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INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (*Division 2 enacted by Stats. 1935, Ch. 145.*)

PART 7. HOME PROTECTION [12740 - 12764] (*Part 7 added by Stats. 1978, Ch. 1203.*)

CHAPTER 3. Other Provisions [12760 - 12764] (*Chapter 3 added by Stats. 1978, Ch. 1203.*)

12760. No home protection company shall pay a commission to any person as an inducement or compensation for the issuance, purchase or acquisition of a home protection contract, nor shall a home protection company or any other insurer either directly or indirectly, as a part of any real property transaction in which a home protection contract will be issued, purchased or acquired, require that a home protection contract be issued, purchased or acquired in conjunction with or as a condition precedent to the issuance, purchase or acquisition, by any person, of any other policy of insurance. The provisions of this section shall not prohibit payment of an override commission or marketing fee to an employee or commission sales agent who is the marketing representative of the home protection company or its parent, subsidiary, or affiliate on the sale or marketing of a home protection contract, provided such person is not a real estate licensee sharing in or entitled to share in, or affiliated with a real estate brokerage firm which is entitled to share in the real estate commission generated by the underlying real property transaction.

(*Repealed and added by Stats. 1981, Ch. 689, Sec. 4.*)

12761. (a) The furnishing of a home protection contract without charge to any person shall constitute a violation of this part. No home protection contract providing coverage prior to the time an interest in the home to which it attaches is sold shall be issued or delivered unless it provides for consideration. Such consideration may consist of a bona fide promise to pay the protection contract fee at the time of and only upon transfer of title.

(b) A home protection company may require an onsite inspection as a prequalification for the issuance of a home protection contract, and in such event offer a report on the inspection in connection with a bona fide application for the issuance of such contract even though the issuance of a contract on the property which is the subject of the inspection does not occur.

(*Amended by Stats. 1986, Ch. 944, Sec. 4.*)

12761.1. (a) A home protection company which was licensed as such on December 31, 1988, and as of that date was a franchisor of entities authorized by Section 771.1 to solicit, negotiate, or effect home protection contracts, or a parent, subsidiary, or affiliate of such a franchisor, and continues to be such a franchisor or parent, subsidiary, or affiliate of such a franchisor, may provide coverage for a listing period.

(b) For the purposes of this section, a "listing period" means a period prior to the time an interest in the home to which the home protection coverage attaches is sold, during which there is in effect an exclusive right to sell listing as that term is defined in Section 1086 of the Civil Code, between the seller of that home and a franchisee of that franchisor.

(c) Home protection contracts providing listing period coverage issued pursuant to this section shall be exempt from the provisions of both of the following:

(1) Subdivision (c) of Section 12740, which requires a separately stated pro rata portion of the annual fee for the period of coverage which exceeds one year.

(2) Subdivision (a) of Section 12753, which requires reserves for unearned premiums applicable to the listing period coverage provided under those home protection contracts.

(*Added by Stats. 1990, Ch. 1021, Sec. 1.*)

12762. (a) A home protection contract shall specify, in clear and conspicuous terms, the following information:

(1) Each of the appliances, systems and components covered by the contract.

(2) All exclusions and limitations respecting the extent of coverage.

(3) The period during which the contract will remain in effect, the protection contract fee and the renewal terms, if any.

(4) With respect to the performance of services by the home protection company, all of the following:

(A) The services to be performed by the company and the terms and conditions of such performance.

(B) The service fee or fees, if any, to be charged for such services.

(C) All limitations respecting the performance of services, including any restrictions as to the time period when or geographical area within which services may be requested or will be performed.

(D) A statement that services will be performed upon telephonic request therefor to the company, without any requirement that claim forms or applications be filed prior to the rendition of service.

(E) A representation that services will be initiated by or under the direction of the company within 48 hours after request is made for such services by any person entitled to make such request under the contract, or the agent of such person.

(b) The commissioner may adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, such reasonable regulations as may be necessary to make more specific the provisions of this section. Those regulations may also establish such other contract form standards and requirements as the commissioner may deem necessary and appropriate in the public interest. However, this section does not authorize the commissioner to specify those appliances, systems, or components which must be covered by a home protection contract except to the extent necessary to guarantee the equity of the exclusions from coverage offered or provided under a contract, or to the extent necessary to avoid illusory coverage due to the nature or extent of exclusions from the contract.

(Amended by Stats. 1983, Ch. 142, Sec. 96.)

12763. No home protection contract shall be issued or delivered until a copy of the form thereof is filed with the commissioner. The commissioner may charge a fee for the filing, which fee shall be established by regulation adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1985, Ch. 106, Sec. 104.)

12764. (a) Any home protection contract shall be noncancellable during the initial term for which it was issued, except for:

(1) Nonpayment of protection contract fees;

(2) Fraud or misrepresentation of facts material to the issuance of such contract; or

(3) Contracts providing coverage prior to the time that an interest in the residential property to which it attaches is sold, upon the contingency that such sale does not occur.

(b) Nothing in this section establishes a right of the contract holder to renewal of any contract.

(Amended by Stats. 1981, Ch. 820, Sec. 15.)