

Insurance Supervisory Commission - CSA

Order No. 7/2009

implementing the Rules establishing, assessing and adjusting losses for the compulsory home insurance against earthquakes, landslides and floods

In force as of 2 June 2009

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There are no amendments as at 21 January 2016

On the basis of the provisions of Art. 4(26) and (27) of Law No. 32/2000 on the insurance activity and supervision of insurance, as subsequently amended or supplemented, and of Art. 37 Letter f) of Law No. 260/2008 on the compulsory home insurance against earthquakes, landslides and floods,

in accordance with the Resolution of the Insurance Supervisory Commission's Board of 28 May 2009, whereby the Rules establishing, assessing and adjusting losses for the compulsory home insurance against earthquakes, landslides and floods were adopted,

the President of the Insurance Supervisory Commission hereby issues this order:

Art. 1. – The rules establishing, assessing and adjusting losses for the compulsory home insurance against earthquakes, landslides and floods, set out in the annexe which is an integral part of this order, shall be implemented starting with the publication date of this order.

Art. 2. – The specialised directorates of the Insurance Supervisory Commission shall ensure that the provisions of this order are complied with.

President of the Insurance Supervisory Commission

Angela Toncescu

Bucharest, 28 May 2009

No. 7

ANNEXE

RULES

establishing, assessing and adjusting losses for the compulsory home insurance against earthquakes, landslides and floods

CHAPTER I

Reporting, establishing and assessing the losses

Art. 1. – These rules lay down the specific procedures for reporting, establishing and adjusting losses for the compulsory home insurance against earthquakes, landslides and floods, and for setting and paying the compensation.

Art. 2. – (1) The insured persons/beneficiaries of the PAD, as defined in Art. 18 of Law No. 260/2008 on the compulsory home insurance against earthquakes, landslides and floods, must inform as soon as possible, without exceeding the 60-day term from the date of occurrence of the insured risk, the insurer that issued the PAD of the occurrence thereof and specify the circumstances of such event, and proceed as instructed by the insurer during the actions taken for establishing such event.

(2) In the event of a change in the information mentioned in the PAD during the validity of the insurance, the insured persons/beneficiaries of the PAD must inform in writing, within 30 calendar days after the date of the change, the insurer that issued the PAD of that change.

Art. 3. – (1) If a risk insured by the PAD occurs, the insured persons/beneficiaries of the PAD shall file a claim in writing with the insurer that issued the PAD, under the terms of these rules.

(2) In the case of the owners benefiting from subsidised insurance premiums, the claim shall be filed through the local authorities directly with PAID and, by way of derogation from the provisions of Art. 19(1) of Law No. 260/2008, the establishment and assessment of the damage, and the loss adjustment, may be also made by an undertaking appointed by PAID.

Art. 4. – (1) The insurer that issued the PAD must acknowledge the occurrence of the insured risk within maximum 5 working days from the date of receipt of the notification referring to the occurrence of the insured event, or from the time when the direct access to the disaster zone is possible.

(2) The acknowledgment of the loss comprises at least the technical report on the findings and the determination of the circumstances of the occurrence of the insured risk.

Art. 5. – (1) The insurer that issued the PAD must open the loss file, initiate the loss adjustment procedure and inform PAID within 5 calendar days of each claim being filed in writing by the insured persons/beneficiaries of the PAD, as a result of the acknowledgment by the competent authorities of the state of natural disaster.

(2) For the loss adjusting, the loss file shall comprise at least the following:

- reporting in writing the loss by the insured person/beneficiary of the PAD;
- the damage acknowledgement report;
- the photographs of the construction elements damaged during the insured event;
- the documents assessing the damage and setting the amount of the compensation;
- the claim filled out by the insured person/beneficiary of the PAD;
- the report drawn up by the loss adjuster.

Art. 6. – (1) The damage acknowledgment report shall be signed by the parties involved, i.e. by the representative of the insurer that issued the PAD or by that of the undertaking appointed by PAID to examine the loss file and by the insured person/beneficiary of the PAD.

(2) Any objections of the parties to the damage acknowledged shall be incorporated in the report or in an annexe thereto, and any change to the report must be made with the written consent of the persons referred to in Para (1).

(3) If, after the conclusion of the report, other damage which could not be initially acknowledged is acknowledged as a result of the insured risk, an additional damage acknowledgment report shall be drawn up, with the participation of the same parties who participated in the initial acknowledgement.

(4) All persons who participate in the drawing up of the reports shall be held liable under the law for wilfully providing (with knowledge) false or unreal data in those reports.

Art. 7. – After the acknowledgement, the insurer that issued the PAD and that examined the loss file must issue a copy of the damage acknowledgment report to the insured person/beneficiary of the PAD, where it shall state the number of the file opened, date, locality, county, complete address of the insured dwelling and the damaged construction elements. The acknowledgment report shall state the construction elements damaged as a result of the occurrence of the insured risk, and the list of the documents required to be submitted by the insured person/beneficiary of the PAD to finalise the loss file and make the payment.

Art. 8. – (1) PAID shall acknowledge the technical findings of the insurers authorised to pursue the compulsory insurance, associates of PAID, and those of the undertakings appointed by PAID.

(2) PAID has the right to verify the technical findings of the insurers authorised to pursue the compulsory insurance, associates of PAID, and those of the undertakings appointed by PAID, and the manner in which the amount of the compensation is assessed and set.

Art. 9. – The assessment of the compensation owed to the insured person of the PAD's beneficiary, which the insurer that issued the PAD must set, shall be made as follows:

a) where the insured person/beneficiary of the PAD requests in writing the preparation of a repair estimate, within 5 working days of such request;

b) where estimates for works or consolidation projects for dwellings drawn up by specialised companies are required, within 5 working days of the receipt of the last document requested by the insurer.

Art. 10. – After completing the steps mentioned above, the insurer that issued the PAD or the undertaking appointed by PAID to examine the loss file must:

a) request any additional documents required for the payment of the compensation (ownership documents, any supporting documents or repair estimates, as appropriate, other costs for works and/or materials, identification documents of the insured person/beneficiary, etc.);

b) after receiving all documents necessary to solve the loss file, respond to the request of the requesting party, making the offer of compensation, based on its own findings of the occurrence of the insured event, covered by the PAD;

c) after the finalisation of the loss file, send the insured person/beneficiary of the PAD, for filling out purposes, the statement revealing that after the collection of the compensation such insured person/beneficiary shall no longer have other claims in connection with the damage concerned from PAID and from the insurer that issued the PAD;

d) inform the insured person/beneficiary of the PAD of its reasons not to accept, in full or in part, the claims, where appropriate.

Art. 11. – (1) PAID shall reimburse the insurers the RON equivalent of EUR 100 at the exchange rate communicated by the National Bank of Romania valid on the conclusion date of the compulsory home insurance contract for each examined loss file, in respect of the activity for establishing and assessing the damage resulting from the occurrence of the compulsorily insured risks.

(2) For each of the loss files rejected as a result of reporting risks which are not covered by PAD and for which the technical acknowledgment of the occurrence of the insured risk is not made and completed, PAID shall reimburse EUR 25.

(3) Any technical expertise (e.g.: regarding the load-bearing structure of the dwelling, the cause of the landslide, etc.) deemed necessary by the insurer that issued the PAD shall be conducted only with the approval of the PAID, which shall also reimburse the costs of that expertise.

CHAPTER II

Setting the compensation

Art. 12. – The right to compensation shall be established based on the documents issued by the institutions empowered to establish, under the law, the state of natural disaster (earthquakes, landslides or floods, as natural phenomena) whereby they declare and designate the disaster zones for any event covered by the insured risks.

Art. 13. – When setting the compensation, where the goods insured are damaged or destroyed, account shall be taken of the claims made by the insured persons/beneficiaries of the PAD, the compensation set by the insurer that issued the PAD and any objections made by the insured persons/beneficiaries of the PAD, without exceeding the compensation limits set by the PAD.

Art. 14. – Where the insured risk occurs, the amounts due as compensation shall be distributed to the co-owner insured persons/beneficiaries depending on the ownership share held by each co-owner.

Art. 15. – (1) The compensation granted by PAID for the losses covered by PAD shall not exceed the value of the compulsorily insured amount and the actual amount of the loss or the real value of the dwelling at the time of the natural disaster.

(2) For dwellings, the amount of the loss shall be equal to the repair costs of the component parts for those which may be repaired, or the replacement costs of the elements which may not be repaired, including the costs of materials, established at the local market average prices.

(3) The repair costs for dwellings shall be established based on the documents issued by the specialised units, or based on the estimate drawn up by the insurer, in the case of direct-labour works. Where the repairs of the dwelling are made with direct-labour, the labour cost per hour shall not include the VAT and shall take into consideration the local market prices, for the materials and labour necessary for the repairs.

(4) Specialised units means the legal persons authorised under the law, whose object of activity comprises the sale of construction materials and/or the execution of construction works.

(5) The repair costs of the constructions intended for housing shall be established by application of the unit prices by estimate items for the repair works at the related constructions and installations; the methodology and legal provisions applicable at the time of preparation of the estimates to establish the repair costs shall be those valid on the date of occurrence of the insured event.

Art. 16. – Where the insured persons/beneficiaries of the PAD submit technical documents, i.e. repair estimates or other evaluations, such documentation may be taken into

consideration when setting the compensation, after the prior verification made by the undertaking examining the loss file.

CHAPTER III

Payment of the compensation

Art. 17. – After accepting the compensation set, the insured person/beneficiary of the PAD shall indicate the payment modality: in cash, payment order or in the bank account of the specialised unit which made the repair.

Art. 18. – PAID shall pay the insured person/beneficiary of the PAD only the counter value of the repair/replacement costs referring to the damage caused by the insured risk, within the limits of the total amount insured by the PAD.

Art. 19. – (1) Where the PAD is concluded for an insured amount below the value of the dwelling, i.e. the dwelling is A type and the insured amount stated in the PAD is EUR 10,000, and the insurance premium is EUR 10, the compensation due shall be paid only up to the level of the compulsorily insured amount provided for in Art. 5(1) Letter a) of Law No. 260/2008, for the B type dwelling.

(2) Where the PAD is concluded for an insured amount above the value of the dwelling, i.e. the dwelling is B type and the insured amount stated in the PAD is EUR 20,000, and the insurance premium is EUR 20, the compensation due shall be paid only up to the level of the compulsorily insured amount provided for in Art. 5(1) Letter b) of Law No. 260/2008, for the B type dwelling, and the premium difference shall be repaid.

Art. 20. – The compensation shall be paid by PAID, based on a summary sent by the insurer that acknowledged and assessed the damage. The summary shall be sent within maximum 5 working days from the date the insurer mentioned above received from the insured person all of the requested documents, including the consent for the offer of compensation sent and the statement provided for in Art. 10.

Art. 21. – PAID shall pay the compensation to the insured person/beneficiary of the PAD, based on the summary received from the insurer that issued the PAD, within 5 working days of its receipt.

Art. 22. – (1) Where the compensation is set by court ruling, the PAID shall offer the compensation based on the enforceable court ruling.

(2) The payment of the compensation set by enforceable court ruling shall be made based on the summary sent by the insurer that issued the PAD.

(3) The summary shall be sent to PAID within maximum 5 working days after the submission by the insured person/beneficiary of the PAD of the application together with the enforceable court ruling.

(4) Where the parties do not agree on the amount of the compensation, the non-disputed amount shall be paid by PAID before the litigation is settled by direct negotiation or by the court of law.

Art. 23. – PAID shall pay the compensation set by enforceable court ruling to the insured person/beneficiary of the PAD based on the summary received from the insurer that issued the PAD, within 5 working days.

Art. 24. – Where the undertaking in the insurance field that examines the loss file, or PAID, fails to fulfil its obligations within the time limits provided for in Art. 20 and Art. 21, or they improperly fulfil the same, including where they unjustifiably reduce the compensation, in accordance with the provisions of Art. 19(5) of Law No. 260/2008, such undertaking or PAID, as appropriate, shall pay the insured person/beneficiary of the PAD a penalty of 0.1% applicable to the amount due which was not paid, for each day of delay, without however exceeding the amount insured by PAD.

Art. 25. – (1) The compulsorily insured amount shall be reduced by the amount of each compensation paid, and the insurance policy shall continue to apply for the remaining insured amount. For the risks provided for in Art. 6 of Law No. 260/2008, the amounts paid by PAID to the insured person/beneficiary of the PAD shall be constituted based on the first risk insurance principle.

(2) In all cases, the compensation shall be paid in RON, in accordance with the provisions of Art. 5(1) of Law No. 260/2008.

Art. 26. – Where payment is made directly by PAID in the account indicated in the statement accepting the compensation by the insured person, then he shall be deemed fully compensated if, within 30 days from the receipt of the amount in his bank account, he did not send the undertaking that examined the loss file any objections to the amount of compensation.

CHAPTER IV

Final provisions

Art. 27. – The insured persons' right to compensation, arising from the insurance concluded in accordance with Law No. 260/2008, shall be extinguished within 2 years from the occurrence of the insured risk.

Art. 28. – (1) In the case of a disaster, where the net withholding of PAID is exceeded, the compensation shall be paid by PAID after receiving the corresponding amounts from reinsurance.

(2) The insurance undertakings, shareholders of PAID, authorised to conclude the PAD, may not be forced in any manner whatsoever to cover from their own resources any differences between the compensation due and the available funds of PAID.

Art. 29. – Where the insured risk occurs, PAID shall pay the compensation under the terms of Law No. 260/2008, of the Rules on the form of, and clauses contained in, the contract of compulsory home insurance against earthquakes, landslides and floods, enforced by Order No. 5/2009 of the President of the Insurance Supervisory Commission, and these rules.

Art. 30. – Failure to comply with the provisions of these rules shall be sanctioned under the terms and in accordance with the provisions of Art. 39 of Law No. 32/2000, as subsequently amended and supplemented, in conjunction with the provisions of Art. 39 of Law No. 260/2008.