

MARKET BULLETIN

From	Director, Worldwide Markets (extn 6677)
Date	19 April 2006
Reference	Y3792
Subject	Louisiana: property insurance Issues
Subject areas	Personal and commercial insurance contracts covering property in Louisiana
Attachments	Appendix 1 Provisions applying to insurance contracts with Hurricane Katrina and Hurricane Rita claims Appendix 2 New laws applying to the conduct of property insurance in Louisiana
Action points	Managing agents and Lloyd's brokers to note the legislative and regulatory provisions in force in Louisiana
Deadlines	The provisions come into force at dates as detailed. Some provisions are already in force

Purpose of bulletin

Since Hurricanes Katrina and Rita hit Louisiana in 2005, the Louisiana legislature and Insurance Commissioner have enacted a number of provisions affecting the conduct of property insurance in Louisiana. This bulletin is intended to summarise those requirements that are currently in force, and to draw attention to some requirements recently enacted.

States of Emergency

States of Emergency imposed after Hurricanes Katrina and Rita remain in force. Proclamations 18 and 19 KBB 2006, issued on 24 March, 2006, extended these States of Emergency until Sunday 23, April, 2006.

Provisions applying to insurance contracts giving rise to Hurricane Katrina and Hurricane Rita claims

Insurance contracts covering property in Louisiana, under which claims are made for damage arising from Hurricanes Katrina and Rita, must take account of the following requirements.

- A mandatory mediation program (Emergency Rule 22).
- Suspension of rights to cancel or non-renew a contract (Emergency Rule 23).
- Prohibition of the imposition of a 6-month deadline on insureds to make repairs to insured property. All insureds have at least one year from the date of the claim within which to recover the replacement costs for damages covered by the policy (Directive 195).
- A direction to ignore unfavourable entries in an individual's credit record, beginning with entries posted on 26 August 2005, when the entries are related to Hurricanes Katrina and Rita (Directive 196).

A summary of these requirements is set out in appendix 1.

New laws applying to the conduct of property insurance in Louisiana

Lloyd's underwriters insuring property in Louisiana should take account of the following legal requirements, enacted by the Louisiana legislature recently. Each requirement applies to all insurance contracts included in its scope, not just those with claims arising from Hurricanes Katrina and Rita.

- Detailed provisions concerning the settlement of claims involving immovable property (Act No. 12 of 2006).
- Restrictions on insurers' ability to impose time limits on the submission by insureds of proof of loss in the event of catastrophic events (Act No. 23 of 2006).
- A requirement for a commercial fire policy to contain advice, in specified format, on the front of the coverage document provided, including a statement of whether or not the insured has coverage for flooding or mould (Act No. 42 of 2006).
- A requirement for a homeowners' policy to contain specified disclosures (Act No. 42 of 2006).

Appendix 2 gives further details of these laws. They are quite detailed and although a summary is provided, we would urge managing agents doing business in Louisiana to study their original texts. It should be taken into account that the laws will apply to Louisiana insurance risks whatever the route by which they reach underwriters.

These laws do not make any reference to their applicability to surplus lines insurance, but neither is surplus lines insurance explicitly excluded. The Louisiana Department of Insurance has not provided formal guidance on this point. Nevertheless, we understand that their general approach is that requirements apply to surplus lines unless specifically excluded. Our local regulatory counsel is seeking to confirm this with the Department

Further information

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This market bulletin has been sent to active underwriters and to the compliance officers of managing agents and Lloyd's brokers.

Julian James
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Provisions applying to insurance contracts with Hurricane Katrina and Hurricane Rita claims

Mandatory mediation program

Contained in: Emergency Rule 22.

Applies to: Personal lines claims resulting from damage to residential property in the state of Louisiana caused by Hurricanes Katrina and Rita. It does not apply to commercial insurance, private motor insurance or liability coverage contained in property insurance policies.

Effective from: 22 December, 2005

Terminates: No date given.

Summary: establishes a special mediation program for private residential claims arising out of Hurricanes Katrina and Rita. It creates procedures for notice of the right of mediation, the conduct of a mediation and other issues relating to a mediation.

Further details available from: [Lloyd's Market Bulletin Y3732.pdf](#)

Suspension of rights to cancel or non-renew a contract

Contained in: Emergency Rule 23.

Applies to: Any personal or commercial residential or commercial property insurance contract covering residential or commercial property located in Louisiana that sustained damage as a result of Hurricanes Katrina or Rita or their aftermaths.

Contracts to which this Rule applies include open market policies and contracts made under binding authorities. It applies to all insurance contracts covering property in Louisiana that was damaged by Hurricanes Katrina or Rita, including multi-state placements.

Effective from: 30 December, 2005. New policies issued after 1 January, 2006 are not affected by this Rule.

Terminates: on the earlier of:

- 60 days after the substantial completion of the repair or reconstruction of the damaged property; or
- 31 December, 2006.

Summary: The right of any insurer (including surplus lines insurers) to cancel or nonrenew a personal or commercial residential or commercial property contract covering property in Louisiana damaged by Hurricanes Katrina or Rita is suspended. It is prohibited until 60 days after the substantial completion of the repair or reconstruction of the property, except for the specific exceptions set out in the rule.

Further details available from: [Lloyd's Market Bulletin Y3721.pdf](#)

Prohibition of the imposition of a 6-month deadline on insureds to make repairs to insured property

Contained in: Directive 195.

Applies to: Insurance contracts covering property in Louisiana damaged by Hurricanes Katrina and Rita.

Effective from: 27 February, 2006

Terminates: No date given.

Summary: Insurers are prohibited from imposing a 6 month time period within which insureds must make necessary repairs to insured property. All insureds have a period of at least one full year from the date of a claim for damages caused by Hurricanes Katrina or Rita within which to recover the replacement costs for damages covered by the policy.

Insurers are entitled to refrain from making payment to their insured for the replacement costs for damages until the insured has adequately verified that necessary repairs have been effected.

Further details available from: [Lloyd's Market Bulletin Y3766.pdf](#).

Direction to ignore unfavourable entries in an individual's credit record

Contained in: Directive 196.

Applies to: Property and casualty insurers, including surplus lines insurers, writing personal lines coverage in Louisiana. Although it only applies to personal lines insurance, insurers writing commercial lines are urged to abide by the Directive's spirit and intent.

Effective from: 1 March, 2006.

Terminates: No date given.

Summary: Directs insurers to ignore all unfavourable entries entered into an individual's credit record on or after 26 August 2005 related to Hurricanes Katrina and Rita.

Further details available from: [Lloyd's Market Bulletin Y3760.pdf](#).

Appendix 2

New laws applying to the conduct of property insurance in Louisiana

Although a summary of each law is provided here, we suggest that underwriters writing Louisiana insurance make themselves familiar with the actual laws, accessible via the links provided.

Act No.12 of 2006

[Louisiana Act No.12 can be accessed via this link.](#)

Applies to: Insurers providing homeowners' insurance and the insurance of immovable property.

Effective date: 2 February, 2006

The Act enacts two new sections in the Louisiana Insurance Code, 658.2 and 1220(B)(6). Section 658.2 provides that:

- Under a personal residential insurance policy, when determining whether a loss is covered, no insurer shall use:
 - the floodwater mark on a covered structure without considering other evidence;
 - the fact that a home is removed or displaced from its foundation without considering other evidence.
- If an insurance policy covers damage to immovable property:
 - the burden is on the insurer to establish an exclusion under the terms of the policy; and
 - any clause, condition, term or other provision contained in a policy of insurance which attempts to alter this burden on an insurer is null and void and of no effect.
- Any insurer determined to be in violation of these provisions shall be liable pursuant to R.S. 22:1220.

Section 1220(B)(6) provides that failure to pay claims pursuant to 658.2 is a breach of an insurer's duties.

Act No.23 of 2006

[Louisiana Act No. 23 can be accessed via this link.](#)

Applies to: Insurance losses in Louisiana arising from catastrophic events for which a state of disaster or emergency is declared.

Effective date: 18 April, 2006

The Act enacts a new section in the Louisiana Insurance Code, 682. This provides that, for losses arising due to a catastrophic event for which a state of disaster or emergency is declared, for those areas within the declaration:

- No damage to covered property shall be automatically denied by the inability of the policyholder to provide sufficient proof of loss within the time limits and requirements of the policy.
- The time limit for the submission of proof of loss shall not be less than 180 days. This will not commence as long as a declaration of emergency is in existence and civil authorities are denying the insured access to the property.
- A policyholder with replacement cost provisions is entitled to complete repairs to the property within one year from the date of the loss or the issue of applicable insurance proceeds, whichever is later. Adherence to this provision entitles a policyholder with a replacement cost provision to receive the full value of the covered damage, without a depreciation reduction.

These provisions are applicable to all new and renewal policies delivered in the state of Louisiana after Act No.23's effective date.

Act No.42 of 2006

[Louisiana Act No. 42 can be accessed via this link.](#)

Applies to: (i) commercial fire policies and (ii) homeowners' insurance policies.

Effective date: 18 April, 2006

The Act enacts and re-enacts three sections in the Louisiana Insurance Code, 667.1, 696 and 1477.

Sections 667.1 and 696 are similar. They state that no fire insurance policy covering commercial property shall be delivered in Louisiana unless the insurer advises the insured in writing of the coverage included in the policy for which the insured has paid premiums. It further states that:

- The advice must be prominently displayed on a form developed and promulgated by the Commissioner of Insurance as an insert in the front of the policy.
- The typed print of the disclosure shall be in bold and no less than a 14-point font.
- The insurer must disclose:

- Whether the insured has coverage for flooding or mould;
- Whether an increased deductible is required for hurricane, wind and/or named storm damage;
- That flood insurance is available through the National Flood Insurance Program and that excess flood insurance may be available by separate policy.

Section 1477 governs the issue of homeowners' insurance policies in Louisiana, providing coverage for damage to property in the state. No such policy shall be issued for delivery in Louisiana unless the insurer advises the insured in writing of the following disclosures:

- Which coverage is included in the policy for which the insured has paid premiums.
- Whether the insured has coverage for flooding or mould.
- Whether an increased deductible is required for hurricane, wind and/or named storm damage.
- That flood insurance is available through the National Flood Insurance Program and that excess flood insurance may be available by separate policy.
- A distinction between replacement costs for losses and actual cash value, the use of depreciation in determining payment for losses and that the policy may contain time limitations for repairs to be completed to receive full replacement cost for the losses.
- That the policy determines the process for providing the insurer with a notification of loss and the time line provided by law of when a claim must be adjusted, settled, and paid, including an explanation of the possible penalties imposed on an insurer for failing to conform to the time requirements.

These disclosures must be prominently displayed on a form developed and promulgated by the commissioner of insurance, in bold type of not less than a 14-point font as an insert in the front of the policy.

Application of these laws to surplus lines insurance

None of these new laws are specifically worded to apply to surplus lines insurance, but neither is surplus lines insurance excluded. Advice received from the Louisiana Department of Insurance is that surplus lines insurers should assume that the laws apply to their business. They would apply to all types of relevant insurance contract, whether arranged on an open market basis or under a binding authority. Managing agents should therefore ensure that appropriate coverholders (including coverholders outside Louisiana involved in the transaction of Louisiana business) are aware of these requirements.