

CHAPTER 203

FIRE INSURANCE

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203.01 Standard fire policy. (1) The commissioner of insurance shall keep on file printed forms in blank of the standard policy of fire insurance, containing the provisions, agreements and conditions specified in the annexed policy. The annexed policy form is declared to be and shall be known as the "Standard Policy".

(2) The position of the number of the policy may be modified by the insurer to suit its convenience. It shall be optional for the insurer to insert the words "renewal of number" followed by a blank line on which an appropriate number may be placed. In lieu of the signatures on such policy by the president and secretary of an insurer having no such officer or officers in this country, the same may be executed by such other officer or officers as have authority so to do.

An action to collect on a policy which did not cover a loss, on the ground of negligence or breach of warranty is based on reformation of the policy and must be brought within one year of the loss as stated in the policy. *Skrupy v. Hartford Fire Ins Co* 55 W (2d) 636, 201 NW (2d) 49

203.02 Fire policies, other conditions. (1) If the policy be made by a company having special regulations lawfully applicable to its organization, membership or policies, such regulations shall apply to and form a part of the policy if the same are written or printed upon or appended to the policy.

(2) Every mutual fire insurance company shall contain in its name, which shall be upon the first page in every policy, the word mutual, and every stock corporation shall, upon the face of its policies, express that it is a stock corporation. If necessary any company may also express its manner of operating in this state, and any company organized under special charter may so indicate and may state on filing side and front page whether the policy is nonassessable.

203.04 Insurance appraisals. (1) Whenever an appraisal is demanded and an appraiser

appointed under the standard fire insurance policy, the other party shall designate an appraiser within 20 days after receipt of notice of such demand and appointment. If no appraiser is appointed by such other party, the party demanding the appraisal may make application for the appointment of an umpire, in the manner provided in subsection (2). Such umpire together with the appraiser named by the one party shall thereupon act as a board of appraisers and their award shall be as binding as though both parties had chosen appraisers.

(2) Application for the selection of an umpire pursuant to the provisions relating to appraisals shall be made to a judge of a court of record in the state in which the property insured was located at the time of the fire, on 5 days' notice in writing, to be given by either party to the other. Such notice when served by the insured must be served in the manner prescribed in s. 262.06 for the service of a summons; and the judge shall, on proof by affidavit of the failure or neglect of said appraisers to select an umpire within the time provided in said policy, and of the service of notice aforesaid, forthwith appoint a competent and disinterested person to act as umpire in the ascertainment of the amount of said loss or damage.

203.06 Standard policy compulsory; permissible variations. (1) No person or company, except town mutual insurance companies, shall issue, use or deliver for use any fire insurance policy on property in this state, unless it shall conform as to all provisions, agreements and conditions of the standard policy as annexed to s. 203.01. Appropriate forms of other contracts or endorsements, whereby the interest in the property described in such policy shall be insured against one or more of the perils which one or more of the insurers issuing the policy is empowered to assume, may be used in connection with the standard policy. Such forms of

other contracts or endorsements attached or printed thereon may contain provisions and stipulations inconsistent with the standard policy, provided that the fire and lightning portions thereof shall be in accord substantially with such standard policy. Subject to the approval of the commissioner, the provisions of the standard policy may be so arranged in the policy as to provide for convenience in its preparation and issuance, provided that the insuring provisions and contract conditions of the standard policy shall not be altered or amended in any manner. Blank spaces may be changed or altered, spaces may be provided for the listing of rates and premiums for coverages insured under the policy or by riders or endorsements attached to or printed thereon and spaces may be utilized for reference to forms and for listing the amount of insurance, provisions as to coinsurance, provisions as to mortgage clause, descriptions and locations of the insured property and other matters advisable and necessary to indicate a delineation of the insurance effective under the contract, and other data as may be included for duplication on daily reports for office records. The name of the company, its location or place of business, the date of its incorporation or organization and the state or country under which the same is organized, or the location of its United States office, the states wherein such policy is in use, the amount of paid-up capital, type of company or insurer, or the manner in which it operates in this state, and the name of its officers may, at the option of the company, be printed on the policies. Subject to the approval of the commissioner there may be placed on the policy an emblem, picture or medallion commonly used by such company and there may also be printed upon the standard policy the words Standard Fire Insurance Policy for Wisconsin and there may be inserted before and after the word Wisconsin a designation of any state in which such form of policy is standard.

(2) (a) There may be inserted in the space indicated therefor or added to the policy by agreement in writing thereon or by indorsement thereto, the following:

1. Descriptions and specifications by schedule or otherwise of the property covered by the policy.

2. Any matter stating the extent of the application of the insurance under the policy.

3. Any matter stating the extent of the contribution to be made under the policy in case of loss or damage.

4. Any matter necessary to express all the facts and conditions relating to insurance on any particular risk.

5. In case of a mortgage or other person holding an interest in property by way of security, who is not named in the policy as an assured, a rider or indorsement, relating to the interest of such mortgagee or other person may be added to such policy. Provided, however, if the insurance covers real property, any loss not exceeding \$100 shall be paid solely to the assured mortgagor.

(b) Every agreement or indorsement shall be plainly printed and in a type not smaller than 8-point and the facts or conditions of such agreement or indorsement shall not defeat or diminish the rights of the insured under the provisions of the standard fire insurance policy.

(d) Riders and endorsements may be added to the standard fire insurance policy insuring property, whereby the insurer agrees to reimburse and indemnify the insured for the difference between the actual value of the insured property at the time any loss or damage occurs and the amount that would be required to repair, rebuild or replace with new materials of like size, kind and quality, but not to exceed the amount of insurance covering such property as has been damaged or destroyed by fire or other perils insured against. The attachment of such riders and endorsements to the standard fire insurance policy with respect to dwelling risks shall in no event result in the payment of a lesser amount than would otherwise have been paid had such riders and endorsements not been attached.

(3) A company may, with the approval of the commissioner, if the same is not already included in the standard form, print on its policies any provision, which it is required by law to insert therein, if such provision be not in conflict with the laws of this state or of the United States, or of the provisions of the standard fire insurance policy, but any such provision shall be printed apart from the other provisions of the policy, and in type not smaller than 8 point, and under this title: "Provisions required by law to be stated in this policy," and be a part of said policy.

(4) The name, with the word "agent" and place of business of any insurance agent may be indorsed on the policy.

(5) Where companies issue a joint policy there may be expressed in the heading of such policy the fact of the severalty of the contract; the proportion of premium to be paid to each company; the proportion of liability which each company agrees to assume; and in the printed conditions of such policy the necessary change may be made from the singular to the plural number, when reference is had to the companies issuing such policy.

(6) The standard policy shall not be mandatory for motor vehicle insurance or for

marine, or for inland marine insurance or for insurance on growing crops, or for livestock insurance or for nuclear facilities.

(7) Subject to the approval of the commissioner, the insuring clause in the standard policy may be modified to include perils in addition to fire and lightning when such perils are included under the policy conditions.

(8) Insurers issuing the standard policy pursuant to this section are authorized to affix thereto or include therein a written statement that the policy does not cover loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination, all whether directly or indirectly resulting from an insured peril under said policy; provided, however, that nothing herein contained shall be construed to prohibit the attachment to any such policy of an endorsement or endorsements specifically assuming coverage for loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination.

203.07 Contract deemed made within state. (1) All insurance against loss or damage to property or in the use of or income from property in this state shall be held to be made within this state.

203.08 Company bound by illegally issued contract. Any policy issued and delivered in violation of ss. 203.01 to 203.07 shall be binding upon the company.

203.09 Board of underwriters; fire patrol. (1) INCORPORATION. Three or more fire insurance agents or companies in any city may incorporate as a board of underwriters in such city under the provisions of ch. 180 or 181.

(2) FIRE PATROL; DUTIES. The board may establish a fire patrol in such city, and may appoint and remove at pleasure a superintendent and such number of patrols as it shall deem proper and provide suitable accommodations and apparatus for such patrol, and make needful regulations for the government and direction thereof; the duty of such patrol shall be to discover and prevent fires and to save life and property at and after fires, and for that purpose such superintendent and patrol may enter any building on fire or which may be in danger of taking fire, subject to the control of the chief of the city fire department, and to remove property therefrom at or immediately after a fire and to guard and protect the same.

(3) ANNUAL MEETING, BUSINESS. The board shall meet in January in each year; prior notice of such meeting, specifying the time and place, shall be published as a class 1 notice, under ch. 985, at least 10 days prior thereto; at such

meeting each insurance company or agent doing a fire insurance business in such city and who has become a member of such corporation shall have the right to be present and each company shall be entitled to one vote. Membership in any such corporation or board shall be optional. Such meeting may determine whether a fire patrol shall be established, or continued if established, and fix the maximum expenses which shall be incurred therefor during the ensuing year; but not exceeding 2% of the premiums for fire insurance received in such city during such year.

(4) EXPENSES OF FIRE PATROL. On the first day of each February each insurance company or agent doing fire insurance business in such city who has become a member of such corporation or board shall furnish said board a sworn statement of the amount of premiums received for insuring property in such city during the preceding calendar year. The board shall assess the amount fixed for said expenses for the current year upon the several member companies or agents, in proportion to the amount of the premiums received by each, and such assessments may be recovered by such board. If statements shall not be made as above required, the board shall serve a written demand therefor on the delinquent member company or agent personally or by leaving the same during business hours at its or his office with the person in charge thereof; and every such member company or agent who shall wilfully make a false statement, or who shall, for fifteen days after such demand, neglect to render such statement, shall forfeit fifty dollars and an additional fifty dollars for each day's neglect after the expiration of said fifteen days, one-half to the use of said board, when it shall prosecute therefor.

203.11 Effect of other policies on same risk. Whether or not a condition is included in any fire insurance policy issued in this state that unless provided by agreement in writing added thereto the insuring company shall not be liable for loss or damage occurring while the insured shall have any other contract of insurance, whether valid or not, on property covered in whole or in part by such policy, such other or additional insurance, whether with or without knowledge or permission of the insuring company, shall nevertheless not operate to relieve the insuring company from liability for loss or damage occurring while the insured shall have such other contract of insurance, whether valid or not. Subject to all other terms and conditions of its policy, each insuring company shall be liable for its proportionate share of any such loss or damage, but in no event shall the insured be entitled to recover from any or all of such

insuring companies a sum greater than his actual loss or damage.

203.13 Notice to agent, notice to company; beneficiary misnamed, immaterial when. (1) Knowledge of an agent of a fire, casualty or marine insurance company at the time a policy is issued or an application made shall be knowledge of the company, and any fact which breaches a condition of the policy and is known to the agent when the policy is issued or the application made shall not void the policy or defeat a recovery thereon in the event of loss.

(2) Error or mistake in designating the person to whom the insurance is payable in a policy of fire insurance shall not void the policy notwithstanding its terms, unless it shall be found as a fact that such error or mistake was due to fraud, misrepresentation or concealment on the part of the owner of the property, or the person representing him, in procuring the issue of the policy, or that the company would not have issued or continued the policy if it had known the facts.

(3) If an agent of any fire, casualty or marine insurer by any act, statement or representation, after a loss and made in reference to notice of loss, or care of property or proofs of loss in connection with such loss, although such act, statement or representation may not have been authorized by the company, shall cause or induce an assured to refrain from doing an act required to be done under the policy of insurance or to delay such act or do it in a manner different from that required by the policy, then such failure to act or delay or doing of such act in a manner different than that prescribed by the policy shall not be a defense to the company or other insurer notwithstanding any provision in the policy unless such failure to act or delay or the doing of such act in a manner different from that prescribed in the policy shall actually have substantially misled or prejudiced the insurer, or unless such act, statement or representation shall have been made in collusion with assured to deceive or defraud the insurer. Nothing herein contained shall in any case be construed to limit or restrict any existing rule of law as to the insurer being bound by the knowledge, statements, acts or representations of an agent but shall apply only to cases where the company would not, under the rules of law heretofore existing, be bound by the acts, statements or representations of the agent.

203.15 Licensed company not to reinsure unlicensed one; reinsurance by retiring company. (1) No fire insurance company shall reinsure or assume in any manner or form, the whole or any part of any risk or liability covering

property in this state, of any unlicensed insurance company.

(2) Any licensed fire insurance company or reinsurance company shall, on retiring from business before the expiration of its policies, file with the commissioner a written notice of such intention, together with a sworn statement of its outstanding liabilities or obligations under such policies, and shall reinsure such liabilities or obligations in a company authorized to do business in this state.

203.21 Total loss measured by amount written in policy. Whenever any policy insures real property and the property is wholly destroyed, without criminal fault on the part of the insured or his assigns, the amount of the policy shall be taken conclusively to be the value of the property when insured and the amount of loss when destroyed.

An unchallenged city determination that a building was more than 50% destroyed and could not be rebuilt established a total loss and required full payment even though the policy provided for a reduced amount if the building was not repaired or replaced. 66 05 (1) (c), Stats 1967, does not bar this result *Gambrell v. Campbellspport Mut Ins. Co.* 47 W (2d) 483, 177 NW (2d) 313.

203.22 Coinsurance clauses. Except as otherwise provided by law, no fire insurance company shall issue any policy in this state containing any provision limiting the amount to be paid in case of loss below the actual cash value of the property, if within the amount for which the premium is paid, unless, at the option of the insured, a reduced rate shall be given for the use of a coinsurance clause made a part of the policy. Any company may, by so providing in the policy, distribute the total insurance in the manner and upon as many items as specified therein, or limit the amount recoverable upon any single item, article or animal to an amount not exceeding the cost thereof, or to an amount specified in the policy.

203.24 Adjusters of insurance. (1) No person, except an agent holding a certificate of authority under s. 209.04, shall make any adjustment of a fire loss under an insurance policy covering hazards described in s. 201.04 (1), (2), (11), (12), (14) and (15), unless he holds a certificate under this section.

(2) A certificate of authority as a fire insurance adjuster, expiring January 31, following, may be issued by the commissioner to any person filing an application on a prescribed form and upon the payment of the fee required by s. 601.31 (15) (d).

(3) Such certificate shall be revoked by the commissioner, if after due investigation and hearing, he determines that the holder has violated the insurance law. No person whose

certificate is revoked shall be granted another certificate within one year thereafter, nor shall he, until again so authorized, act as employe or participate in the pay of any fire insurance adjuster.

(4) A person does not violate this section by making his first adjustment during a license year prior to obtaining such certificate; provided, that he shall, within two days after entering upon such adjustment, make application therefor, and shall in all other respects comply with this section.

(5) Upon the completion of each adjustment, a report thereof shall be made and signed by each adjuster participating therein and by the insured or someone authorized thereto by him, and shall be filed with the state fire marshal and a duplicate thereof shall be filed with the chief of the fire department, if any, provided that reports of adjustment under subsection (15) of section 201.04 need not be filed unless the adjustment involves a fire loss, and then only as to such fire loss.

(6) No fire loss for which a report is required under sub. (5) shall be paid unless the report of the adjustment signed by the adjuster shall show that the report required by this section has been filed.

(7) The deposit of such report in the mails, properly sealed, addressed and postpaid, shall be a sufficient filing.

(8) This section shall apply to all persons who act in the capacity specified in subsection (1) for any insurance company or insured and to all persons who act as advisors to or adjusters for the insured for compensation in case of loss by fire, excepting attorneys acting in the ordinary relation of attorney and client.

(9) No compensation which shall be based on the excess of recovery over a stipulated sum, or on a percentage upon the amount of recovery in excess of five per cent of the amount of such recovery, plus actual transportation charges and hotel bills, shall be paid for the services of any

fire insurance adjuster, and any contract for compensation in violation of this subsection shall be void.

(10) Subsection (1) shall not apply to adjusters for town mutual companies, nor to officers and employes of authorized insurers.

203.28 Fire companies, domestic; risks.

Any corporation organized under the laws of this state for the insurance of property against loss or damage by fire may also insure the interest of the insured in the same classes of property, real or personal, subject to the limitations prescribed by the law under which it was organized or is governed as to the amount of any single risk, against loss or damage:

(1) By lightning, hail, wind or rainstorm, earthquake, bombardment, invasion, insurrection, riot, civil war, military or usurped power;

(2) By breakage or leakage of sprinklers or sprinkler systems, pumps, waterpipes or plumbing;

(3) By explosions, whether fire ensues or not, including explosion of steam boilers, pipes, engines, motors and machinery connected therewith;

(4) By burglary or theft;

(5) By breakage of glass;

(6) By any other hazard which may lawfully be the subject of insurance except hazards which may be insured against under section 201.04 (7), (8) and (9); and

(7) May insure against loss or damage to live stock and may also insure automobiles and other vehicles including accessories and other property transported upon and used in connection therewith against loss by collision, burglary or theft and may also insure against loss by legal liability for damage to property resulting from the maintenance and use of automobiles or other vehicles and against any risk mentioned in section 201.04 (1), (2), (5) or (10) which the company may assume under its license.