

EXECUTIVE SUMMARY
25 Pa. Code Chapter 401
Mine Subsidence Fund

The proposed amendments to 25 Pa. Code Chapter 401 will modify the regulations concerning the administration of the Coal and Clay Mine Subsidence Insurance (MSI) Fund (Fund). The Coal and Clay Mine Subsidence Insurance Board (Board) is authorized by Section 19 of the Act of August 23, 1961 (P.L. 1068, No. 484), as amended, (52 P.S. §§ 3201-3225) (Act) to promulgate regulations for the administration of the Fund. There are no companion federal regulations. The proposed amendments will:

- Codify the Board's practices concerning the submission of MSI policy applications by insurance producers.
- Revise some definitions in § 401.1 to ensure consistency with the MSI insuring agreement. In particular the definition for "structure" is amended to expressly include appurtenances. This clarification ensures consistency between the regulations and the Board's 2006 amendment to the MSI insuring agreement to cover subsidence damage to certain appurtenances.
- Codify how MSI policies are to be issued to cover structures containing multiple units and structures owned as a condominium or a cooperative. There has been significant confusion regarding the issuance of MSI policies covering multiple unit structures and structures owned as condominium or a cooperative.
- Revise the provisions concerning the loss deductible to be consistent with the Board's practice of waiving the loss deductible when the amount of damages to a structure exceeds the amount of coverage under the MSI policy.
- Codify the recently adopted policy permitting the issuance of MSI policies for previously damaged structures. This ensures consistent implementation of the Board's commitment to provide MSI policies as broadly as possible.
- Authorize the Board to make loans and grants that fund projects that foster the development of new technologies that will assist the Board in determining areas that are at risk from mine subsidence and to assist in the investigation of claims. Grants and loans, rather than service purchase contracts, are the appropriate mechanism for funding these projects because the Board is not acquiring an ownership interest in this new technology or service.
- Simplify and expand the criteria for covering multiple purpose structures at the residential rate.
- Reduce the amount of time insurance producers (individuals and businesses licensed to sell insurance in Pennsylvania) must wait to receive reimbursement from the state through a proposed amendment which will allow insurance producers to retain a portion of their premiums to cover commissions in lieu of invoicing the Board. The existing process requires the Commonwealth to pay for the commissions through the State Treasury.

There are currently more than 57,000 structures insured, 100,000 policyholders, 1,500 insurance producers authorized to accept MSI applications for the Board and approximately one million structures at risk for subsidence damage. MSI applicants, policy holders and insurance producers will all benefit from the certainty of consistent treatment due to the codification of the Board's practices and procedures. Certain structures previously covered under nonresidential

rates will be eligible to be insured under lower cost residential rates. These are structures that are no more than 50% residential in use and that contain more than four units. The residential rate is approximately 1/3 of the nonresidential rate.

The insurance producers will benefit from improved cash flow because commissions will be paid by retaining a portion of the premium payment rather than invoicing the Board, eliminating the current 3 month delay in receiving payment. This new method of payment will also save the Fund, Controller's office and the Treasurer's office significant processing costs. In addition, learning institutions and other entities developing technologies and services potentially valuable to the Board will benefit from the availability of grants or loans to foster those developments.

The effectiveness of the proposed amendments will be measured by increases in the number of subscriptions, premium income, and to the underwritten value of coverage. Other measures of effectiveness will be the savings in time and expense to the operations of the Fund and increased customer satisfaction.

No advisory boards or committees are involved in the administration of the MSI Fund. However, the Department received public input on the proposed regulatory changes. The Department, for example, has historically received complaints from owners of structures partially used for residential purposes about the unnecessary restrictions the regulations impose against insuring such structures at the lower residential rates. In addition, the Department consulted insurance producers via a survey concerning the proposed changes in commission compensation procedures. Those responding to the survey overwhelmingly support the Department's amendments, which will enhance efficiencies.

A thirty-day (30) public comment period is recommended. Due to the extensive communications that have already taken place with the Fund's stakeholders, including policyholders and insurance producers, public meetings are not recommended. The Small Business Ombudsman's Office was contacted about the proposed rulemaking as many of the insurance producers are associated with small businesses.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART III. COAL AND CLAY MINE SUBSIDENCE INSURANCE BOARD

CHAPTER 401. MINE SUBSIDENCE FUND

GENERAL PROVISIONS

§ 401.1. Definitions.

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Association - The unit owners' association organized under the Real Estate Condominium Act, 68 Pa.C.S. §3301 (relating to organization of unit owners' association) or the proprietary lessees' association organized under the Real Estate Cooperative Act, 68 Pa.C.S. §4301 (relating to organization of association).

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Commissions - Fees paid to insurance producers as compensation for the applications they submit to the Board.

Common Elements - All portions of a Condominium or Cooperative other than the units.

Condominium - Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners. Ownership of the real estate is in accordance with the requirements of the Real Estate Condominium Act, 68 Pa.C.S. §§ 3101 – 3414.

Cooperative - Real estate owned by an association, each of whose members is entitled, by virtue of his ownership interest in the association, to exclusive possession of a unit. Ownership of the real estate is in accordance with the Real Estate Cooperative Act, 68 Pa.C.S. §§ 4101 – 5100.

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Insurance Producer - A person that sells, solicits or negotiates contracts of insurance.

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Mine subsidence - The movement of the ground's surface as a result of the [partial or complete cave-in or the] collapse of underground coal or clay mine workings.

Structure - A complete building, [that] **which** contains a roof, walls and a foundation [which] **that** firmly attaches the structure to the earth, **and its appurtenances as defined in the insurance policy.**

Units - Specific areas of a building that are separate and distinct from other areas of the building, having an individual entrance accessing either a common entry or the building's exterior. For the purposes of the definition of "common elements" and § 401.11(b)(2) a:

(1) Units in a condominium are portions of the condominium designated for separate ownership, the boundaries of which are described in the condominium declaration.

(2) Units in a cooperative are physical portions of the cooperative designated for separate occupancy under a proprietary lease.

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§ 401.11. Eligibility for insurance.

(a) [To be eligible for a mine subsidence insurance policy, the insured shall be the owner of a structure within the anthracite or bituminous coal or clay mine regions, the territorial extent of which will be designated by the Board. The Board may add to, subtract from or change the territorial classifications.] **Structures located within the coal and clay regions of Pennsylvania are eligible for coverage.**

(b) Only [a title] **an** owner of a structure may be named as the [insured in an insurance policy and an insurance policy will not be issued to another person] **policyholder.**

(1) If there [are several owners of one structure,] is more than one owner of a structure, [they] the owners shall designate one owner whose name shall appear on the insurance policy. The other [owners] policyholders shall be listed in the application for insurance.

(2) If the structure is owned as a condominium or cooperative:

(i) The Association is the policyholder if the policy covers all common elements and units.

(ii) The Unit owner shall be the policyholder if the policy only covers the unit and there is a separate policy covering the common elements.

(iii) A unit owner may purchase coverage for their unit and common elements if the Association will not purchase insurance, however, the Unit Association shall be the named policyholder with the unit owner being listed in the application. Renewals will be sent to the unit owner.

(c) [An individual, corporation or group of individuals holding title to more than one structure within the anthracite or bituminous coal or clay mine regions may insure these structures.] Structures which are at least 50% residential [and have at most four residential units] are eligible for residential rates. [Other structures shall be insured at commercial rates.]

(d) [A double home shall be considered one structure if both sides of the home are owned by the same person.]

(e) The Board, or its agents, may refuse to issue an insurance policy for] **If a structure [previously] is damaged by mine subsidence or by another cause, [if this] and the Board determines that the damage could not be separated or apportioned from subsequent damage, [until the previous damage has been repaired to the satisfaction of the Board, or its agents.] the Board will issue a policy if the applicant either:**

(1) First repairs the damages to the Board's satisfaction.

(2) Submits to the Board an estimate, prepared by a reputable expert, of the cost to repair the damages to the Board's satisfaction. The cost to repair, adjusted for inflation, would be excluded from any damage claim settlement. However, a policy would not be issued if the cost to repair exceeded the replacement cost of the structure or the policy limit, which ever is less, because the policy would have no value.

(e) The Board may refuse to issue a policy while the structure to be covered is being damaged by mine subsidence or by another cause, until the Fund determines that the cause of damage has ceased.

(f) Multiple unit structures are insured as follows:

(1) Structures comprised of vertically stacked units are only insurable under a single policy.

(2) Other unit configurations are insurable under a single or multiple policy at the owner's discretion.

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§ 401.13. Coverage limits and premiums for insurance.

(a) The maximum amount of insurance [for a single covered structure], the term or duration of the policy, and the premium rate shall be determined by the Board.

(b) An insurance policy is effective upon the date a complete application **and its premium** is received by the Board or its agent [provided the premium associated with that Application is received by the Board or its agent within the next 80 days] and provided that the applicant and structure meet the eligibility requirements in the act and in § 401.11 (relating to eligibility for insurance).

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§ 401.22. Loss deductible amount.

Every insurance policy shall include a loss deductible amount for which the Fund is not liable. The amount will be determined by the Board and may be changed as experience may warrant, and will be included in the schedule of premium rates adopted by the Board. [The Fund will be liable for only a specified percentage of a loss in excess of the deductible amount as will be adopted in the schedule of premium rates.] **The loss deductible will be waived if the cost to repair the damage exceeds the amount of coverage under the policy.**

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INSURANCE PRODUCERS

§ 401.41. Submission of applications.

Insurance producers may only submit applications for mine subsidence insurance to the Board electronically from the Board's web site.

§ 401.42. Commission rates.

The board will annually establish commission rates.

§ 401.43. Payment of commissions.

The insurance producer shall retain the commission from the premium collected. The Board may authorize other forms of payment.

§ 401.44. Repayment of commissions.

Commissions in excess of five dollars (\$5.00) that are unearned due to the Board's rejection of an MSI application or the cancellation of a policy shall be repaid to the Board upon its demand. Failure by an insurance producer to promptly repay commissions as directed by the Board may result in their exclusion from participation with the Fund.

§ 401.45. Confidentiality of policyholder information.

Insurance producers are responsible to safeguard all applicant and policyholder information and are responsible for the misuse of information that is under their control. Failure by an insurance producer to safeguard applicant and policyholder information may result in their exclusion from participation with the Fund.

LOANS AND GRANTS

§ 401.51. Loans and grants.

Each year the Board may authorize up to 1% of the Fund's Unreserved Fund Balance, as declared by the Board under section 10(c) of the Act (52 P.S. §3210(c)), to be used to provide loans and grants to entities that develop technologies, perform services or engage in other activities that benefit the Fund by improving its ability to provide mine subsidence insurance coverage or to improve the efficiency, economy and effectiveness of the Fund's operations.