **5 years' experience** as an agent, subagent, or adjuster or some other insurance experience or has teaching or education qualifications or experience.

Those people exempt from taking an exam are those who have a designation Certified Insurance Counselor (CIC, CPCU, CLU or hold a PhD in Risk Management.

Unfair Trade Practices

The law that specifically describes wrongful acts that should be avoided in the transaction of insurance is called **Unfair Trade Practices**. The purpose of the act is to regulate trade and claims settlement practices in

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the business in accordance with US Congress' intent as found in Public Law 15 (1945) and Gramm-Leach Bliley Act (1999). All activities or practices in this state that constitute **unfair methods of competition, or unfair or deceptive acts or practices are considered unlawful, and the Commissioner has the sole enforcement authority.**

False Advertising

This includes many wrongful activities including:

- **Misrepresentation** of benefits, advantages, conditions, or terms of the policy;
- **Misrepresentation of financial benefits** (for example – dividends) of a policy
- **Misleading or misrepresenting the financial condition** of any insurance company;
- **Intentionally misquoting** of a premium rate so as to induce the purchase, lapse, forfeiture or surrender of a policy;
- Stating, publishing, circulating before the public in a newspaper, magazine, radio, television or some other way of advertising or making a statement in the course of the business of insurance that is **untrue, deceptive, or misleading,**

Defamation



Publishing, spreading around or circulating either by oral or written statement or any pamphlet, circular or article that is **false or maliciously derogatory about the financial condition of an insurer** with the intent to injure the insurer is an unfair trade practice, *The ABC Company cannot even scrape together the funds to buy a postage stamp to send your claims check,* would definitely qualify as malicious.

Unfair Discrimination

Insurance is based on discrimination. It is only to charge higher rates on Life insurance for older people because they are more likely to die within the policy period. It is fair to charge someone with two moving violations in the last year a higher premium for Auto insurance. **It is not lawful to base rates on such things as race, color or national origin. Any activity that results in discrimination that is considered unfair is unlawful.**

The Georgia Act gives specific examples as follows:

- Permitting any unfair discrimination between individuals of the same class and equal expectation of life in rates charged for a **Life Policy or Annuity**;
- Permitting any unfair discrimination between individuals of the same class and essentially the same hazard in the amount of premium fees for any **Accident or Health policy**;

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- Permitting any unfair discrimination between individuals of the same class and essentially the same hazard by refusing to insure, refusing to renew, or limiting the amount of **insurance on a Property or Casualty risk** solely because of geographic lactation or risk or age, unless just cause may be shown to be based on sound underwriting and is actuarially based;
- Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to a person **because of gender, race, religion, national origin, marital status, income or educational background** of the person;
- Refusing to insure **solely because another insurer has refused to write a policy or has canceled or refused to renew an existing policy** in which that person was a named insured.

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Rebating

Rebating is the giving or promise to give a person or business something of value so as to induce them to buy a policy of insurance. The common method of rebating is giving back a portion of the premium. Since the agent would not do this for all their insureds or prospective insureds it could be considered a form of unfair discrimination. Of the Producer takes an



insured to dinner to discuss insurance, this would not be

Complete and Truthful Completion of Application

Insurance company must require and instruct agents to include all material facts relevant to the risk being written when completing an application with the policyowner. It is unlawful to encourage agents to accept applications which contain material misrepresentation or conceal important information which would void the policy at its inception.

Controlled Business

The law defines controlled business as Property or Casualty insurance for a person or person's spouse; for any relative; for a person's employer or the firm of which a person is a member; for any officer, director, or stockholder or for any person in regard to property under a person's control or supervision. Cost 25% of business or second degree of kinship from one source. The limitation related to controlled business is to prevent a person from obtaining a license to principally sell insurance on property and casualty over which they have control.

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Anyone requiring as a condition to the sale or financing of real or personal property the purchase or renewal of insurance policies from a specific agent or company. We will give you a mortgage on the house you wish to purchase, but you must buy the insurance from us. The mortgage company can require that you insure mortgaged property, but they cannot dictate the source of the coverage.

Twisting and Churning

Twisting has nothing to do with a dance in the 1960's but it can be harmful and does deal with changing a position. When an agent or Life insurance company misrepresents the facts in order to replace a policy from company **A** with one from company **B**, that is **twisting... the facts are being twisted in the eyes of the policyowner to trigger the change.**

The term churning is a type of twisting in which the policyowner is induced through misrepresentation to cancel an existing policy and replace it with another policy of the same company or family of companies.

Lying to replace = twisting or churning

Importantly, replacement in itself is not illegal, immoral or fattening, If all the facts are fully disclosed to the policyowner as required by law, replacement is perfectly legal...and in many cases desirable.

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Advertising

This is one of the most complex areas of unfair practices, because it takes on so many forms. Likewise, there are a number of gray areas. Some of the possible violations include:

- Direct response advertising of any Life insurance in which the calculation of the death benefit cannot be easily understood by the purchaser;
- Direct response advertising of any individual or group Life or Health policy which promotes that it is **guaranteed issue** when in fact certain conditions must be met;
- Direct response advertising by an insurer of any Life or Health insurance where such advertisement has not been approved for use in Georgia by the Commissioner;
- Failing to disclose in printed material that medical benefits are calculated on the basis of usual, customary and reasonable charges.
- Engaging in dishonest, unfair or deceptive insurance practices in marketing or sales to service members of the armed forces of the U.S.
- An advertisement, announcement, solicitation or statement expressly or by implication which can mislead the recipient into believing that any insurance premium or policy coverage

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- Failing to acknowledge **with reasonable promptness** pertinent communications with respect to claims;
- Failing to adopt and implement **reasonable standards** for the prompt investigation and settlement of claims;
- **Failing** to attempt in good faith to effectuate prompt, fair and **equitable settlement** of claims submitted **in which liability is clear**;
- **Forcing insureds or beneficiaries to sue** to recover amounts due under its policies by offering a lot less than the amounts ultimately recovered in suits; unless there is just cause for offering a lesser amount;
- **Refusing** to pay claims **without a reasonable investigation**;
- When requested by the insured in writing, **failing to affirm or deny** coverage of claims **within a reasonable time** after investigation has been completed;
- **Delaying payment** by requiring duplicate proof of loss verification;
- When requested by the insured in writing, failing in the case of claims denial or offers of compromise settlement to provide promptly a **reasonable and accurate explanation** of the basis for actions;

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- Making claims payments to an insured or beneficiary without indicating the coverage under which the claim is being made.
- **Failing to provide forms necessary to file claims within 15 calendar days** of a request;
- When an insurer owns a repair facility or requires that a specific repairer be used, the **insurer's failure to adopt reasonable standards** that repairs are quality;
- Indicating to first-party claimant on a payment, draft check, or accompanying letter that said payment is final or a release of any claim unless the policy limit has been paid or there has been a compromise settlement agreement; and
- Issuing checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which releases the insurer or its insured from total liability.

The provisions related to **unfair claims practices relate primarily to insurers** since insurance agents typically are not involved in claims handling expect for a limited number of first party claims as the Producer or agency may be authorized through their agency contract or limited by law.

We Caught You

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If the Commissioner thinks an agent or insurance company has done something wrong, utilized an unfair method of competition or deceptive act or is involved in unfair claims settlement, The Commissioner may charge the person with a violation and must notify that person of **a hearing... giving at least a 15 days' notice.** If the person is found guilty, the Commissioner serves a copy of the violation and requires the person to cease and desist...stop. The Commissioner has the discretion order one of the following:

- Payment of a civil penalty of **not more than \$1,000 for each violation**, unless the person new or should have known, then the penalty is not more than **\$5,000 for each violation.**
- Penalties for **violations of a cease and desist orders**, the Commissioner may assess fines of **not more than \$10,000 for each and every violation.**
- Suspension or revocation of the person's license if the person knew or reasonably should have known that what they were doing was wrong.

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Reporting and Deposition of Premiums



As an insurance agent, you owe a high level of financial responsibility to both your clients and the company(s) you represent. When you write an application, you will in most instances receive premiums or partial premiums from the proposed insured. By contract and by law you have a responsibility to report the premium for each policy to the company involved. **Any willful violation is considered a misdemeanor.**

All premiums received or return premiums due the insured falls within the scope of your fiduciary responsibility. When such money is received it should be placed in a separate account maintained for all premiums that are owed to various insurance companies that you may represent. The money should not be placed in your normal checking account that is used for day-to-day activities. If the money owed to the insurance companies is deposited into your business checking account this would be called **commingling**. The law does not require that you have a separate account for each insurance company. All you must do is keep records as to which insurance company is owed what.

Any violation of this part of the law can result in appropriate action by the Commissioner... anywhere from a cease and desist order, to probation, to suspension, to revocation of your license. Every

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wrongful act can be the basis of a fine. Any **willful violation** is considered a **misdemeanor**, unless the **amounts exceed \$500** – in that case the violation is treated as a **felony**.

Sharing Commissions

It is unlawful to share commissions with a person that is not licensed to solicit, sell, or negotiate Property and Casualty Insurance. One of the most common violations is the agent who pays part of his or her commission to a realtor as a *finder's fee* to direct an owner of property to buy Property Insurance from the agent.

Additional Fees

No person shall **knowingly charge for insurance any sum more than the premium** applicable for such insurance. The premiums and charges for insurance shall not be in excess or less than those specified in the policy. An agent should not make charges for inspection fees to examine the property or risk management fees in excess of premiums. In order to collect such fees, a person must **disclose their roles as a counselor or risk manager and indicate the charges for such service** and they **must not collect** commission related to the sale of the insurance.



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No agent or company shall knowingly issue any Fire insurance policy on property in an amount that exceeds the fair value of the property. As discussed, common acceptable valuations include Fair Market Value and Replacement Cost amongst others.

Total Loss by Fire to One or Two-Family Residential Building

If a one- or two-family residential building is totally destroyed by fire without any criminal activity by the insured, the amount of insurance shown on the declarations page will be paid if the loss occurred within **30 days** of the effective date of coverage.

But wait a minute! This **does not** apply if:

1. The building is not wholly destroyed by fire;
2. Two or more policies provide insurance for this covered loss by fire;
3. Two or more building or structures are insured under a blanket form for a single amount of insurance; or
4. The completed value of the building is insured under a builder's risk policy.

Remember this provision is very limited as it only applies to the peril of fire to a structure; the fire must occur within the first 30 days of the policy and there must be a total loss.



the perils of wind and/or hail or both must provide for a policy period that extends coverage until the crop is harvested. This coverage may be provided as a portion of the policy or as an endorsement.

Residual Markets Related to Property Risk

Georgia has established residual markets (insurance for the almost uninsurable) in several areas of property and casualty coverage. The objectives are obvious as you think about them. An urban area could become such a magnet for crimes like burglary and arson that no insurance company could profitably write insurance in that area. However, if insurance simply becomes unavailable within this neighborhood, it will become uninhabitable and probably bulldozed within a very short period. If we can get every Property insurance company in Georgia to absorb a small, proportionate share of the risks, perhaps there is a possibility that this declining area can be rehabilitated.

These residual markets... or pools, typically do not offer top-of-the-line contracts, and the premiums costs are not bargains. If you can qualify for coverage from a standard company, you would certainly want to stay out of the pool.

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Fair Access to Insurance Requirements

Purpose

Some building properties are simply uninsurable due to the high risk of loss stemming from the building's location, occupancy, or condition. **The purpose of this FAIR plan is to provide Property insurance to Georgia citizens and to encourage improvement and development of properties located in Georgia.** All insurance companies licensed to write Property insurance in Georgia on a direct basis are authorized to establish and maintain a FAIR plan and to establish and maintain an underwriting association...but, as you will soon see, it is not optional.

The FAIR plan in Georgia is administrated by the **Georgia Underwriting Association.**

Operation

The Association issues policies of Property insurance insuring **eligible** property available to **qualified** applicants. Recognize that not all property is eligible and not all applicants are qualified... a building that is already burning would not be eligible, and an illegal business would not be qualified. There are two categories of property risk:

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Example: Sheri insures a house for \$200,000 and pays a premium of \$600. She suffers a total loss of the house due to a fire, and the company determines that the value was only \$160,000 and that is all they will pay. The premium on \$160,00 is \$480. In this case Sheri will receive a return of premium of \$120.



It not only can provide the minimum liability requirements, but excess limits of liability and auto coverages, including auto medical payments, uninsured motorist coverage as well as other than collision (comprehensive) and collision.

In order to be eligible a person must have a valid Georgia driver's license and a vehicle registered in Georgia. A person who has committed no traffic offenses for the prior 3 years and has had no claims based on fault against an insurer for the prior 3 years shall not be eligible for a policy issued under the Plan, unless such person's application discloses reasons for which the person would not be able to get insurance through normal means.

Any insurance agent holding a valid Property and Casualty license for the state of Georgia can write business through the **GAAIP**.

The Plan is **administered by a Governing Committee and a Regional Manager**. Any person or insurance company that disagrees with any ruling or decision of the Regional Manager or the Committee may appeal to the Commissioner of Insurance. If the unhappy person or company does not agree with the Commissioner's decision, they have **10 days** to appeal by filing a petition in superior court of the county of residence.

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General Knowledge portion of this course. As you should remember, the coverage will provide both Workers Compensation and **Employer Liability**. In the Workers Comp Coverage, the policy will pay for medical payments, loss of income due to disability and rehabilitation. In the extreme case of death, it will pay for burial and for a monthly stipend for dependents such as a spouse and minor children for a period of time.

Most Workers Compensation insurance is written by the voluntary market provided by a number of insurance companies authorized to transact insurance in Georgia. Certain employers, because of the nature of their work, loss of experience, or lack of time they have been in business are not acceptable to Comp Underwriters. For those employers who have been rejected, the state of Georgia has an assigned risk plan...another pool.

Workers Compensation Assigned Risk Plan

This plan is designed to provide Workers Compensation to those applicants who in good faith are eligible to purchase Workers Compensation insurance in the State of Georgia, but who are unable to buy it through the standard marketplace. The employer/applicant must be declined by multiple insurance companies in the voluntary market to establish eligibility for the Assigned Risk plan. This plan

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is titled the **Georgia Workers Compensation Insurance Plan** and is commonly called the **Assigned Risk Plan**.

The State Board of Workers Compensation has the administrative responsibility for Georgia's Workers Compensation laws. The Board has set up a process that assigns the employer/applicant to a company on a equitable apportionment. No insurer shall issue a policy of Workers Compensation or Employer's Liability insurance in this state unless they participate in the Assigned Risk Plan... if you get 12% of the good, you get 12% of the not so good.

Regulation Of Rates

Georgia law related o rates is rather extensive, but we will touch on the high points. **The primary goals of rate regulation is promote the public welfare by making sure that rates are not excessive, inadequate or unfairly discriminatory.** The state wants to make sure that the consumers are not being robbed; all parties are treated fairly and that the companies remain financially solvent. It is a tough balancing act.

The state permits insurance companies to be members (sometimes called subscribers) of a rating or advisory organization who meet and share

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information with respect to the making of rates... like ISO. This is not considered collusion.

The Commissioner is the ultimate source of rate regulation. In most instances, insurance companies and rating organizations may file their rates and begin using the rates prior to the Commissioners approval... Georgia, then is a *file and use state*. For insurance written on high-risk applicants, the Commissioner may require that any rate planning be approved prior to use.

When a rate filing results in an increase of 10% or more within a 12 month period, the Commissioner may order an examination of that insurance company to determine the accuracy of loss reserves and any other components of information used to support the rate filing increase. If the increase is less than 25% within the 12 month period, the Commissioner **can waive** the examination if he feels he has adequate information to evaluate the increase.

Rating of Personal Private Passenger Autos... The Exception

Any insurance company that is authorized to write in Georgia must file with the Commissioner any rate, rating plan, rating system, or underwriting rule for all

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personal private passenger auto. For a policy that provided only the **mandatory minimum limits (25/50/25)**, the increase shall not be effective unless the filing has been approved by the Commissioner for 45 days has passed without disapproval by the Commissioner. The Commissioner may extend the period up to an additional 55 days. If the filing has been disapproved, notice of such disapproval shall be given within 100 days, specifying why the filing was rejected. The company has 30 days after the disapproval order to request a hearing and such a hearing will be held within 30 days following the request.

Any private passenger auto insurance filing other than the one described in the above paragraph will be effective upon filing and does not require the Commissioner's approval. This shall apply to the entire private passenger auto with limits above the mandatory minimum.

Reduction in Premiums (Discounts)

Each Personal Auto policy of private passenger type autos shall offer a reduction of **at least 10%** in premium for liability, medical payments, and collision coverage if the insured driver has met one of the following requirements:

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- 1) The named driver is at least 25 years of age, has a clean driving record (no tickets or at fault accidents) and has completed an approved driving course.

NOTE: Approved courses include: a defensive driving course, an emergency operations course at the Georgia Public Safety Training Center, or driver improvement program sponsored by a nonprofit organization, such as AARP, AAA, The National Safety Council or other courses approved by the Department of Drivers Services.

- 2) A named driver under age 25 who is unmarried, enrolled as a full-time student, maintains a clean driving record and is classified as an honor student.

Workers Compensation Rating

The regulation requires individual rate filing for the Voluntary market of Workers Compensation insurers to Establish a competitive rate for the insured/employers in Georgia.

Any insurance company that wants to revise the **manual rates** it charges for this coverage must file an individual rate filing with the Commissioner. At the same time the insurance company shall file a copy of such filing with the authorized rating organization that the insurance company uses.

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An individual insurance company may include within its own individual rate filing: **Experience Rating Plans** (a rating method that considers the individual loss experience of a specific insured), **Retrospective Rating Plans** (a rating method in which the annual premium is determined at the end of the coverage period and it is based on the insureds own loss experience for that policy period), **Rating Factors** and **Premium Discount Plans** filed with the Commissioner by the authorized rating organization.

The Assigned Risk Insurance Plan not only established assignment of risk for the writing of Workers Compensation policies, but also set up a system for rating these risks. The Commissioner has established separate categories for these rejected risks. The rates will be reviewed annually and rates are adjusted based on the financial condition of the Assigned Risk Plan.

Cancellation and Nonrenewals

Notice Required of Termination

Termination = Cancellation or Nonrenewal

A notice of termination, including a notice of **cancellation or Nonrenewal**, by the insurance company, a notice of **increase in premiums**, other than an increase in premiums due to a change in risk



which exceeds 15% of the current policy premium or a notice of change in any policy provisions which limits or restricts coverage shall be **delivered in person** or by sending the notice by the United States mail by minimum of **first-class mail** to the last address of record for the insured.

Such delivery or mailing of notice must be at least **45 days prior** to the termination date of such policy. If notice is mailed the insurance company **must obtain a receipt** from the US Postal Department.

If the insurance company **fails to comply** with the rules described above, the policyholder is entitled to purchase, under the same premiums and policy terms and conditions, **an additional 30 day period of insurance coverage** beyond the termination date of the policy. This provision only extends the existing coverage for 30 days. This will give the insured a chance to replace the existing coverage under similar terms and premiums

Notice Requirements

Notice of Cancellation or Nonrenewal must include the following:

- Wording advising the insured of an opportunity of review by the Commissioner;

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- Notification that if the insured requests, the insurance company must furnish the reasons for the failure to renew the policy;
- Notification that if an insured feels that the Nonrenewal is unlawful, the insured must file a written notice with the insurance company prior to the effective date of Nonrenewal;
- If the insured wants the Commissioner to review the cancellation or Nonrenewal, he must send a written request for the review by the Commissioner **within 15 days** from receipt of the Notice of Nonrenewal or Cancellation.

Review of Cancellation or Nonrenewal by the Commissioner

The insured's request must state the reasons he believes the Nonrenewal or cancellation is unlawful and a violation of the Insurance Code.

Payment of Premiums During a Period of Review and Refund of Premiums

During the time of review of the cancellation or Nonrenewal, the insured shall pay the insurance company a **30 day pro-rata portion of the premium**. The insured shall send to the Commissioner proof that he has paid the premium as a part of the review request.



Disposition and Penalties

If the Commissioner votes **yes (i/e. insured you lose)**, then the cancellation or Nonrenewal **is lawful** and the termination under the policy shall be **effective as of the date** and time originally **stated on the notice** of cancellation or Nonrenewal. **Termination of the interim coverage** shall be effective no earlier than 5 days following the Commissioners decision.

Then the insurance company will retain a prorate premium for that time there was interim coverage. The company shall refund all remaining premium to the insured **within 10 working days** of receipt of the Commissioners decision.

If the Commissioner votes, **no (i.e. insurance company you lose)** the insurance company's action is deemed unlawful. The Commissioner may decide that the policy should be reinstated or renewed. The Commissioner may also order other remedies and penalties. The penalties usually are ordered if the Commissioner determines the insurance company has a pattern of unlawful cancellation or Nonrenewal.

Cancellation of Policies Generally

The cancellation of a policy stated in the words found in the policy may be cancelled by the insurance

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company or its agents as long as the provisions of the Insurance Code are followed.

Written notice stating the effective date must be at least 30 days from the day such notice is mailed or delivered in person. The period may, of course, be longer if stated in the policy. There are **two exceptions** to the 30 day rule... if the cancellation is **within the first 60 days** of the policy, **notice is 10 days.** **If the cancellation is due to** nonpayment of premium... **10 days notice.**

Any **unearned premium** which has been paid by the insured shall be refunded on a **pro rata basis.** If the return of premium does not accompany the notice of cancellation, then such return shall be made on or before the date of cancellation. If the returned premium is sent to the agent then he or she should deliver it in person to the insured or mail it within 10 working days of receipt. Any insurance company or agent that fails to follow the prescribed rules for returning unearned premium shall pay to the insured a **penalty equal to 25% of the amount of the return of the unearned premium plus interest equal to 18% per annum** until such time the proper return has been made. The maximum amount of penalty and interest shall not exceed 50% of the amount of the refund due.

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Cancellation By the Insured

An insured may request cancellation of an insurance policy by returning the original policy to the company or by making a written request for cancellation to the company or its authorized agent stating a future date on which the policy is to be cancelled.

The cancellation shall be accomplished in the following manner:

- 1) If only the interest of insured is affected (e.g. the owner of an inexpensive rental house owns the property outright... no mortgage... wants to cancel her property policy), the **policy shall be cancelled on the date the policy or the written request is received by the insurance company or its agent...whichever is later.**
- 2) If the law states the insurance policy may not be cancelled unless notice is given to a governmental agency, mortgagee, or other third party, the insurer shall mail or deliver such notice stating the date cancellation shall become effective, but such date **shall not be less than 10 days** from the date of mailing or delivery of the notice.
- 3) Notice must be either delivered in person or mailed in the United States mail through use of at least first-class mail to last known address of record or the named insured, governmental agency, or mortgagee where applicable and

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receiving the receipt provided depending on the mail method.

- 4) Notwithstanding the failure of the insurance company to comply with the provisions of this Code, cancellation shall be effective on the effective date of any replacement policy.

Cancellation or Nonrenewal of Homeowners or Dwelling Policies

There are specific provisions applicable to policies of insurance against direct loss to **residential buildings and contents where individuals** are the named insureds... Homeowners and Dwelling Policies.

No notice of cancellation is effective unless mailed or delivered as described in previous paragraphs. The insurance company must provide reasons for such cancellation.

After coverage under a policy has been in effect for more than 60 days **OR** after the effective date of a renewal policy, a notice of cancellation **may be issued for only the following reasons:**

- Nonpayment of premium;
- Discovery of fraud, concealment of material fact, or material misrepresentation made by or with the knowledge of the insured in obtaining

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the policy, continuing the policy or presenting a claim under the policy;

- The occurrence of a change in the risk that may significantly increase any condition that increase the likelihood of a loss; or
- A material violation of the material conditions or terms of the policy.

Insurance companies may not **refuse to renew** a policy unless written notice of nonrenewal is mailed or delivered in person to the named insured. The notice must state the time when the nonrenewal will be effective, which shall **not be less than 30 days** from date of mailing or delivery of such notice.

A policy cancelled for reason other than nonpayment of premium **or** in the event of a refusal to renew a policy; the **insurance company shall notify the named insured of his possible eligibility for insurance through the Georgia Fair Access to Insurance Requirements Plan (FAIR)**. Included within the notice is the address for the Georgia Fail Plan.

Any unearned premium will be returned to the named insured,

A company may not refuse to renew a policy for any of the following reasons:

- 1) Lack of supporting insurance business... just because an agency is not doing enough



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business with a company does not allow the company to cancel or nonrenew the business that has been written. However, if the company terminates the agency contract, the company then refuses to renew existing contracts.

- 2) Changes in the company's underwriting rules unless such changes in the rules apply uniformly within a specific class or territory and such change has been approved by the Commissioner;
- 3) **Two or less claims** against the policy within the preceding **36 months** if such claims are not attributable to the negligent or intentional acts of the insured or of persons residing at the insured premises

If an insurance company can demonstrate to the Commissioner that renewal would violate the provisions of the Insurance Code, or that renewal would be hazardous to the general public, then the company can choose to nonrenew the policy.

Cancellation Nonrenewal of Automobile or Motorcycle Policies

A **Persona Auto or Motorcycle policy** may only be **cancelled** for one or more of the following **reasons:**



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- 1) The named insured **failed to pay premiums** on such policy
- 2) The issuance was obtained through a **material misrepresentation**
- 3) Any insured violated any of the terms and conditions of the policy
- 4) The named insured failed to disclose fully, if called for in the application, his driving record for the preceding 36 months
- 5) The named insured failed to disclose his written application on in response to inquiry by the insurance company or its agent information necessary for the acceptance or proper rating of the risk
- 6) The named insured made a **false or fraudulent claim** or knowingly aided or abetted another in the presentation of such a claim
- 7) The named insured or any other operator either resident in the same household or who regularly operates an auto insured under such policy:
 - Has within 36 months prior to the notice of cancellation, has his driver's license under **suspension or revocation**
 - Is or becomes subject to epilepsy or heart attacks and the person does not produce an certificate from a physician



testifying to his unqualified ability to operate a motor vehicle

- Has an accident record, a criminal or traffic record; or a physical, mental, or other condition which could endanger the public safety
- Has within a **3 year period** prior to the notice of cancellation been addicted to the use of narcotics or other drugs
- Has been convicted or forfeited bail during the 36 months immediately preceding the notice of cancellation for any felony; criminal negligence resulting in death or assault from the operation of a motor vehicle; operating a motor vehicle while in an intoxicated condition; intoxicated while in or about an auto or while having custody of an auto; leaving the scene of an accident without stopping to report; theft or unlawful taking of a motor vehicle, or making false statements in an application for a driver's license; or having been convicted of **3 or more speeding violations within the 36 months.**

- 8) When the insured auto:
- Is do **mechanically defective** that its operation might endanger the public

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- Is used to **carry passengers for compensation**, except a carpool situation
- Is used in the transportation of **flammable or explosives**
- Is an authorized emergency vehicle
- Has changed in shape or condition during the policy period so as to significantly increase the risk

NOTE: when a policy is cancelled for a reason other than nonpayment of premium, or if the policy is nonrenewal, the insurance company must advise the insured that he may be eligible for insurance through the Georgia Auto Insurance Plan.

Nonrenewal

Nonrenewal by an insurance company will not be effective unless a written notice of nonrenewal is mailed or delivered in person to the named insured. Such notice must be mailed or delivered at least 30 days prior to the nonrenewal effective date.

As was the case of the cancellation described earlier, the insurance company must specify the reason or reasons for nonrenewal. The following reasons are NOT acceptable for nonrenewal:

- 1) Lack of supporting insurance business;
- 2) A change in the insurance company's underwriting rules unless such changes in

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the rules apply uniformly within a specific class or territory and such change has been approved by the Commissioner;

- 3) Two or less of the following claims within the preceding 36 months:
 - Accidents involving 2 or more motor vehicles in which the driver of the insured auto was not a fault
 - Uninsured or underinsured motorist coverage claims
 - Comprehensive coverage claims (also known as other-than-collision claims)
 - Towing or road service coverage claims
- 4) Age, gender, location of residence address within the state, race, creed, national origin, ancestry, or marital status (simply stated **no unlawful discrimination!**)
- 5) Lawful occupation provided that the insured auto is not used in such occupation
- 6) Military service, provided that the named insured remains a legal resident of Georgia
- 7) Number of years of driving experience of a named insured or other resident driver or person who regularly drives an auto insured under the policy
- 8) Accidents or violations which occurred more than 36 months prior to the expiration of anniversary date or solely for claims paid



- during the preceding 36 months period which did not total more than \$750
- 9) One at-fault claim against the policy of such coverage has been in effect continuously for at 36 months
- 10) Two claims against the policy which were the insured's fault if such coverage has been in effect for at least 72 months
- 11) Factors not relating to claims or driving record or driving ability of the named insured or any other operator who is a household member or regularly operate an insured auto

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Nonrenewal Notice of Personal Auto or Motorcycle Policies

The notice for nonrenewal must provide the named insured certain information. It must advise the insured that the insurance company **must provide reasons for the nonrenewal** and that the named insured must provide a **written request** if they wish to **contest the nonrenewal**. If such a written request is not filed, then the named insured amy not come back later and assert an action against the insurance company for an unlawful nonrenewal.



If an owner or operator fails to demonstrate the required financial responsibility, they could face the following penalties:

- Suspension of a driver's license;
- Suspension of registration for up to 6 months;
- Misdemeanor charges for a person who fails to surrender their driver's license when required to do so or failure to comply with registration reinstatement.

Uninsured Motorist Coverage

Despite the fact that it is a legal requirement that a person who operates a motor vehicle in the State of Georgia must be financially responsible, not all people will purchase Auto Liability Insurance or meet the alternative requirements under the law. It is estimated that nationally 14% of all drivers are uninsured and this number is estimated to be 12% in Georgia. With the current downturn in economic conditions. It is projected that these numbers will rise. How does one protect him/herself? He/she purchases uninsured motorist coverage. As we already discussed, Uninsured and Underinsured Motorist is what you buy because the Other Guy is not insured or inadequately insured. **In Georgia, Uninsured Motorist includes what we already discussed as Underinsured Motorist.**

Requirements and Types of Coverage

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Every Auto Liability policy written in the state **shall offer Uninsured Motorist Coverage**. The **limits of Uninsured Motorist coverage offered shall be equal to the bodily injury liability limits stated in the policy.**

Any named insured **may reject in writing** the Uninsured Motorist Coverage or select a lower limit of the coverage, but not less than the state minimum limits of financial responsibility. **See example:**

If the named insured initially rejects the coverage or selects lower limits it shall be binding on every insured on the policy. If later on the named insured requests coverage, the previous rejection will be disregarded.

Property Damage Uninsured Motorist is available, but it must be purchased along with Bodily Injury Uninsured Motorist.

Bodily Injury Uninsured Motorist may be purchased by itself. To use our earlier example, May could buy Uninsured Motorist Bodily Injury without Uninsured Motorist Property Damage... Her limits would be stated as 100/300/100 or 25/50/25. Whatever the selection, the named insured **may not choose greater** than carried in the **Liability Coverage** of the policy.

Notice Acknowledgement:

Insurance companies selling Auto Insurance must provide a **Notice Acknowledgement** and it must be

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signed by the applicant/named insured. The Notice contains the following:

If you have chosen to accept Uninsured Motorist coverage from your automobile insurance company and have any questions after reading this statement regarding Uninsured Motorist coverage or the amount of coverage you have selected, your agent or company representative will be able to assist you. You should have chosen the amount of Uninsured Motorist coverage you want based on this question: if I get hit by someone with little or no Liability Insurance how much protection do I need to cover the cost associated with car repair, medical bills, other expenses, and lost wages?

For private passenger auto policies in effect on January 1, 2009, insurance companies shall send to their insureds who have not rejected UM coverage this notice at least 45 days before the renewal of the policy. Such notice is not required for future renewals.

The UM Property Damage Coverage may be issued with a deductible of \$250, \$500, or \$1,000 at the option of the insured. In fact, a deductible above \$1,000 may be offered with the approval of the Commissioner.

Insured

The Uninsured Motorist section of the policy defines the term insured to mean:

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policy is less than the amount of the Uninsured Motorist coverage... **this is how Georgia integrates Underinsured Motorists with Uninsured Motorists.**

- 3) Bodily Injury or Property Damage resulting from a hit-in-run driver.
- 4) Where bodily injury or property damage occurs to the insured or a passenger due to the actions of a hit-and-run driver, but there was no actual contact between the two vehicles. In simple terms, **our insured hit a tree avoiding some idiot** who was driving in the wrong lane sending a text message. **If our guy can provide a witness, Uninsured Motorists can provide coverage** for our guy, his passengers and for his car.
- 5) Which a liability bond or policy applies at the time of the accident but the bonding or insurance company either denies coverage or becomes insolvent.

Does NOT include a motor vehicle:

- Owned by, or furnished for the regular use of, the insured or any resident, spouse, or resident relative in the same household;
- Operated on rails or crawler treads;
- Designed for use mainly off public roads except while on public roads; or
- While located for use as a premises (i.e., no coverage if you live in your car).

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Example: If Mary purchases liability limits of 100/300/100, she must be offered the same limits for her Uninsured Motorist Coverage. She could buy 100/300/100... or she could buy less, say 50/100/50. But, if she buys anything at all, it must be at least 25/50/25. Her only remaining choice would be to reject the UM Coverage altogether in writing.



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Property Damage UM Coverage

Property Damage refers to coverage for injury or destruction of:

- **A covered auto;**
- **Property contained in the covered auto and owned by the Named Insured;** or
- **Property contained in the covered auto and downed by anyone else occupying the covered auto**

Exclusions – WE WON'T PAY!

- If an insured or their legal representative settles a bodily injury or property damage claim without the insurance company's consent, no payment will be paid under this coverage.
- When the named insured's covered auto is being used as a public or livery conveyance.
- Using a vehicle without a reasonable belief that you were entitled to do so.
- Property contained in or struck by any vehicle owned by the Named Insured that is not a covered auto.
- Will not pay any insurer or self-insurer under workers comp or a disability law.
- Does not provide Uninsured Motorists Coverage for punitive damages.



Penalties for Failure to Pay a Claim

If an insurance company refuses to pay an insured any loss covered within 60 days after a demand has been made by the insured and a finding has been made that such refusal was made in bad faith, the insurance company is responsible to the insured in addition to appropriate recovery of an amount not to exceed 25% of the recovery and all reasonable attorney fees.

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Example: Bill, the named insured, is injured in an auto accident by a negligent driver who has no Liability Insurance. Bill files a bodily injury claim under his Uninsured Motorist coverage seeking medical costs and lost wages. Even though she was not in the car, Bills wife, Sue files a claim for a loss of consortium. Since Bill was in the hospital for several days and injured for several weeks, she can make a claim for loss of companionship as well as for the costs to hire someone to mow the yard, wash the car and some of the other chores that Bill regularly does for his family.



Notes and Examples

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