

**INSURANCE DIVISION[191]
Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 505.8, the Insurance Division hereby adopts amendments to Chapter 20, "Property and Casualty Insurance Rate and Form Filing Procedures," Iowa Administrative Code.

Chapter 20 establishes certain minimum standards and guidelines of conduct for filing insurance rates and forms and for the implementation of the Iowa Fair Plan Act. The adopted amendments are promulgated to clarify what information an insurance company regulated by the Division may provide its customer in connection with a commercial real estate transaction between the customer and a lender.

This adopted rule making is a result of approximately two years of discussion conducted by the Division with interested parties, plus additional discussion between concerned legislators and interested parties, and other meetings among interested parties. Most of the interested parties agreed to a compromise version of the rules, and that is the version of the rules being adopted. The purpose of the rules, which is clarification of what information an insurance company may provide its customer in connection with a commercial real estate transaction between the customer and a lender, is achieved.

These amendments were published under Notice of Intended Action in the April 4, 2012, Iowa Administrative Bulletin as **ARC 0070C**.

Interested persons were able to make written suggestions or comments on the amendments on or before April 24, 2012. Some written and verbal comments were made. Also, there was a public hearing on April 24, 2012, at 10 a.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa. James R. Mumford, First Deputy Commissioner, acted as hearing officer. A court reporter was present for the hearing and entered as exhibits for the hearing all written comments received and recorded all testimony presented at the hearing.

There was concern expressed that additional definitions were needed in the rule, such as for "nonrecourse lending," "commercial transactions," etc. The Division determined that additional definitions are not needed because the terms have general meaning in the business world and have no different meaning in the rule. No changes to the amendments proposed in the Notice of Intended Action were made.

The concern was expressed about whether there was flexibility once the 20-day trigger had started for the insured and insurer to agree to something other than requested. The Division determined that, since this is a business transaction, it is assumed that both parties will want to reach an agreement about insurance coverage. Thus, if the insurer does not want to agree to the request of the potential insured, the insurer has the option to negotiate further with the potential insured or may deny coverage. The term "insured" should be read in the context of the sentence in which it is being used and technically may not be an insured but a potential insured. No changes to the amendments proposed in the Notice of Intended Action were made.

A request for a sunset provision was made, but the Division has determined that, since the Division has the authority to amend rules when needed, the Division will review these rules for possible changes should unintended consequences of the rules develop. No changes to the amendments proposed in the Notice of Intended Action were made.

The Division intends to review any Commissioner's bulletins relating to this subject for possible rescission or clarification.

The Division finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments, 35 days after publication, should be waived and these amendments should be made effective on May 9, 2012, because these amendments confer a benefit on the public in that they clarify what information an insurance company may provide its customer in connection with a commercial real estate transaction between the customer and a lender. There has been confusion over this issue for more than two years. The interested parties have worked hard to come to a compromise. That compromise is the content of these amendments. A public hearing was held, and no need was found to vary from the

compromise. An immediate effective date provides the public with the clarification that has been needed for so long.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 505.

These amendments became effective May 9, 2012.

The following amendments are adopted.

ITEM 1. Amend **191—Chapter 20**, title, as follows:

~~PROPERTY AND CASUALTY INSURANCE RATE AND FORM FILING PROCEDURES~~

ITEM 2. Reserve rules **191—20.61** to **191—20.69**.

ITEM 3. Amend **191—Chapter 20** by adopting the following new Division III:

DIVISION III
CERTIFICATES OF INSURANCE FOR COMMERCIAL LENDING TRANSACTIONS

191—20.70(515) Purpose. The purpose of division III is to clarify what information an insurance company regulated by the division may provide its customer in connection with a commercial real estate transaction between the customer and a lender.

191—20.71(515) Definitions. For purposes of division III, the following definitions shall apply:

“*ACORD*” means the Association for Cooperative Operations Research and Development.

“*Commercial real estate transaction*” means a non-recourse commercial lending transaction in which the underlying property serves as the primary collateral securing the borrower’s repayment of the loan and neither the borrower nor any of its members, partners, or shareholders, nor any related person to any of the aforementioned persons, bears the economic risk of loss in the event of a payment default under the terms of the lending transaction.

“*Division*” means the insurance division.

“*ISO*” means the insurance services office.

191—20.72(515) Evidence of insurance.

20.72(1) Prior to the issuance of an insurance policy by an insurer, an insured who has entered into a commercial real estate transaction may request that the relevant insurer or a producer acting on behalf of the insurer provide the following items as evidence of insurance:

a. An ACORD Form 75, a successor ACORD form, an ISO binder form, or a substantially similar binder form approved by the division; and

b. An ACORD Form 28, a successor ACORD form, an ISO certificate form, or a substantially similar certificate of insurance form approved by the division.

The insurer or the producer acting on behalf of an insurer has the sole discretion to determine which division-approved binder form or certificate of insurance form the insurer or producer uses to comply with this rule.

20.72(2) An insurer or a producer acting on behalf of an insurer shall comply with a request made pursuant to this rule within 20 business days of the receipt of the request. The requirements of this rule shall not apply to an insurance producer who:

a. Is unauthorized to provide the documents described in this rule; and

b. Informs the insured of this fact within 20 business days of the receipt of the request.

20.72(3) Delivery of a binder along with a certificate of insurance requested pursuant to this rule may be accomplished by regular mail, overnight delivery, facsimile, physical delivery, electronic means, or other appropriate means.

20.72(4) Notwithstanding any language on a form provided pursuant to subrule 20.72(1) which language states that the form is for “information only,” a binder together with a certificate of insurance delivered pursuant to this rule shall be valid and may be relied upon by the borrower or by the borrower’s lender as evidence of insurance, including in any private civil action or administrative proceeding, until

the delivery of the insurance policy to the borrower or the cancellation of the binder pursuant to Iowa Code sections 515.125 to 515.127.

20.72(5) An insurer or producer acting on behalf of an insurer that produces or delivers a binder and certificate of insurance to its customer pursuant to this rule may charge a reasonable fee for the production and delivery of the documents.

20.72(6) All insurers and all producers subject to this rule shall comply with the terms hereof within 90 days from May 9, 2012.

These rules are intended to implement 2011 Iowa Code Supplement chapter 515.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/30/12.