

## ***Common Problems Identified by the Property and Casualty Market Conduct and Consumer Services Sections***

The State Corporation Commission's Bureau of Insurance (Bureau) has developed the following information to assist insurers with compliance problems frequently found in the regulation of the market by the Market Conduct Section, the Consumer Services Section, and the Coordinator of Special Projects. These problems may have been identified in market conduct examinations, in other regulatory actions conducted by the Market Conduct Section or the Coordinator of Special Projects, or during the handling of a complaint by the Consumer Services Section. The purpose of this document is to allow insurer personnel responsible for compliance to use it as a checklist to review their operations in Virginia. Its purpose is not to provide specific guidance on how an insurer should conduct business in Virginia but to point out the areas in which the Bureau has found problems in the past. This list should not be considered all-inclusive, and the insurer should continue to review [Title 38.2 of the Code of Virginia](#), the appropriate regulations, administrative letters, and orders to ensure compliance.

Any questions regarding the contents should be addressed either in writing or by calling:

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## Private Passenger Automobile Terminations

**Failure to include all named insureds on the termination notice.** The cancellation and nonrenewal notices must be mailed to the named insureds shown on the policy. If there are multiple named insureds, all must be listed on the termination notice. (See [§ 38.2-2212 of the Code of Virginia](#).)

**Failure to provide a specific reason for the cancellation or nonrenewal of a policy.** [Section 38.2-2212 E 3 of the Code of Virginia](#) requires that the insurer provide the insured with the specific reason for canceling or nonrenewing the policy. The Bureau does **not** consider the following examples to be specific reasons: “loss history,” “driving record,” “claims,” “prohibited risk,” “underwriting reason,” etc. The insured is entitled to know why his policy is being terminated, and the insurer must provide the specific reason.

**Failure to provide a notice or failure to retain a copy of the notice of cancellation or nonrenewal of a policy.** [Section 38.2-2208 of the Code of Virginia](#) provides the retention requirements for notices of cancellation and nonrenewal of automobile policies. Insurers are often unable to provide the examiners with copies of notices either because the insurers fail to send the notice or because they do not have an adequate retention system. The inability to produce such a notice, while a violation of the statute, could also result in the insurer having to reinstate the policy and, perhaps, pay a claim. If the policy requires that the notice be sent to the lienholder, the insurer must also retain a copy of that notice.

**Failure to provide the proper number of days’ notice required when terminating a policy.** [Section 38.2-2212 of the Code of Virginia](#) provides the various notice requirements for terminating a policy. Examiners frequently find that insurers fail to provide the proper number of days’ notice for a particular type of termination.

**Failure to properly obtain proof of mailing termination notices.** [Section 38.2-2208 of the Code of Virginia](#) contains the procedures an insurer must follow when the notices of cancellation and nonrenewal of private passenger automobile policies are mailed to the named insured. We have found that confusion exists when the insurer is using the bulk mailing option found in [§ 38.2-2208 A 1 c](#). When the insurer uses the bulk mailing method, the United States Postal Service (USPS) Bulk Mailing Form (PS Form 3606) must be completed. Please note that the form requires the meter stamp or postage to be affixed to the form along with the canceled postmark by the USPS. Since the statute requires “written receipt,” both the evidence of payment (meter stamp or stamps) *and* the USPS postmark must be on the completed form in order to constitute a “written receipt.”

In addition to the completed PS Form 3606, the statute requires the insurer to retain a mailing list of the name and address of the insured stated in the policy (or last known address) and a signed statement that “...the written receipt from the USPS corresponds to the mailing list retained by the insurer.” To comply with [§ 38.2-2208 A 1 c](#), the insurer must *at the time of mailing*: 1) have the bulk mailing certificate form completed in its entirety, 2) maintain a mailing list reflecting the name and address to which the notices were mailed, and 3) include the signed statement that the mailing list corresponds to the USPS “written receipt.”

***Insurers may provide nonrenewal notices electronically.*** Please note that effective July 1, 2009, [§ 38.2-2212](#) allows electronic transmittal of nonrenewal notices to insureds. Refer

*also to § 38.2-325 of the Code of Virginia for additional requirements pertaining to the electronic delivery of nonrenewal notices.*

**Failure to correctly handle requests to cancel a policy by a premium finance company.** A cancellation requested by a premium finance company is considered to be an insured-requested cancellation and should be handled accordingly. If the insurer's contract provides for a short rate cancellation when the insured requests the policy to be cancelled, the earned premium should be calculated short rate when the policy is cancelled at the premium finance company's request. Upon receiving a request from a premium finance company to cancel a policy, the insurer must verify that it has a copy of the premium finance agreement containing a power of attorney. [Subsection A of 14 VAC 5-390-40 \(the Rules Governing Insurance Premium Finance Companies\)](#) requires the insurer to notify the insured, the insurance agent, and the premium finance company that the policy has been cancelled and provide them with the information that is required by the regulation. The insurer must cancel the policy as soon as it legally may. For example, if there is a filing on the policy (such as an SR-22 or FR-44), the insurer must wait the requisite number of days and then cancel the policy as soon as permitted by the filing. Examiners frequently find that insurers are unaware of these requirements. Insurers should review [14 VAC 5-390-10 et seq.](#) to determine their responsibilities under the regulation.

**Insured-requested cancellations.** [Section 38.2-2212 F 2 of the Code of Virginia](#) states that the provisions of the statute do not apply to the cancellation of a private passenger automobile policy if the insured, or his duly constituted attorney-in-fact, has notified the insurer or its agent orally, or in writing if the insurer requires such notification to be in writing, that he wishes the policy to be canceled. The insurer demonstrates that it permits oral cancellations by amending the termination provisions of the insurer's automobile policy. This amendment must be filed with the Bureau of Insurance as a broadening to the standard private passenger automobile form.

**Failure to provide notice when the insurer does not wish to renew the insured's policy.** If the insurer does not wish to renew a policy, a non-renewal notice must be sent to the insured. An exception to this exists in cases where an affiliated insurer has manifested its willingness to provide coverage to the insured at a premium that is lower than that which would have been charged for the same exposures on the expiring policy. The affiliated insurer policy must have types and limits of coverage at least equal to those of the expiring policy unless the insured has requested a change in the coverage or limits. The insurer of the expiring policy is not required to send an offer of renewal, and the policy issued by the affiliated insurer will be deemed to be a renewal policy. (See [§ 38.2-2212 F 4 of the Code of Virginia.](#))

**Failure to provide an adverse underwriting decision (AUD) notice.** [Section 38.2-610 of the Code of Virginia](#) requires insurers to provide AUD notices when they decline to write coverage and when they terminate coverage. These notices are required when insurers initiate the cancellation of a policy mid-term (including cancellations in the first 59 days from the original inception date and excluding cancellations for nonpayment of the premium), refuse to renew a policy, or decline to write, in whole or in part, coverage requested by an applicant or policyholder. The definitions of "adverse underwriting decision," "declination of coverage," and "termination of insurance" are set forth in [§ 38.2-602 of the Code of Virginia](#). The Bureau of Insurance finds that insurers also fail to provide all of the information required in the AUD notice as set forth in [§ 38.2-610 of the Code of Virginia](#) and [Administrative Letter 1981-16](#).

## Homeowner Terminations

**Failure to include all named insureds on the termination notice.** The cancellation and nonrenewal notices must be mailed to the named insureds shown on the policy. If there are multiple named insureds, all must be listed on the termination notice. ([§ 38.2-2114 of the Code of Virginia.](#))

**Failure to provide a specific reason for the cancellation or nonrenewal of a policy.** [Section 38.2-2114 of the Code of Virginia](#) requires that the insurer provide the insured with the specific reason for canceling or nonrenewing the policy. The Bureau does **not** consider the following examples of reasons used by insurers to be specific: “loss history,” “condition of property,” “underwriting reasons,” “prohibited risk,” “no longer insurable,” etc. The insured is entitled to know why his policy is being terminated, and the insurer must provide the specific reason.

**Failure to provide the proper number of days’ notice required when terminating a policy.** [Section 38.2-2114 of the Code of Virginia](#) provides the various notice requirements for terminating a policy. Examiners frequently find that insurers fail to provide the proper number of days’ notice for a particular type of termination.

**Failure to send or failure to retain a copy of a notice of cancellation or nonrenewal of a policy.** [Section 38.2-2113 of the Code of Virginia](#) provides the retention requirements for notices of cancellation and nonrenewal of homeowners policies. Insurers are often unable to provide the examiners with copies of notices either because they fail to send the notice or because they do not have an adequate retention system. The inability to provide such a notice, while a violation of the statute, could also result in the insurer having to reinstate the policy and, perhaps, pay a claim. If the policy requires that the notice be sent to the lienholder, the insurer must also maintain a copy of that notice.

**Failure to properly obtain proof of mailing termination notices.** [Section 38.2-2113 of the Code of Virginia](#) contains the procedures an insurer must follow when the notices of cancellation and nonrenewal of owner-occupied policies are mailed to the named insured. We have found that confusion exists when the insurer is using the bulk mailing option found in [§ 38.2-2113 A 1 c](#). When the insurer uses the bulk mailing method, the USPS Bulk Mailing Form (PS Form 3606) must be completed. Please note that the form requires the meter stamp or postage to be affixed to the form along with the canceled postmark by the USPS. Since the statute requires “written receipt,” both the evidence of payment (meter stamp or stamps) *and* the USPS postmark must be on the completed form in order to constitute a “written receipt.”

In addition to the completed PS Form 3606, the statute requires the insurer to retain a mailing list of the name and address of the insured stated in the policy (or last known address) and a signed statement that “...the written receipt from the USPS corresponds to the mailing list retained by the insurer.” To comply with [§ 38.2-2113 A 1 c](#), the insurer must *at the time of mailing*: 1) have the bulk mailing certificate form completed in its entirety, 2) maintain a mailing list reflecting the name and address to which the notices were mailed, and 3) include the signed statement that the mailing list corresponds to the USPS “written receipt.”

***Insurers may provide nonrenewal notices electronically.*** Please note that effective July 1, 2009 [§ 38.2-2113](#) allows electronic transmittal of nonrenewal notices to insureds. Refer

also to § 38.2-325 of the Code of Virginia for additional requirements pertaining to the electronic delivery of nonrenewal notices.

**Canceling policies mid-term for reasons not permitted by statute.** After the first 90 days of coverage (or a shorter period if specified in the policy), homeowners policies can only be cancelled for the six reasons listed in [§ 38.2-2114 A of the Code of Virginia](#). In order for the insurer to use a physical change in the property as a reason to cancel mid-term, the insurer must show that there has been a physical change since the policy was renewed. In most cases, this would require two inspection reports to support the insurer's position that there has been a physical change. Examiners often find insurers terminating policies for reasons not allowed, such as vacancy or the home is no longer owner-occupied. However, the policy provides some modified coverage in some circumstances if the dwelling becomes vacant. *An exception exists where foreclosure efforts by the secured party against the property covered by the policy have resulted in the sale of the property by a trustee under a deed of trust as duly recorded in the land title records of the jurisdiction in which the property is located. (As of July 1, 2009, this is a permissible reason for a mid-term cancellation of a homeowners policy.)* Otherwise, insurers should be very careful when terminating policies mid-term as the Code is very restrictive.

**Insured-requested cancellations.** [Section 38.2-2114 E 3 of the Code of Virginia](#) states that the provisions of the statute do not apply to the cancellation of a homeowners policy if the insured, or his duly constituted attorney-in-fact, has notified the insurer or its agent orally, or in writing, if the insurer requires such notification to be in writing, that he wishes the policy to be canceled. In order for the insurer to demonstrate that it permits oral cancellations, it must amend the termination provisions of the insurer's homeowners policy and file the amendment with the Bureau of Insurance.

**Failure to provide notice when the insurer does not wish to renew the insured's policy.** If the insurer does not wish to renew a policy, a non-renewal notice must be sent to the insured. An exception to this exists in cases where an affiliated insurer has manifested its willingness to provide coverage to the insured at a premium that is lower than that which would have been charged for the same exposures on the expiring policy. The affiliated insurer's policy must have types and limits of coverage at least equal to those of the expiring policy unless the insured has requested a change in the coverage or limits. The insurer of the expiring policy is not required to send an offer of renewal, and the policy issued by the affiliated insurer will be deemed to be a renewal policy. (See [§ 38.2-2114 of the Code of Virginia](#).)

**Failure to provide an adverse underwriting decision (AUD) notice.** [Section 38.2-610 of the Code of Virginia](#) requires insurers to provide AUD notices when they decline to write coverage and when they terminate coverage. These notices are required when insurers initiate the cancellation of a policy mid-term (including cancellations in the first 89 days from the original inception date and excluding cancellations for nonpayment of the premium), refuse to renew a policy, or decline to write, in whole or in part, coverage requested by an applicant or policyholder. The definitions of "adverse underwriting decision," "declination of coverage," and "termination of insurance" are set forth in [§ 38.2-602 of the Code of Virginia](#). The Bureau of Insurance finds that insurers also fail to provide all of the information required in the AUD notice as set forth in [§ 38.2-610 of the Code of Virginia](#) and [Administrative Letter 1981-16](#).

## Commercial Automobile/Property and Liability Terminations

**Failure to provide a specific reason for the cancellation or nonrenewal of a policy.** [Section 38.2-231 A 1 c of the Code of Virginia](#) requires that the insurer provide the insured with the specific reason for canceling or nonrenewing the policy. The Bureau does **not** consider the following examples to be specific reasons: “loss history,” “driving record,” “claims,” “prohibited risk,” “underwriting reason,” etc. The insured is entitled to know why his policy is being terminated, and the insurer must provide the specific reason.

**Failure to provide the proper number of days’ notice required when terminating a policy.** [Section 38.2-231 of the Code of Virginia](#) provides the various notice requirements for terminating a policy. Examiners frequently find that insurers fail to provide the proper number of days’ notice for a particular type of termination.

**Failure to send or failure to retain a copy of a notice of cancellation or nonrenewal of a policy.** [Section 38.2-231 F of the Code of Virginia](#) provides the retention requirements for notices of cancellation and nonrenewal of certain commercial policies. Insurers are often unable to provide the examiners with copies of notices either because they fail to send the notice or because they do not have an adequate retention system. The inability to provide such a notice, while a violation of the statute, could also result in the insurer having to reinstate the policy and, perhaps, pay a claim. If the policy requires that the notice be sent to the lienholder, the insurer must also maintain a copy of that notice.

**Failure to properly obtain proof of mailing termination notices.** [Section 38.2-231 of the Code of Virginia](#) contains the procedures an insurer must follow when the notices of cancellation and nonrenewal of commercial liability policies are mailed to the named insured. We have found that confusion exists when the insurer is using the bulk mailing option found in [§ 38.2-231 F 1 c](#). When the insurer uses the bulk mailing method, the USPS Bulk Mailing Form (PS Form 3606) must be completed. Please note that the form requires the meter stamp or postage to be affixed to the form along with the canceled postmark by the USPS. Since the statute requires “written receipt,” both the evidence of payment (meter stamp or stamps) *and* the USPS postmark must be on the completed form in order to constitute a “written receipt.”

In addition to the completed PS Form 3606, the statute requires the insurer to retain a mailing list of the name and address of the insured stated in the policy (or last known address) and a signed statement that “...the written receipt from the USPS corresponds to the mailing list retained by the insurer.” To comply with [§ 38.2-231 F 1 c](#), the insurer must *at the time of mailing*: 1) have the bulk mailing certificate form completed in its entirety, 2) maintain a mailing list reflecting the name and address to which the notices were mailed, and 3) include the signed statement that the mailing list corresponds to the USPS “written receipt.”

**Insurers may provide nonrenewal notices electronically.** Please note that effective July 1, 2009, [§ 38.2-231 F 1 c](#) allows electronic transmittal of nonrenewal notices to insureds. Refer also to [§ 38.2-325 of the Code of Virginia](#) for additional requirements pertaining to the electronic delivery of nonrenewal notices.

**Failure to correctly handle requests by a premium finance company to cancel a policy.** A cancellation at the request of a premium finance company is an insured-requested cancellation and should be handled accordingly. If the insurer’s contract provides for a short rate cancellation when the insured requests the policy be cancelled, the unearned premium should

be calculated short rate when the policy is cancelled at the premium finance company's request. [Section A of 14 VAC 5-390-40 \(Rules Governing Insurance Premium Finance Companies\)](#) requires the insurer to notify the insured, the insurance agent, and the premium finance company that the policy has been cancelled and provide them with a list of information that is required by the regulation. Examiners frequently find that insurers are unaware of these requirements. Insurers should review [14 VAC 5-390-10 et seq.](#) to determine their responsibilities under the regulation.

**Failure to provide notice when the premium increases more than 25%.** As of July 1, 2006, [§ 38.2-231 of the Code of Virginia](#) requires the insurers of commercial liability insurance, commercial automobile insurance, and certain types of miscellaneous casualty insurance to provide a notice to the named insured when there has been a premium increase greater than 25%, if the increase is initiated by the insurer. Additionally, medical malpractice insurers must provide at least 90 days' notice when the policy is being cancelled or nonrenewed or when the renewal premium will be increased by more than 25%, if the increase is initiated by the insurer. Some examples of an insurer-initiated increase would be an increase in the filed rates; changes in experience or schedule rating resulting in an increase in premium; and for claims-made policies, annual premium increases until the risk reaches a mature claims-made status. Additional information can be found in [Administrative Letter 2006-12](#).

**Failure to provide notice when the insurer does not wish to renew the insured's policy.** If the insurer does not wish to renew a policy, a non-renewal notice must be sent to the insured. An exception to this exists in cases where an affiliated insurer has manifested its willingness to provide coverage to the insured at a premium that is lower than that which would have been charged for the same exposures on the expiring policy. The affiliated insurer's policy must have types and limits of coverage at least equal to those of the expiring policy unless the insured has requested a change in the coverage or limits. The insurer of the expiring policy is not required to send an offer of renewal, and the policy issued by the affiliated insurer will be deemed to be a renewal policy. (See [§ 38.2-231 of the Code of Virginia](#).)

**Reduction in coverage notice.** A reduction in coverage notice is only required to be sent on personal injury liability and property damage liability policies as defined in [§§ 38.2-111, 38.2-117, 38.2-118, and 38.2-124](#) which are also subject to [§ 38.2-1912 of the Code of Virginia](#). At present, none of the lines of insurance referenced above are subject to [§ 38.2-1912 of the Code of Virginia](#).

**When notice of reduction in coverage or increase in premium is not required.** [Section 38.2-231 E of the Code of Virginia](#) states that the notice is *not* required if: (a) the insurer delivers or mails to the named insured a renewal policy or a renewal offer not less than 45 days prior to the effective date or, in the case of medical malpractice insurance, not less than 90 days prior to the effective date of the policy; (b) the policy is issued to a large commercial risk as defined in [§ 38.2-1903.1 C of the Code of Virginia](#) (except that policies of medical malpractice insurance are not exempt from the notice requirement); or (c) the policy is retrospectively rated, where the premium is adjusted at the end of the policy period to reflect the insured's actual loss experience.

## Automobile Rating and Underwriting

**Charging points or increasing premium because of accidents.** [Section 38.2-1905 of the Code of Virginia](#) provides the guidelines for charging points or increasing premiums for accidents in which the insured was wholly or partially at fault. [Administrative Letter 1992-25](#) and [Administrative Letter 1980-12](#) provide further clarification and require that the insurer have proof of fault prior to the assignment of points. Examiners often find that an insurer has increased the insured's premium without first obtaining evidence of fault. Furthermore, the Consumer Services Section finds insurers using "failure to maintain control of the vehicle" as justification for charging points. This is not evidence of fault without more information. The insurer should also ensure that the point is assigned to the vehicle customarily driven by the operator responsible for the accident as required by [§ 38.2-1905 C of the Code of Virginia](#) and explained by [Administrative Letter 1990-9](#). Please be aware that a Virginia Motor Vehicle report does not indicate fault; rather, it indicates that the driver was involved in an accident. Fault must be determined through additional research. Finally, when insurers send the right to appeal notice to an insured because the insurer has applied points to the insured's policy or increased his premium as a result of a motor vehicle accident, the notice should provide the date of the accident so that the insured knows why the points are being applied.

**Rounding of Uninsured Motorist (UM) Rates.** *In July 2002, the regulation of uninsured motorist coverage rates changed from prior approval to "file-and-use." (Refer to [Administrative Letter 2002-5](#).) Although the rates for uninsured motorist coverage are no longer prescribed by the Bureau of Insurance, insurers wishing to continue using the rates previously promulgated by the Commission ([Administrative Order 10994](#)) may do so. With this change, insurers are now permitted to round uninsured motorist rates provided that the insurer has filed the appropriate rounding rule.*

**Failing to document individual risk premium modifications.** [Section 38.2-1904 C of the Code of Virginia](#) allows an insurer to modify class rates for individual risks in accordance with rating plans that establish standards for measuring variations in risk. [Administrative Letter 2006-16](#) provides guidance for filing these rating plans and also states that justification for the variations must be kept on an individual risk basis. [Administrative Letter 2006-16](#) reiterates that all premium debits and credits which are applied pursuant to any schedule rating plan/individual risk premium modification plan must be supported by evidence documented in the underwriting file of every new business and renewal policy. Examiners frequently find no evidence to support the IRPM credits or debits in the underwriting file. This documentation should be specific, available for review, and kept current.

**Using rates that have not been filed or that have been superseded.** The insurer must use the rates it has filed with the Bureau. Examiners frequently find that an insurer will use rates that have not been filed or that have been superseded by a new filing. *Insurers that use advisory loss costs provided by rate service organizations and file their own loss cost multipliers should carefully review [Administrative Letter 2006-16](#) and the VA RFA-1 forms filed with the Bureau to ensure that the proper rates are being used. Please also refer to the [Virginia Property and Casualty Rules, Rates, and Forms Filing Guidelines Handbook](#) for more specific guidance.*

**Failure to use the correct/filed symbol classification.** Errors occur most frequently with independently filed symbols because the policy file does not adequately indicate which filed symbol should define the insured vehicle. If the insurer files its own symbols, the symbol

classifications must correspond to the vehicle documentation maintained in the file. If the symbol is VIN specific, the VIN should be obtained and documented in the policy file. If the symbol is cost specific, the cost of the vehicle must be documented in the policy file to support how the insurer arrived at the symbol classification. The examiners should be able to view the information from the policy file and determine the specific symbol that defines the vehicle.

**Miscellaneous rating problems.** Other rating problems include the use of incorrect territories and classifications. While all random errors cannot be prevented, the insurer is encouraged to review its internal auditing program in order to prevent as many mistakes as possible. The insurer should also audit any automated rating system to ensure that it is programmed to rate in accordance with the insurer's filed rating plan. (While this might seem obvious, examiners frequently encounter situations where there has been a programming error that causes many policies to be rated incorrectly because no one audited the newly programmed rates or rules.)

**Failure to provide an adverse underwriting decision (AUD) notice.** [Section 38.2-610 of the Code of Virginia](#) requires insurers to provide AUD notices when they make an "adverse underwriting decision." AUD's include the failure of an agent to place the insured in the specific insurance institution requested by the insured, the placement of the insured by the agent or the insurance institution with a residual market mechanism or an unlicensed insurer, the declination of requested coverage (in whole or in part), and the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished. (See [§ 38.2-602 of the Code of Virginia](#).)

## Commercial Underwriting and Rating

**Failure to document individual risk premium modifications.** [Section 38.2-1904 C of the Code of Virginia](#) allows an insurer to modify class rates for individual risks in accordance with rating plans that establish standards for measuring variations in risk. [Administrative Letter 2006-16](#) reiterates that all premium debits and credits, which are applied pursuant to any schedule rating plan/individual risk premium modification plan, must be supported by evidence documented in the underwriting file of every new business and renewal policy. Examiners frequently find no evidence to support the IRPM credits or debits in the underwriting file. This documentation should be specific, available for review, and kept current.

**Using rates that have not been filed or that have been superseded.** The insurer must use the rates it has filed with the Bureau. Examiners frequently find that an insurer will use rates that have not been filed or that have been superseded by a new filing. *Insurers that use advisory loss costs provided by rate service organizations and file their own expense multipliers* should carefully review [Administrative Letter 2006-16](#) and the VA RFA-1 forms filed with the Bureau to ensure that the proper rates are being used. Please also refer to the [Virginia Property and Casualty Rules, Rates, and Forms Filing Guidelines Handbook](#) for more specific guidance.

**Failing to notify the Bureau when rates, rules, and forms filed by a rate service organization (RSO) on behalf of the insurer will not be used.** Insurers are required to use rules, rates, and forms that they file or that are filed on their behalf by an RSO. Failure to use the filed rules, rates, or forms or to timely delay adoption of them is a violation of [§§ 38.2-1906 D, or 38.2-317 of the Code of Virginia](#). A timely filing to delay adoption of rules, rates, or forms filed on behalf of the insurer is on or before the RSO filing effective date.

## Claims--All Lines

**Failure to document adequately claims file.** [The Rules Governing Unfair Claim Settlement Practices \(14 VAC 5-400-10 et seq.\)](#) require that a claim file contain all notes and work papers pertaining to the claim, and that the documentation is detailed so that pertinent events and the dates of those events can be reconstructed. (See [14 VAC 5-400-30.](#)) The claims adage that “*If it isn’t in the file, it never happened*” is the rule that governs proper documentation. If the file does not contain a denial letter, a copy of the estimate, a note indicating that a coverage has been discussed, a response to an inquiry, etc., the examiner cannot assume the file was handled correctly. Claim handlers should be instructed that their actions must be documented and that written insurer procedures do not take the place of supporting documentation.

**Failure to advise the insured of benefits or coverages of the policy.** [The Rules Governing Unfair Claim Settlement Practices \(14 VAC 5-400-10 et seq.\)](#) require an insurer to advise first party claimants of the benefits, coverages or other provisions of the policy when those benefits, coverages, or other provisions are pertinent to a claim. (See [14 VAC 5-400-40.](#)) Examiners frequently see files where the claim handler failed to mention the first party coverages applicable to the claim, even though the claims report clearly indicates that the coverage is pertinent to the claim. The areas where this happens most often are medical expense/loss of income coverage, rental reimbursement coverage, uninsured/underinsured motorist coverage (including bodily injury and reimbursement of collision deductible). The problems in this area are often caused by the failure to *document* properly the file regarding the discussions held with the claimant.

**Failure to deny a claim in writing.** [Subsection 14 VAC 5-400-70 A \(Rules Governing Unfair Claim Settlement Practices\)](#) requires *any* denial to be given to the claimant in writing. A claim is defined as a demand for payment. If the insurer is presented with a bill or a receipt from the claimant, a demand has been made. If the insurer denies payment, in whole or in part, a written denial must be given to the claimant and a copy maintained in the claim file.

**Failure to provide an explanation for denial of a claim.** [Subsection B of 14 VAC 5-400-70 \(Rules Governing Unfair Claim Settlement Practices\)](#) requires that any written denial contain a reasonable explanation of the basis for the denial and that specific reference to a policy provision, condition, or exclusion be made if the denial is based on the provision, condition or exclusion. Examiners often find that the denial letter only states that the loss is “not covered” with no further explanation. Or, examiners will find that the denial letter states that the insurer’s investigation determined that the insured is not legally liable for the loss. This is not a reasonable reason for denying the claim. To make the reason for the denial reasonable, the insurer would need to comment on what it found in its investigation that it relied upon to make this determination. It is not sufficient to tell a claimant that the reason for denying his claim is that the insurer’s insured is not “legally liable.” A statement explaining why the insurer’s insured is not liable should also be included. For example, the insurer might give as additional support a statement that the evidence indicates that the claimant contributed to the loss due to his excessive speed.

**Failure to state the coverage under which a claim is paid.** [Section 38.2-510 A of the Code of Virginia](#) requires that any payment of a claim be accompanied by a statement indicating the coverage under which the payment is being made. This can be accomplished by providing this information on the check or draft or in a document provided with the payment. Examiners frequently find that the insurer uses the peril instead of the coverage, uses an incorrect

coverage, or does not provide any information. While the insurer can include the peril or other information that more clearly describes the loss, the coverage must be included.

## Automobile Claims

**Failure to give a copy of the repair estimate to the claimant.** [Subsection D of 14 VAC 5 400-80 \(Rules Governing Unfair Claim Settlement Practices\)](#) requires that if an insurer prepares an estimate of the cost to repair an automobile, the insurer must give a copy of the estimate to the claimant. This may be a documentation problem as most insurers have procedures that require the estimate to be given to the claimant. However, if the examiners find no evidence in the file that the insurer followed its procedures, then the insurer will be cited for failing to comply with the regulation.

**Failure to properly pay the sales and use taxes on a totaled automobile when the insured retains the salvage.** The personal automobile policy forms provide for the payment of the applicable state and local sales and use tax when the insurer settles a claim by paying the actual cash value of the automobile. Examiners frequently find insurers fail to pay these taxes when the insured retains the salvage. There is nothing in any of the policies that excludes payment of these taxes when the insured retains the salvage. The insurer should review its claim handling guidelines to ensure that the proper payments are being made. The minimum sales tax is \$35.00. (See [§ 58.1-2402 of the Code of Virginia.](#))

**Failure to handle Uninsured Motorist (UM) claims correctly.** The standard private passenger automobile and commercial automobile policies in Virginia provide that UMPD coverage is excess over any other physical damage coverage applicable to the vehicle. Accordingly, claims involving an uninsured motorist should be paid first under the physical damage coverage after applying the appropriate deductible, if that coverage has been purchased. If the UMPD deductible is less than the physical damage deductible, the difference between the two deductibles should be paid under the UMPD coverage. For example, if an insured has collision coverage with a \$500 deductible and sustains \$1,000 of damage caused by a known uninsured motorist, the insurer would pay \$500 under the collision coverage and \$500 under the UMPD coverage. If the uninsured motorist was unknown, the insurer would pay \$500 under the collision coverage and \$300 under the UMPD coverage (\$500 less the \$200 UMPD deductible). (See [§ 38.2-2206 of the Code of Virginia.](#)) (See also [Commercial Automobile Standard Forms and Personal Automobile Standard Forms.](#))

**Another area of UMPD coverage where the examiners frequently see problems involves paying rental expenses.** If the insured is entitled to recover for the damage to a motor vehicle, he would also be entitled to rental expenses incurred ([§ 8.01-66 of the Code of Virginia](#)). Again, UMPD would be excess over any first party rental reimbursement coverage or transportation expense coverage that the insured has available.

**Incorrectly handling physical damage claims when the damaged vehicle has custom equipment.** The exclusion for “custom equipment” in the PAP applies to pickup trucks and vans. Insurers often deny coverage for custom equipment on private passenger automobiles and other vehicles to which the exclusion does not apply. All of the private passenger motor vehicle’s equipment is covered on an ACV basis. (See [Personal Automobile Standard Forms.](#))

**Treating paint and materials guidelines as caps on what the insurer will pay.** [Section 38.2-517 A 6 of the Code of Virginia](#) forbids the use of arbitrary paint and materials caps. Any

guideline an insurer uses must be reasonably related to the type and size of the vehicle, the amount of damage, and the type and color of paint used on the vehicle.

**Failing to provide the information required by § 38.2-517 A 3 to insureds and claimants in connection with a glass claim arising under a motor vehicle insurance policy.** [Section 38.2-517 A 3 of the Code of Virginia](#) requires an insurer to provide certain information to insureds and claimants prior to being referred to a third party representative in connection with a glass claim. The information that the third party is not the insurer and is acting on behalf of the insurer must be given *prior* to sending the insured or claimant to the third party representative's telephone system or internet page. The Bureau has noted a number of instances where insurers have technical violations of the statute.

**Failing to provide the information required by § 38.2-517 A 4-5 to insureds and claimants in connection with a claim arising under a motor vehicle insurance policy.** [Sections 38.2-517 A 4-5 of the Code of Virginia](#) require insurers to provide certain information to insureds and claimants in connection with a motor vehicle claim. [Section 38.2-517 A 4 of the Code of Virginia](#) requires insurers to tell insureds and claimants *at the time* that the insurer recommends the services of a designated motor vehicle repair or replacement facility or the products of a designated manufacturer that the insured or claimant is under no obligation to use the services of a designated motor vehicle repair or replacement facility or the products of a designated manufacturer. [Section 38.2-517 A 5 of the Code of Virginia](#) requires insurers to tell insureds and claimants *at the time* that the insurer recommends the services of a designated motor vehicle repair or replacement facility that the insurer has a financial interest in such repair or replacement facility.

**Handling collision damage waivers and supplemental liability protection in rental claims.** Supplemental Liability Protection (SLP) is reasonable when required by the vehicle rental agency. With respect to a claim under a motor vehicle policy, there are no circumstances where Personal Accident Insurance (PAI) would be reasonable and, therefore, is not owed as part of a transportation expense claim.

Collision Damage Waiver (CDW) is reasonable and must be paid when a third party claimant rents a vehicle because of a loss caused by the insured, and that claimant does not have collision and/or comprehensive coverage on his/her own insurance policy. In addition, CDW is reasonable and must be paid when an insured rents a vehicle as a result of a loss caused by an uninsured or underinsured motorist, and the insured does not carry collision and/or comprehensive coverage on his/her policy.

The company must document their files to reflect sufficient details of the conversation with the claimant to support the insurer's decision. These details should include, at a minimum, documentation that SLP and/or CDW were explained to the insured or claimant including whether SLP and/or CDW are considered reasonable for the purposes of payment. In the event that the insurer denies the claim for either of these expenses, if the file documentation sufficiently supports the decision and documents the discussion with the insured or claimant, and if the billing from the rental agency included charges received from others for CDW or SLP, then a denial letter would not be required to further document the file. If the required documentation is not in the file, then the insurer must send a denial letter to the insured or claimant for the charges on the rental bill that the insurer is not going to pay.

## Homeowner Claims

**Failure to properly pay replacement cost claims.** [Section 38.2-2108 of the Code of Virginia](#) allows for the establishment of standards for the content of any policy or endorsement used in connection with any policy insuring owner-occupied dwellings in the Commonwealth. The Bureau has promulgated a regulation ([14 VAC 5-340-10 et seq.](#)) that provides the minimum standards for homeowners policies issued in the Commonwealth. Each of the standards for homeowners policies provide for replacement cost coverage on insured dwellings. In addition, the insured may purchase replacement cost on his personal property. Most insurers and rate service organizations have filed homeowners policies that allow for the payment of the actual cash value (ACV) prior to replacement. The insured has *six months* from the date of the last ACV payment to *assert a claim* for the difference between the ACV and the replacement cost of the damaged property. (See [§ 38.2-2119 B of the Code of Virginia.](#)) However, this does not mean that the insured must actually replace the damaged property within six months after the last ACV payment is made, only that he assert a claim for the difference between the ACV and replacement cost within that time period.

Examiners frequently find that insurers incorrectly advise insureds that replacement cost claims must be made within 180 days of the date of the loss. This statute was amended effective July 1, 1992 to provide that insureds have six months to assert a replacement cost claim. The insurer should review all policy forms that provide replacement cost coverage to ensure that the language of the form is correct. The insurer should also review its claims handling procedures and all form letters that address this situation to ensure that they refer to *six months* rather than *180 days*.

## Forms Requirements

**PLEASE NOTE:** All insurers writing private passenger automobile insurance in Virginia should review [Administrative Order 11730](#). This Order sets forth the new standard automobile forms that may be used in Virginia for policies effective on or after 7/1/2008. All prior standard forms including the Family Automobile Policy and the Special Package Policy are withdrawn for all policies effective on or after 7/1/2008. Changes are made to the Personal Automobile Policy as of 7/1/2008 also. (See [Personal Automobile Standard Forms.](#))

**Using forms that have not been filed or that have been superseded.** The most frequent problem that the examiners find when reviewing policy forms is the use of forms that have not been filed with and approved by the Bureau of Insurance. The Bureau also finds that insurers will use previously approved forms that have been superseded. Virginia has standard forms for motor vehicle policies, and these forms are approved by Administrative Order. Examiners frequently find that insurers are not using the current version of the form in violation of [§ 38.2-2220 of the Code of Virginia](#). Most other forms must be approved by the Bureau prior to use. The insurer should review all forms to ensure they are either the correct standard form or that the insurer has filed and received approval from the Bureau. Please refer to the [Virginia Property and Casualty Rules, Rates, and Forms Filing Guidelines Handbook](#) for more specific guidance.

**Failure of insurers to put all conditions pertaining to the insurance in their policies.** [Section 38.2-305 A of the Code of Virginia](#) provides the requirements for what must be included in an insurance policy. Examiners frequently find that insurers do not include all of the conditions of the policy by failing to attach a specific policy form or by failing to refer to a

particular form on the declarations page. If the form is not attached to a renewal policy, it should be listed on the declarations page showing the form number and the edition date. This notice applies to all classes of insurance except those exempted in [§ 38.2-300 of the Code of Virginia](#).

**Failure of insurers to incorporate the provisions of the claims-made regulation in claims-made forms.** The Bureau of Insurance promulgated a regulation that governs claims-made liability policies issued Virginia. See [14 VAC 5-335-10 et seq. of the Virginia Administrative Code](#). The regulation became effective January 1, 2005. The Bureau of Insurance continues to find that companies have not made filings to update their claims-made forms to comply with the regulation. Insurers that issue claims-made forms in Virginia should audit those forms and confirm that the forms comply with the regulation. Any forms not in compliance should immediately be updated and filed with the Bureau of Insurance.

## Required Notices

**Failure to provide the IMPORTANT INFORMATION TO POLICYHOLDERS notice providing insurer and Bureau contact information.** [Section 38.2-305 B of the Code of Virginia](#) requires that a specific notice be provided with each new or renewal insurance policy, contract, certificate, or evidence of coverage issued to a policyholder, covered person, or enrollee. This notice must read substantially the same as the notice in the Code. Examiners frequently find that this notice is not given when policies are renewed or when a renewal certificate is issued. The statute was amended effective July 1, 1997, and now clearly states when the notice should be given. The insurer should ensure that this notice is being given when required. This notice applies to all classes of insurance except those exempted in [§ 38.2-300 of the Code of Virginia](#).

**Failure to provide an adverse underwriting decision (AUD) notice.** [Section 38.2-610 of the Code of Virginia](#) requires agents and insurers to provide AUD notices when they make an “adverse underwriting decision.” AUD’s include the failure of an agent to place an applicant in the specific insurance institution requested by the applicant the placement of the insured by the agent or the insurance institution with a residual market mechanism or an unlicensed insurer, the declination (in whole or in part) of requested coverage, the termination of coverage, and the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished. (See [§ 38.2-602 of the Code of Virginia](#) for definitions.) In addition, the AUD notice must provide the specific reason(s) for the AUD or advise the insured or applicant that, upon written request, he may receive the reason(s), provide the insured or applicant with a summary of his rights as set forth in [§§ 38.2-608 of the Code of Virginia](#) (the right to access recorded personal information) and [38.2-609 of the Code of Virginia](#) (the right to correct, amend, or delete recorded personal information), and inform the insured or applicant that he must request further information about the adverse underwriting decision within 90 business days from the date of the mailing of the AUD notice or other communication of the AUD to the applicant or insured. (See also [Administrative Letter 1981-16](#).) The requirement to provide an AUD notice applies only to insurance purchased primarily for personal, family, or household purposes.

**Failure to advise insured of right to appeal the application of points or increase in premium as a result of a motor vehicle accident.** [Section 38.2-1905 A of the Code of Virginia](#) requires that an insurer increasing the premium or applying points to an insured’s motor vehicle policy as a result of a motor vehicle accident provide the insured with a notice of his right to appeal the increase in premium/application of points to the Commissioner of Insurance within 60 days of the insured receiving the notice from the insurer. For new business policies, such notice is only required when the accident is discovered after the policy is issued or the information is different from that which was on the application or the quote.

**Failure to advise insured of availability of medical expense benefits coverage.** [Section 38.2-2202 A of the Code of Virginia](#) requires that an insurer issuing an original premium notice for insurance covering liability arising from the ownership, maintenance, or use of any motor vehicle include the IMPORTANT NOTICE provided in the statute with the premium notice. The notice can be on the front of the premium notice or can be enclosed with the premium notice. It must be in boldface type and read exactly as stated in the statute. Examiners often find that this notice is not given when new policies are issued or that the notice is not worded as required by the statute.

**Failure to offer rental reimbursement/transportation expense coverage.** [Section 38.2-2230 of the Code of Virginia](#) requires that every insurer issuing a new or renewal policy of motor vehicle insurance as defined in [§ 38.2-2212 of the Code of Virginia](#), which provides comprehensive or collision coverage, must advise the insured of the option to purchase rental reimbursement coverage. The insurer should ensure that this offer is being made as required. *An insurer offering coverage for transportation expenses as set forth in the Virginia private passenger automobile standard forms satisfies this requirement.*

**Failure to provide warning concerning cancellation on application for motor vehicle liability insurance.** [Section 38.2-2210 of the Code of Virginia](#) requires that a specific notice be printed on or attached to the first page of an automobile application form in boldface type. Examiners frequently find that this notice is not provided or is provided somewhere other than the first page of the application. The insurer should review its application to ensure compliance with all of the requirements of this section of the Code. This requirement only applies to applications for liability insurance on motor vehicles as defined in [§ 38.2-2212 of the Code of Virginia](#).

**Failure to offer the insurance credit score disclosure notice-automobile policies.** Any insurer issuing or delivering a private passenger automobile policy that uses credit information contained in a consumer report for underwriting, tier placement, or rating an applicant or insured shall disclose on the insurance application, at the time the application is taken, or at renewal if no previous notice has been given, the information required by [§ 38.2-2234 A 1 of the Code of Virginia](#).

**Failure to offer the insurance credit score adverse action notice--automobile policies.** [Section 38.2-2234 A 2 of the Code of Virginia](#) requires any insurer that takes an adverse action based in whole or in part upon credit information to provide notice to the applicant or insured that the adverse action was based in whole or in part on credit. The notice must also provide a statement of the primary factors or characteristics that were used as the basis for the adverse action or notify the applicant or insured that he may request such information. For the purposes of [§ 38.2-2234 of the Code of Virginia](#), an adverse action is defined as a denial, nonrenewal or cancellation of, an increase in any charge for or refusal to apply a discount, placement in a less favorable tier, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with underwriting, tier placement or rating.

Adverse action includes, but is not limited to, circumstances where the applicant or insured (i) did not receive the insurer's most favorable rate, (ii) was not placed in the insurer's best tier, and (iii) when there are multiple insurers available within a group of insurers, the applicant or insured did not receive coverage in the group's most favorably priced insurer. In the case of renewals, the circumstances listed in (i), (ii), and (iii) are not adverse actions if, due to the insured's credit information, the insured is not receiving a less favorable rate, or placed in a less favorable tier or company than during the policy period immediately preceding the renewal policy.

**Failure to provide replacement cost notice.** [Section 38.2-2118 of the Code of Virginia](#) requires every insurer writing insurance policies on owner-occupied dwellings and appurtenant structures that have replacement cost provisions to provide to all applicants a notice outlining the minimum coverage requirement necessary to make the replacement cost provision fully effective and the effect on a claim payment on not meeting the minimum coverage requirement.

**Failure to offer coverage for loss caused by back up through sewers and drains.** [Section 38.2-2120 of the Code of Virginia](#) requires any insurer that issues or delivers a homeowners policy to offer coverage for loss caused by water that backs up through sewers or drains. [Administrative Letter 1980-2](#) states that this notice must be given with all new and renewal policies. The insurer should ensure that this offer is being made as required. A company may not refuse to provide this coverage to their policyholders when this coverage is requested even if a moratorium is in place for other coverages.

**Failure to offer ordinance and law coverage.** [Section 38.2-2124 of the Code of Virginia](#) requires any insurer that issues a policy of fire insurance or fire insurance in combination with other coverage must offer coverage for the repair or replacement of property in accordance with applicable ordinances or laws that regulate construction, repair, or demolition. This offer must be made with all new and renewal policies. The insurer should ensure that this offer is being made as required. A company may not refuse to provide this coverage to their policyholders when this coverage is requested even if a moratorium is in place for other coverages.

**Failure to provide the flood notice.** [Section 38.2-2125 of the Code of Virginia](#) states that any insurer that issues a policy of fire insurance or fire insurance in combination with other coverage that excludes coverage for damage due to flood, surface water, waves, tidal water, or any other overflow of a body of water shall provide written notice that explicitly states that flood damage is excluded, that information regarding flood insurance is available from the National Flood Insurance Program, and that coverage for loss to contents is available on the flood policy for an additional premium.

**Failure to provide the insurance credit score disclosure notice--homeowner and tenant policies.** Any insurer issuing or delivering a homeowners or tenant policy that uses credit information contained in a consumer report for underwriting, tier placement, or rating an applicant or insured shall disclose, on the insurance application, at the time the application is taken, or at renewal if no previous notice has been given, the information required by [§ 38.2-2126 A 1 of the Code of Virginia](#).

**Failure to provide the insurance credit score adverse action notice--homeowners and tenant policies.** [Section 38.2-2126 A 2 of the Code of Virginia](#) requires any insurer that takes an adverse action, based in whole or in part, upon credit information must provide notice to the applicant or insured that the adverse action was based in whole or in part on credit. The notice must also provide a statement of the primary factors or characteristics that were used as the basis for the adverse action or notify the applicant or insured that he may request such information. For the purposes of [§ 38.2-2126 of the Code of Virginia](#), an adverse action is defined as a denial, nonrenewal or cancellation of, an increase in any charge for or refusal to apply a discount, or placement in a less favorable tier, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with underwriting, tier placement, or rating. Adverse action includes, but is not limited to, circumstances where the applicant or insured (i) did not receive the insurer's most favorable rate, (ii) was not placed in the insurer's best tier, and (iii) when there are multiple insurers available within a group of insurers, the applicant or insured did not receive coverage in the group's most favorably priced insurer. In the case of renewals, the circumstances listed in (i), (ii), and (iii) are not adverse actions if, due to the insured's credit information, the insured is not receiving a less favorable rate, or placed in a less favorable tier or company than during the policy period immediately preceding the renewal policy.

**Failure to provide the notice of change in deductible--homeowner policies.** When an insurer unilaterally changes a deductible in a policy written to insure owner-occupied dwellings, the insurer must provide a written notice that (i) explicitly states that the deductible has changed and (ii) explains how the new deductible will be applied ([§ 38.2-2127 of the Code of Virginia](#)). The law prohibits the insurer from changing the deductible except at renewal.

**NOTE:** Insurers are prohibited from changing a deductible unilaterally during the policy term, including the 90 day underwriting period, once coverage is bound. Where the need arises to make a change in a deductible during the underwriting period, insurers must cancel the policy and offer to write with a different deductible. However, insurers may make changes, such as increasing deductibles or increasing limits, during the underwriting period if the insured agrees to such changes, or if the application, signed by the insured, advises the insured that the deductible may be changed.

## Notices--Information Collection and Disclosure Practices

**Notice of Insurance Information Collection and Disclosure Practices.** This notice is triggered when the insurer/agent initiates the *collection* of *personal* information. Personal information includes medical-record information, MVRs, credit reports, CLUE reports, etc. For *applicants*, if personal information is collected by the insurer/agent during the application process, this notice must be provided by the insurer/agent when the collection of personal information is initiated. For example, if the agent obtains a motor vehicle report (MVR) as part of the application process, the notice must be given at that time. If personal information is not collected before the issuance of the policy, the insurer must give the notice when the policy is issued. The notice must be given on renewal when the insurer *collects* personal information about the policyholder unless a notice has been given in the last 24 months. Because the collection of personal information is the event that triggers this notice, if the insurer does not collect personal information about the policyholder for a renewal, the insurer does not have to provide the notice.

The insurer may satisfy the notice requirements with an abbreviated notice. The requirements of this notice are set forth in [§ 38.2-604 C of the Code of Virginia](#). However, every insurer using the abbreviated notice must make available to an applicant or policyholder a long notice. The requirements for the long notice are set forth in [§ 38.2-604 B of the Code of Virginia](#). These notices must be in writing or, if the policyholder agrees, in electronic format.

**Notice of Financial Information Collection and Disclosure Practices.** This notice is triggered by the *disclosure* of *financial* information. Financial information includes personal information other than medical-record information or the record of payments for the provision of health care to an individual. For *applicants*, this notice must be given before financial information is *disclosed* to nonaffiliated third parties if the disclosure is made outside of the exceptions set forth in [§ 38.2-613 of the Code of Virginia](#). If the insurer only discloses financial information to affiliates and/or non-affiliated third parties within the exceptions in the Code, no notice is required to the *applicant*. If an applicant becomes a *policyholder* and the insurer has not yet provided a financial information and disclosure notice, the insurer must provide the policyholder with a notice no later than when the policy is issued or delivered.

For both *applicants* and *policyholders*, the insurer must provide the long notice set forth in [§ 38.2-604.1 B of the Code of Virginia](#). However, for *applicants* only, the insurer may provide the short notice set forth in [§ 38.2-604.1 D of the Code of Virginia](#) if the insurer provides the applicant a reasonable means to obtain the long notice. The short and long notices must be accompanied by the opt-out notice set forth in [§ 38.2-612.1 A of the Code of Virginia](#). Finally, the applicant or policyholder must be given 30 days to notify the insurer that he does not want his financial information disclosed.

However, if the insurer does not disclose and does not wish to reserve the right to disclose financial information about *policyholders* and *former policyholders* to affiliates and non-affiliated third parties outside of the exceptions, the insurer may use the notice set forth in [§ 38.2-604.1 C of the Code of Virginia](#).

For renewals, the insurer must give *policyholders* the notice(s) that reflect its practices for the collection and disclosure of financial information not less than once each calendar year. The notice must be in writing or, if the policyholder agrees, in electronic format.

Problems found during review of these forms:

- *Both* forms are required because triggers are different.
  - ◆ *Collection* of personal information triggers notice required in [§ 38.2-604](#)
  - ◆ *Disclosure* of financial information triggers notice required in [§ 38.2-604.1](#)
- Insurers create a national/regional GLBA notice and do not review the requirements of Virginia law.
- Combining these notices is:
  - ◆ Permissible
  - ◆ Difficult because triggers are different
  - ◆ Difficult because information required to be in the two notices is different
- Insurers are not providing these notices at the proper time.
- Insurers' notices do not contain all of the information required by the relevant statute(s).
- Some insurers think that the GLBA notice required by [§ 38.2-604.1](#) takes the place of the former [§ 38.2-604](#) notice.

## Agent and Agency Licensing and Appointments

**Failure to properly appoint agents and agencies.** Insurers frequently accept business from agents who are not properly appointed as required by [§ 38.2-1833 of the Code of Virginia](#). In addition, the examiners frequently find that insurers are paying commissions to agencies that are not properly appointed as required by [§ 38.2-1833 of the Code of Virginia](#).

**Doing business with unlicensed agents and agencies.** The examiners find instances where the insurers are accepting business from agents that are not licensed as required by [§ 38.2-1822 of the Code of Virginia](#) and are paying commissions to agencies that are not licensed as required by [§ 38.2-1812 of the Code of Virginia](#).

**Paying commissions to fictitious names not filed with the Bureau of Insurance.** The examiners frequently find that insurers are paying commissions to fictitious names used by agents and agencies that have not been filed with the Bureau of Insurance as required by [§ 38.2-1812 E of the Code of Virginia](#). No insurer may pay commissions to a fictitious name unless the entity using the fictitious name has so notified the Bureau of Insurance.

## **Insurer Offering Renewal to Insured with an Insurer in the Same Group**

**Notice of Non-Renewal Required Pursuant to §§ 38.2-231, 38.2-2114, and 38.2-2212.** Some insurers are offering to write their insureds with a different insurer within the same group of affiliates and are failing to provide a notice of non-renewal as required by [§ 38.2-231 of the Code of Virginia](#) (applicable to commercial liability and commercial auto), [§ 38.2-2114 of the Code of Virginia](#) (applicable to owner-occupied dwellings), or [§ 38.2-2212 of the Code of Virginia](#) (applicable to private passenger auto). When an insurer decides that it will not renew coverage, in most cases the non-renewal notice required by these sections must be sent. The only exception is when an affiliated insurer in the same group has manifested its willingness to provide coverage to the insured at a premium that is lower than that which would have been charged for the same exposures on the expiring policy. The affiliated insurer's policy must have types and limits of coverage at least equal to those of the expiring policy unless the insured has requested a change in the coverage or limits. Additionally, pursuant to [§§ 38.2-2114 E 5, 38.2-2212 F4, and 38.2-231 A 3 of the Code of Virginia](#), the policy issued by the affiliated insurer is deemed to be a renewal policy.

**Notices Required—Renewal of a Policy with Insurer in the Same Group under a Petition Approved by the Commission ([§ 38.2-2114.1](#) or [§ 38.2-2212.1](#))**

	Private Passenger Automobile Policies	Homeowner and Owner-Occupied DP Policies	Fire Policies (non owner-occupied with no tenants personal property coverage)	Fire Policies (tenant-occupied) (DP policies insuring personal property only) and HO-4 type Policies
<a href="#">§ 38.2-305</a>	X	X	X	X
<a href="#">§ 38.2-604</a>	X	X	X	X
<a href="#">§ 38.2-604.1</a>	X	X	X	X
<a href="#">§ 38.2-610</a>	X	X	X	X
<a href="#">§ 38.2-2118</a> (if replacement cost provision for dwelling and appurtenant structures is on the policy)		X		
<a href="#">§ 38.2-2120</a>		X		X
<a href="#">§ 38.2-2124</a>		X	X	
<a href="#">§ 38.2-2125</a>		X	X	X
<a href="#">§ 38.2-2126</a>		X		X
<a href="#">§ 38.2-2127</a>		X		
<a href="#">§ 38.2-2128</a>		X		
<a href="#">§ 38.2-2202</a>	X			
<a href="#">§ 38.2-2230</a>	X			
<a href="#">§ 38.2-2234</a>	X			
<b>Notices not Required</b>	38.2-2210 (if no application is obtained), 38.2-2208 and 38.2-2212	38.2-2113 and 38.2-2114	38.2-2118, 38.2-2120, 38.2-2126, 38.2-2127, and 38.2-2128	38.2-2118, 38.2-2118, 38.2-2124, 38.2-2127, and 38.2-2128

## Miscellaneous Information

**Statutory record retention requirements in Virginia.** The following statutes outline the record retention requirements in the Insurance Code that apply to market conduct.

- [Section 38.2-511 of the Code of Virginia](#) requires insurers to maintain a complete record of their complaints since the last examination was conducted pursuant to [§ 38.2-1317 of the Code of Virginia](#), which refers to financial examinations.
- There are record retention requirements in the various termination statutes: [§§ 38.2-231, 38.2-2113](#), and [38.2-2208 of the Code of Virginia](#). These statutes require an insurer to maintain all records relating to the termination of policies to which these statutes apply for one year from the termination date.

The Bureau of Insurance cautions insurers that they should seek the advice of their counsel when determining how long insurance records should be maintained. For example, consideration must be given to statutes of limitation when making such decisions.