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# TITLE 230 – DEPARTMENT OF BUSINESS REGULATION

## CHAPTER 20 – INSURANCE

## SUBCHAPTER 40 – CLAIMS

PART 2 – Unfair Property/Casualty Claims Settlement Practices

## 2.1 Authority

This Part is adopted under the authority of R.I. Gen. Laws Chapter 27-9.1.

## 2.2 Purpose

The purpose of this Part is to establish minimum standards for the investigation and disposition of property and casualty claims arising under insurance policies or certificates as defined in this Part and issued to residents of Rhode Island. It is not intended to cover claims involving workers' compensation, fidelity, suretyship, or boiler and machinery insurance. The various provisions of this Part are intended to define procedures and practices which constitute unfair claims practices. Nothing herein shall be construed to create nor imply a private cause of action for violation of this part. This is merely a clarification of original intent and does not indicate any change of position.

## 2.3 Definitions

A. All definitions contained in R.I. Gen. Laws Chapters 27-9.1 and 27-29 are hereby incorporated by reference. As otherwise used in this Part:

1. "Aftermarket part," means as defined in R.I. Gen. Laws § 27-10.2-1, means a motor vehicle ~~body~~ replacement part that is not an original equipment manufacturer part.

2. "Automobile body shop," means as defined in R.I. Gen. Laws § 5-38-1.

3. “Agent” means any individual, corporation, association, partnership or other legal entity authorized to represent an insurer with respect to a claim.

4. "Claimant" means either a first party claimant, a third-party claimant, or both.

5. "Claim file" means any retrievable electronic file, paper file or combination of both.

6. "Days" means calendar days.

7. "Department" means the Rhode Island Department of Business Regulation.

8. "Director" means the Director of the Department of Business Regulation or his or her designee.

9. "Division" means the Insurance Division of the Department of Business Regulation.

10. "Documentation" means, but is not limited to, all pertinent communications, transactions, notes, work papers, claim forms, bills, and explanation of benefits forms relative to the claim.

11. “Fair market value” means the retail value of a motor vehicle as set forth in a current edition of a nationally recognized compilation of retail values commonly used by the automotive industry to establish values of motor vehicles.

12. "First party claimant" means an individual, corporation, association, partnership or other legal entity asserting a right to payment under his, her or its insurance policy or insurance contract arising out of a loss covered by the policy or contract.

13. "Investigation" means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.

14. “Licensed motor vehicle glass repair shop” means a motor vehicle glass repair shop that has a current valid license for motor vehicle glass repair issued under R.I. Gen. Laws Chapter 5-38.5.

15. "Notification of claim" means any notification, by a claimant, whether in writing or other means, acceptable under the terms of an

insurance policy to an insurer or its agent which reasonably apprises the insurer of the facts pertinent to a claim.

165. "Original equipment manufacturer part" or "OEM part" shall be as defined in R.I. Gen. Laws § 27-10.2-1(2).

1617. "Replacement vehicle" means a motor vehicle which is of like kind and quality. A motor vehicle of like kind and quality shall be:

a. be manufactured by the same manufacturer;

b. be the same or newer model year;

c. have a similar body style;

d. have similar options and mileage; and

e. be in as good or better overall condition as the motor vehicle deemed to be a total loss.

1718. "Third party claimant" means any person asserting a claim against any person holding insured status under a policy or certificate of an insurer.

1819. “Writing” means electronic communications pursuant to R.I. Gen. Laws Chapter 42-127.1.

1920. “Written communications” means all correspondence, regardless of source or type that is materially related to the handling of the claim.

## 2.4 File and Record Documentation

A. Each insurer's claim files for policies or certificates are subject to examination and investigation by the Director or by the Director’s duly appointed designees. To aid in such examination:

1. The insurer shall maintain claim data that is accessible and retrievable for examination. An insurer shall be able to provide the claim number, line of coverage, date of loss and date of payment of the claim, date of denial or date closed without payment. This data must be available for all open files and for closed files for the current year and four (4) preceding years.

2. Detailed documentation shall be contained in each claim file in order to permit reconstruction of the insurer's activities relative to each claim.

3. Each relevant document within the claim file shall be noted as to date received, date processed, or date mailed.

4. For those insurers that do not maintain hard copy files, claim files must be in appropriate electronic media and be capable of duplication to hard copy.

## 2.5 Misrepresentation of Policy Provisions

A. No insurer shall fail to fully disclose to first party claimants all pertinent benefits, coverages, or other provisions of a policy or contract under which a claim is presented.

B. No agent shall conceal from first party claimants benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.

C. A first party claim shall not be denied on the basis of failure to exhibit property unless there is documentation of breach of the policy provisions in the claim file.

D. No insurer shall deny a claim based upon the failure of a first party claimant to give written notice of loss within a specified time limit unless the written notice is a written policy condition, or first party claimant’s failure to give written notice after being requested to do so is so unreasonable as to constitute a breach of the first party claimant’s duty to cooperate with the insurer.

E. No insurer shall indicate to a first party claimant on a payment draft, check or in any accompanying letter that said payment is "final" or "a release" of any claim or specified part of a claim unless the policy limit has been paid or there has been a compromise settlement agreed to by the first party claimant and the Insurer as to coverage and amount payable under the contract.

F. No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specific coverage that contains language purporting to release the insurer or it’s insured from total liability.

## 2.6 Failure to Acknowledge Pertinent Communications

A. Every insurer, upon receiving notification of claim shall, within fifteen (15) days acknowledge the receipt of such notice in writing unless payment is made within that period of time.

B. In addition to the requirements in § 2.6(A) of this Part, the insurer upon receiving notification of claim shall inform the claimant in the insurer's written acknowledgment of receipt of the claim, or sooner if the claimant inquires, if coverage exists for the rental of an automobile comparable to the claimant's damaged vehicle.

C. Every insurer, upon receipt of any inquiry from the Department regarding a claim shall, within twenty-one (21) days of receipt of such inquiry, furnish the Department with an adequate written response to the inquiry.

D. An appropriate reply in writing shall be made within fifteen (15) days on all other pertinent communications from a claimant which reasonably suggest that a response is expected.

E. Upon request by an Automobile Body Shop, an insurer must notify the Automobile Body Shop of the name(s), address(es), telephone number(s) of any lienholder(s) on the vehicle which is the subject of the claim.

F. Every insurer, upon receiving notification of claim, shall promptly provide necessary claim forms, instructions and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer’s reasonable requirements. Compliance with this paragraph within fifteen (15) days of notification of a claim shall constitute compliance with § 2.6(A) of this Part.

## 2.7 Standards for Prompt, Fair and Equitable Settlements Applicable to All Insurers

A. Within twenty-one (21) days after receipt by the insurer of properly executed proofs of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the Insurer. No insurer shall deny a claim on the grounds of a specific provision, condition, or exclusion unless reference to such provision, condition, or exclusion is included in the denial. The denial must be given to the first party claimant in writing and the claim file of the insurer shall contain such documentation of the denial as required by § 2.4 of this Part.

1. Where there is a reasonable basis supported by specific information available for review by the Department that the first party claimant has fraudulently caused or contributed to the loss, the insurer is relieved from the requirements of this subsection; provided, however, that the first party claimant shall be advised of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

B. If the Insurer needs more time to determine whether a first party claim should be accepted or denied, it shall notify the first party claimant within twenty-one (21) days after receipt of the proofs of loss, giving the reasons more time is needed. If the investigation remains incomplete, the insurer shall, forty-five (45) days from the initial notification and every forty-five (45) days thereafter, send to the first party claimant a letter setting forth the reasons additional time is needed for Investigation.

1. Where there is a reasonable basis supported by specific information for suspecting that the first party claimant has fraudulently caused or contributed to the loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

C. Insurers shall not fail to settle a first party claims on the basis that responsibility for payment should be assumed by others except as may otherwise be provided by policy provisions.

D. No insurer shall commence or continue negotiations for settlement of a claim if the claimants rights may be affected by a statute of limitations, unless the insurer has given the claimant written notice of such limitation. Notice shall be given to first party claimants at least thirty (30) days and to third party claimants at least sixty (60) days before the date on which any such statute of limitations may expire.

E. No insurer shall make statements indicating that the rights of a third-party claimant may be impaired if a form or release is not completed within a given period of time unless the statement is given for the purpose of notifying the third-party claimant of the provision of a statute of limitations.

F. The insurer shall affirm or deny liability within a reasonable time and shall tender payment of all claims in which damages are not in dispute within thirty (30) days of affirmation of liability. In claims where multiple coverages are involved payments which are not in dispute and where the

payee is known should be tendered within thirty (30) days if such payment would terminate the insurer's known liability under that individual coverage.

G. No insurer shall request or require any first party claimant to submit to a polygraph examination unless authorized under the applicable insurance contract and state law.

H. If, after an insurer denies a claim, the claimant objects to such denial, the insurer shall notify the Claimant in writing that he or she may have the matter reviewed by the Rhode Island Department of Business Regulation, Division of Insurance, via the contact information for the Department promulgated in a Bulletin for this specific purpose.

## 2.8 Standards for Prompt, Fair and Equitable Settlements Applicable to Automobile Insurance

A. Total Loss Vehicles

1. Pursuant to R.I. Gen. Laws § 27-9.1-4(25) an insurer may not designate a vehicle a total loss if the cost to rebuild or reconstruct the motor vehicle to pre accident condition is less than seventy-five percent (75%) of the fair market value of the motor vehicle immediately preceding the time it was damaged unless the requirements of § 2.8(A)(3) of this Part are met.

2. Fair market value means the retail value of the motor vehicle as set forth in a current edition of a nationally recognized compilation of retail values commonly used by the automotive industry to establish values of motor vehicles.

    a. To qualify as "nationally recognized compilation of retail values commonly used by the automotive industry," a filing must be made with the Department requesting that the entity be deemed to qualify under R.I. Gen. Laws § 27-9.1-4(25). The filing may be made by the entity itself or any person seeking qualification of an entity for this purpose.

    b. The Department reviewed the initial filings and published a bulletin in 2014 identifying two entities that initially qualified. The bulletin will be updated as entities are added or removed due to changes in circumstances.

c. Applications requesting to add entities may be filed at any time and will be addressed by the Department in due course. The Department will publish information relating to future filings on its website.

3. If the total cost to rebuild or reconstruct the motor vehicle is less than seventy-five percent (75%) of the fair market value of the motor vehicle immediately preceding the time it was damaged, the vehicle may be considered a total loss with the written agreement of the owner. The owner is the person or entity listed on the title to the motor vehicle if a title exists.

4. If an insurer is not retaining salvage, the insurer must notify the vehicle owner, in writing, of the requirements for obtaining a salvage and reconstructed title.

5. Cash Settlements

a. A cash settlement shall be based upon the fair market value of the motor vehicle less any deductible provided in the policy, if applicable, including all applicable taxes, title, registration and other fees incident to transfer of evidence of ownership of a comparable automobile.

b. When the cash settlement amount is affected by betterment or depreciation, the insurer must support the deviation by documentation in the claim file by giving particulars of the automobile condition that warrant said deviation. Any deductions or betterment from fair market value, including deduction for salvage, must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount. Deduction shall not be made for reconditioning or dealer preparation. The basis for determining fair market value shall be fully explained to the claimant. All information that is the basis for such reduction shall be contained in the claim file and a copy of the valuation shall be provided to the claimant.

c. If the insurer in the process of adjusting a total loss makes a deduction for salvage of the claimant's vehicle, the insurer must furnish the claimant with the name and address of a salvage dealer who will purchase the salvage for the amount deducted.

B. Replacement Vehicles and Cash Settlement.

1. When the policy provides for the adjustment and settlement of first party automobile total losses on the basis of fair market value or a replacement with another of like kind and quality, one of the following methods shall apply:

a. The insurer may elect to offer a replacement automobile that is at least comparable in that it will be by the same manufacturer, same or newer year, similar body style, similar options and mileage as the first party claimant vehicle and in as good or better overall condition and available for inspection at a licensed dealer within a reasonable distance of the first party claimant's residence. The insurer shall pay all applicable taxes, title, registration and other fees incident to transfer of evidence of ownership of the automobile paid, at no cost other than any deductible provided in the policy. The offer and any rejection thereof must be documented in the claim file.

b. The insurer may elect a cash settlement based upon the fair market value of the motor vehicle less any deductible provided in the policy including all applicable taxes, title, registration and fees incident to transfer of evidence of ownership of a comparable automobile.

(1) When the cash settlement amount is affected by betterment or depreciation, the insurer must support the deviation by documentation in the claim file by giving particulars of the automobile condition that warrant said deviation. Any deductions or betterment from fair market value, including deduction for salvage, must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount and shall be in accordance with R.I. Gen. Laws § 27-9.1-4(a)(25)(iv). Deduction shall not be made for reconditioning or dealer preparation. The basis for determining fair market value shall be fully explained to the claimant. All information that is the basis for such reduction shall be contained in the claim file and a copy of the valuation shall be provided to the claimant.

(2) If the insurer in the process of adjusting a total loss makes a deduction for salvage of the claimant's vehicle, the insurer must furnish the claimant with the name and address of a salvage dealer who will purchase the salvage for the amount deducted.

2. Right of Recourse - If the insurer is notified within thirty-five (35) days of the receipt of the claim draft that the insured cannot purchase a comparable vehicle for the fair market value, the insurer shall reopen its claim file and the following procedure(s) shall apply:

a. The insurer may locate a comparable vehicle by the same manufacturer, same year, similar body style and similar options and price range for the insured for the fair market value determined by the insurer at the time of settlement. Any such vehicle must be available through licensed dealers;

b. The insurer shall either pay the insured the difference between the fair market value before applicable deductions and the cost of the comparable vehicle of like kind and quality which the insured has located, or negotiate and effect the purchase of this vehicle for the insured;

c. The insurer may elect to offer a replacement in accordance with the provisions set forth in § 2.8(B)(1) of this Part; or

d. The insurer may conclude the loss settlement as provided for under the appraisal section of the insurance contract in force at the time of loss. This appraisal shall be binding against both parties, but shall not preclude or waive any other rights either party has under the insurance contract or a common law.

(1) The insurer is not required to take action under this subsection if its documentation to the claimant at the time of settlement included written notification of the availability and location of a specified and comparable vehicle of the same manufacturer, same year, similar body style and similar options in as good or better condition as the total loss vehicle which could have been purchased for the fair market value before applicable deductions. The documentation shall include the vehicle identification number.

C. Vehicle Repairs

1. Partial losses shall be settled on the basis of a written appraisal or for claims less than two thousand five hundred dollars ($2,500) on the basis of an appraisal or estimate. Written appraisals for claims in excess of two thousand five hundred dollars ($2,500)must be based on a physical inspection of the motor vehicle. The insurer shall supply the claimant with a copy of the appraisal upon which the settlement is based. The appraisal shall be reasonable, in accordance with applicable policy provisions, and of an amount which will allow for repairs to be made in a workmanlike manner. If the claimant subsequently claims, based upon a written appraisal which he or she obtains, that necessary repairs will exceed the written appraisal prepared by or for the insurer, the insurer shall:

    a. pay the difference between the written appraisal and a higher appraisal obtained by the claimant, or

    b. promptly provide the claimant with the name of at least one Automobile Body Shop that will make the repairs for the amount of the written appraisal. If the insurer designates only one or two such repairers, the insurer shall assure that the repairs are performed in a workmanlike manner. The insurer shall maintain documentation of all such communications. The claimant shall not be required to use said Automobile Body Shop; however, the insurer shall not be required to pay for the difference between the insurer's written appraisal and the claimant's appraisal if the claimant chooses to use another Automobile Body Shop.

2. When settling a claim, the amount of the settlement shall allow for the motor vehicle to be repaired to its condition prior to the loss within a reasonable time period.

3. When the amount claimed is reduced because of betterment or depreciation all information for such reduction shall be contained in the claim file. The deductions shall be itemized and specified as to dollar amount and shall be appropriate for the amount of deductions.

4. An insurer may not withhold payment to a claimant, pending reinspection under R.I. Gen. Laws § 27-10.1-9.

5. Aftermarket ~~Crash~~ Parts.

a. The purpose of this subsection is to set forth standards for the prompt, fair and equitable settlements applicable to automobile insurance with regard to the use of aftermarket ~~crash~~ parts. It is intended to regulate the use of aftermarket ~~crash~~ parts in automobile damage repairs paid by insurers. It also requires that all aftermarket ~~crash~~ parts, as defined in this section, be identified and be of the same quality as the original part.

b. For motor vehicles less than forty-eight ~~thirty~~ (~~30~~48) months beyond the date of manufacture, the insurer shall not specify the use of an aftermarket ~~crash~~ part or used parts whether OEM or otherwise, for the repair of the motor vehicle unless the Automobile Body Shop has written consent from the claimant pursuant to R.I. Gen. Laws § 27-10.2-2.

c. All aftermarket ~~crash~~ parts, which are subject to this section and manufactured after the effective date of this section, shall carry sufficient permanent non-removable identification so as to identify its manufacturer. Such identification shall be accessible to the extent possible after installation.

d. For all motor vehicles forty-eight ~~thirty~~ (~~30~~48) months or more beyond date of manufacture, no insurer shall require the use of aftermarket ~~crash~~ parts in the repair of an automobile unless the aftermarket ~~crash~~ part is at least equal in kind and quality to the original part in terms of fit, quality and performance. Insurers specifying the use of aftermarket ~~crash~~ parts, when allowable under R.I. Gen. Laws § 27-10.2-2, shall consider the cost of any modifications which may become necessary when making the repair.

e. When “OEM part(s)” are used in the repair of a motor vehicle, no insurance company may require any repairer to use repair procedures that are not in compliance with the recommendations of the original equipment manufacturer.

f. This subsection shall not apply to the repair or replacement of motor vehicle glass performed by “licensed motor vehicle glass repair shops" pursuant to R.I. Gen. Laws Chapter 5-38.5.

D. Steering

1. The purpose of R.I. Gen. Laws § 27-29-4 is to protect consumers from unfair methods of competition or unfair or deceptive acts or practices. Specifically, the legislative intent of subsection (15) is to assure consumers (first and third party claimants) the right to have a free choice in selecting an automobile body repair shop. The purpose of this section is to clarify insurance companies' obligations pursuant to R.I. Gen. Laws § 27-29-4(15).

2. R.I. Gen. Laws § 27-29-4(15) defines one unfair method of competition and unfair or deceptive act or practice in the business of insurance as:

    a. REQUIRING that repairs be made to an automobile at a specified auto body repair shop or INTERFERING with the insured's or claimant's FREE CHOICE of repair facility. The insured or claimant shall be promptly informed by the insurer of his or her free choice in the selection of an auto body repair shop. Once the insured or claimant has advised the insurer that an auto body repair shop has been selected, the insurer may NOT RECOMMEND that a different auto body repair shop be selected to repair the automobile. [Emphasis added].

3. When a claim is reported to an insurer, the insurer must promptly inform the claimant (first or third party) of his or her free choice in the selection of an automobile body repair shop. The insurer may not REQUIRE repairs to be made at a specific auto body shop or INTERFERE with the insured's or claimant's free choice of repair facility. In addition, once the insured or claimant tells the insurer that he/she has selected an automobile body repair shop, the insurer may not RECOMMEND a different auto body repair shop.

4. R.I. Gen. Laws § 27-29-4(15) does not prevent an insurer from communicating true information to a consumer. The mere transmittal of information does not constitute "steering." Providing truthful, non-coercive information about options available to consumers is not a "recommendation" prohibited by the statute. The fact that a consumer alters his or her choice of repairer after speaking with an insurer does not itself establish a violation of the statute. However, an insurer may not disseminate false information. At no time shall an insurer make any misrepresentation to the claimant (first or third party) about any of the following: the limitations, scope, and/or quality of the work of any automobile

body repair shop or of the warranty or guarantee provided by any shop for the work performed.

5. The choice of an auto body shop is the consumers. Insurers should guide their conduct by that principle. Examples of conduct, in the totality of the circumstance, that constitute "interfering" can be found in the Department's administrative decision in Providence Auto Body v. Allstate Insurance Company, DBR 07-I-0114. Further, the Department does not interpret R.I. Gen. Laws § 27-29-4(15) as prohibiting the insured or claimant from receiving, or the insurance company from conveying to, the insured or claimant information concerning the insurer's obligations and benefits under the contract (policy).

6. The provisions of this section also apply to claims involving motor vehicle glass installation.

7. Insurers shall not require that vehicles be removed from a repair shop for purposes of appraisal, where an appraisal may reasonably be conducted at the repair shop in question. While insurers may request appraisal at a centralized location, if the owner does not agree the appraisal should occur at the consumers' selected repair shop or other requested location unless there are documented circumstances of impossibility.

E. Miscellaneous Requirements

1. Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claim under their own policies solely to avoid paying claims under such insurer's policy.

2. Insurers shall not require a claimant to travel an unreasonable distance to inspect a replacement automobile.

3. In order to fully compensate for the loss to the consumer, the insurer must include applicable sales tax in its calculation of settlement value in any total loss claim.

4. The claimant may exercise his or her right to arbitration pursuant to R.I. Gen. Laws § 27-10.3-1.

5. An insurer shall include the first party claimant's deductible, if any, in subrogation demands. Pursuant to R.I. Gen. Laws § 27-8-12 upon settlement of the subrogation claim, the first party claimant's

insurer shall pay the first party claimant the full deductible or the amount collected if less than the full deductible, less the first party claimant 's prorated share of the subrogation expenses, if any. The subrogation expenses, as opposed to the first party claimant's deductible, are subject to prorating based on percentage of fault. The insurer may only retain funds in excess of the deductible portion of the recovery as set forth in this section.

6. When the insurer elects to repair and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

7. Storage and Towing. Storage and towing rates set by regulation or order of an administrative agency with jurisdiction over that subject matter, shall be considered the appropriate and reasonable charges for those services. The insurer shall provide reasonable notice to a first or third party claimant prior to termination of payment for automobile storage. Such insurer shall provide reasonable time for the claimant to remove the vehicle from storage prior to the termination of payment.

    a. The insurer shall provide written notice to a claimant, with a copy to the storage facility, prior to termination of payment for motor vehicle storage charges. Such notice shall be given in reasonable time so as to provide the claimant the opportunity to remove the vehicle from storage prior to the termination of payment.

8. An insurer taking possession of a motor vehicle with a Rhode Island certificate of title that has been declared a total loss because of damage to that vehicle shall

    a. Apply for a salvage certificate of title within ten (10) days in accordance with R.I. Gen. Laws §§ 31-46-1 and 31-46-1.1.

    b. Prior to making application with the division of motor vehicles, evaluate the damage to the vehicle and properly classify the salvage as either “parts only” or “repairable” as defined in R.I. Gen. Laws § 31-46-1.1.

    c. Maintain copies of all documents utilized to evaluate the damage for classification purposes.

d. Produce such documentation as required by the division of motor vehicles upon applying for the salvage certificate of title.

e. In accordance with R.I. Gen. Laws § 27-8-14 all insurers shall report all vehicle thefts within thirty (30) days of the theft and all salvage declarations to the National Insurance Crime Bureau (NICB) or similar organization that maintains a central database of automobile theft and salvage.

## 2.9 Standards for Prompt, Fair and Equitable Settlements Applicable to Fire and Extended Coverage Type Policies with Replacement Cost Coverage

A. Replacement Cost

1. When the insurance policy provides for the adjustment and settlement of first party claimant losses based on replacement cost, the following shall apply:

a. When a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making such repair or replacement not otherwise excluded by the policy, shall be included in the loss. The first party claimant shall not have to pay for betterment nor any other cost except for the applicable deductible.

b. When a loss requires replacement of items and the replaced items do not match in quality, color or size, the insurer shall replace all such items so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. The first party claimant shall not bear any cost over the applicable deductible, if any.

B. Actual Cash Value

1. When the insurance policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the Insurer shall determine actual cash value as follows: replacement cost of property at time of loss less depreciation, if any. Upon the first party claimant's request, the insurer shall provide a copy of the claim file worksheet(s) detailing any and all deductions for depreciation.

2. In cases in which the first party claimant's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value as set forth above is not required. In such cases, the insurer shall provide, upon the first party claimant's request, a written explanation of the basis for limiting the amount of recovery along the amount payable under the policy.

## 2.10 Department Complaint Review

A. A claimant who believes that there has been a violation of this Part may file a written complaint with the Division. All complaints filed with the Department shall be processed in accordance with the Division's internal complaint review process and, if the Division determines that reasonable cause exists, the complaint shall be handled in accordance with the Department's Rules of Procedure for Administrative Hearings, Part 10-00-2 of this Title.

B. All complaints filed with Department must be in writing. The Department will only accept complaints filed by the individual claimant, the claimant's designated immediate family member (spouse, parent, sibling or offspring), an insurance producer licensed by the Department with regard to policies of insurance effected by him or her, claimant's attorney admitted to practice law in this state, executor and/or administrator or other court-appointed legal representative of the claimant's estate. If a complaint relates to a claim which is under consideration by any court of this or any other state, the Division may defer jurisdiction over the matter to that court. Nothing herein shall be deemed to prohibit either the insurer or the claimant from seeking redress in the appropriate judicial forum.