

RESOLUTION 2-08-2002

DIGEST

Insurance Agents and Brokers: Maintenance of Records

Amends Insurance Code section 1759.3 to increase from five to ten years the length of time insurance agents and brokers must retain records.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

Reasons:

This resolution amends Insurance Code section 1759.3 to increase from five to ten years the length of time insurance agents and brokers must retain records. This resolution should be disapproved because it would impose undue record keeping burdens upon insurance agents and brokers.

The stated purpose of this resolution is to preserve insurance records during the ten-year repose period for latent construction defect claims. (Code Civ. Proc., § 337.15, subd. (a).) While preservation of records might be a good idea generally, the resolution, as presently worded, has several major drawbacks. First, the resolution is not confined to construction policies, meaning that *all* insurance agents and brokers would be required to maintain *all* records pertaining to *all* areas of coverage, regardless of whether the limitations period had run on particular claims. Second, the resolution does not distinguish between “occurrence” and “claims made” policies. A “claims made” policy loses its relevance after the expiration date of the policy, since claims not reported during the policy period are not covered. On the other hand, an “occurrence” policy is relevant past the expiration of the policy, since the policy covers acts and omissions occurring during the effective period regardless of when a claim is made or reported. It makes no sense to require both types of policy records to be maintained for the same amount of time. Finally, as a matter of practice, it would be extremely onerous for agents and brokers to be required to maintain ten years of records. The burden of maintaining records during long limitations periods should fall on either the owner of the policy or the carrier, not on the representative who is simply acting as an agent for the carrier.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Insurance Code section 1759.3 to read as follows:

- 1 §1759.3
- 2 (a) Every administrator shall maintain at its principal administrative office for the duration of the
- 3 written agreement referred to in Section 1759.1 and ~~five~~ ten years thereafter adequate books and

1 records of all transactions between it, and insurers and insured persons. The books and records shall
2 be maintained in accordance with prudent standards of insurance recordkeeping. The insurer shall retain
3 the right to continuing access to the books and records of the administrator sufficient to permit the
4 insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the
5 written agreement between the insurer and administrator on the proprietary rights of the parties in the
6 books and records.

7 (b) The commissioner shall have access to the books and records for the purpose of examination,
8 audit, and inspection. Any information contained in the books and records, including, but not limited to,
9 the identity and addresses of policyholders and certificate holders, shall be confidential, except the
10 commissioner may use the information in any proceedings instituted against the administrator.

11 (c) The commissioner may, after notice and hearing, promulgate reasonable rules and regulations
12 specifying the manner and type of records to be maintained by administrators.

13 (d) Every administrator shall keep and maintain the books and records required by this section
14 and the regulations promulgated pursuant to this section. Failure to keep or maintain the books and
15 records as required shall be grounds for the suspension or revocation of the certificate of registration of
16 the administrator. The proceeding shall be conducted in accordance with Chapter 5 (commencing with
17 Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

Existing Law: Insurance Code section 1759.3 provides that insurance brokers and agents are required to keep records of transactions between insurers and insured persons for five years.

This Resolution: This resolution would lengthen the applicable time for an insurance broker or agent to retain its insurance records from five years to ten years to accommodate the statute of limitations in construction defect litigation.

The Problem: Litigation concerning construction defects has a ten-year statute of limitations for latent defects against the original builder. Oftentimes homeowners will bring suit against the original builder at or close to the ten-year time limit. Establishing the identity of insurers, as well as the additional insured obligations of insurers, can be difficult when records have been destroyed. All parties to the litigation benefit when adequate insurance coverage exists for potentially covered claims. This resolution would increase the time that insurance brokers and agents are required to keep records from five years to ten years to preserve this important information.

IMPACT STATEMENT:

This proposed resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: W. Stuart Home, III, Jacobsen & McElroy, 3600 American River Drive, Suite 160 Sacramento, California, 95864. (916) 971-4100; shome@jacobsenmcelroy.com

RESPONSIBLE FLOOR DELEGATE: W. Stuart Home, III

COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

The extension of the requirement for maintaining all insurance records relating to health or life insurance from five (5) to ten (10) years simply to ensure that records be available in a relatively few cases involving construction defects would create a significant administrative burden upon insurance brokers and agents. This burden is disproportionate to the problem.