## MINE SUBSIDENCE INSURANCE

A. EXPLANATION

The Illinois Mine Subsidence Act (article XXXVIII) requires that Mine Subsidence Insurance be available for any structure in Illinois on policies providing fire and extended coverage beginning October 1, 1979. The Act provides that insurance be provided unless waived in writing, but 68 counties have been exempted from this automatic coverage requirement.

1. The following counties are NOT EXEMPTED, and coverage must be provided unless waived in writing, up to a maximum limit of liability of $750,000 per structure. Bond, Bureau, Christian, Clinton, Douglas, Franklin, Fulton, Gallatin, Grundy, Jackson, Jefferson, Knox, LaSalle, Logan, McDonough, Macoupin, Madison, Marion, Marshall, Menard, Mercer, Montgomery, Peoria, Perry, Putnam, Randolph, Rock Island, St. Clair, Saline, Sangamon, Tazewell, Vermillion, Washington, and Williamson.
2. The coverage must be provided, if requested, in the remaining 68 counties.

B. MINE SUBSIDENCE COVERAGE

1. **Definition** – Mine Subsidence means loss caused by lateral or vertical movement, including any resulting collapse of structures from collapse of man-made underground mines including but not limited to coal, clay, limestone, and fluorspar mines. Mine Subsidence does **not** mean loss caused by earthquake, landslide, volcanic eruption, or collapse of storm or sewer drains and rapid transit tunnels.
2. **Property Covered** – For an additional premium, the structures are insured against direct loss caused by Mine Subsidence for any one occurrence of not more than the structure's amount of insurance or $350,000, whichever is less.

   Coverage applies to structures meaning any dwelling, building, farm building, or fixture permanently affixed to realty including:
   a. Cost of excavations, grading, or filing;
   b. Foundations of buildings, boilers, or engines which are below the undersurface of the lowest basement floor, or where there is no basement, below the surface of the ground;
   c. Underground pilings, piers, pipes, flues, and drains; and
   d. Pilings which are below the low water mark.
3. **Property Not Covered** – Coverage does not apply to personal property, land, lawn, plants, shrubs, trees, crops, and agricultural field drainage tile.
4. **Perils Not Insured Against** – This Coverage does not insure against loss caused by earthquake, landslide, volcanic eruption, collapse of storm or sewer drains and rapid transit tunnels or earth movement other than mine subsidence, soil conditions, soil erosion, soil freezing or thawing, improperly compacted soil, construction defects, and roots of trees or shrubs. The exclusion of loss caused by earth movement in this policy does not apply to mine subsidence.

5. **Deductible** – In case of loss by mine subsidence, the follow deductible applies separately to each structure:

    a. 2% of the limit of liability, but not less than $250 and not more than $500 shall be deductible from each loss.
    b. No other deductible in the policy applies to mine subsidence.

6. **Premiums** –See premium tables.
    a. Town Policies – Rate the Coverage A amount of insurance for each dwelling
    b. Farm Policies – Rate the four highest valued structures. All structures will be covered. Structures cannot be insured individually.

C. ELIGIBILITY

All dwellings, buildings, farm buildings, mobile home or fixtures permanently affixed to realty.

IMSIF ILLINOIS MINE SUBSIDENCE INSURANCE FUND

August 2014

# Important Notice to All Illinois Property Insurers

## Subject: Public Act 098-1007: Amendment to Illinois Statute

On May 23rd, 2014, the Illinois legislature passed SB3504, which amended Section 805.1(e) of the Illinois Mine Subsidence Statute (215 ILCS 5/XXXVIIIA). The amendment has been signed by the Governor, and its provisions will become effective on January 1st, 2015. A copy of Public Act 098-1007, as enacted, is attached to this Bulletin.

As amended by this Act, Section 805.1(e) provides that policies in non-exempt counties must continue to provide mine subsidence coverage unless waived in writing by the insured, and that insurers must continue to charge premium for that coverage. HOWEVER, the amendment also provides that if mine subsidence coverage is in force when mine subsidence damage first becomes reasonably observable, the insurer "shall notify" the insured who made the mine subsidence claim that continuation of mine subsidence coverage thereafter may not be necessary and is optional, but that mine subsidence coverage on the damaged residence or commercial building shall terminate only if the insured waives that coverage in writing. The notice from the insurer to the insured shall be given within 60 days after the insurer receives written confirmation from the Illinois Mine Subsidence Insurance Fund that the cause of loss is active mine subsidence. The notification must be in the form of a separate mailing to the insured from the insurer via the United States Postal Service and shall include notification to the insured that mine subsidence premiums paid for coverage on a damaged residence or commercial building subsequent to the established date of loss shall be refunded to the insured within 60 days after the insured provides a signed waiver of mine subsidence coverage to the insurer. The notification shall be accompanied by a waiver of coverage form for the insured to sign and return to the insurer.

The Fund believes it would be prudent for insurers to remind the insured that under the Statute, loss recovery is limited to the amount of insurance in force when damage first becomes reasonably observable. The limit of coverage cannot be increased by paying mine subsidence premium for successive years, while movement from mine subsidence is continuing. The Fund also believes that companies would be well advised to notify insureds that they may wish to consider whether or not to reinstate the mine subsidence coverage once the Fund notifies the company that mine subsidence movement has ceased, so that coverage will be in place in the event of a subsequent mine subsidence occurrence.

Questions concerning this Notice should be directed to Kathy Moran, Industry Relations Manager at (312)521-5161 or kamoran@imsif.com.

Illinois Mine Subsidence Insurance Fund
www.imsif.com

**Public Act 098-1007**

SB3504 Enrolled LRB098 18973 RPM 55582 b

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois, represented in the General Assembly:**

Section 5. The Illinois Insurance Code is amended by changing Section 805.1 as follows:

(215 ILCS 5/805.1)

Sec. 805.1. Mine Subsidence Coverage.

(a) Beginning January 1, 1994, every policy issued or renewed insuring a residence on a direct basis shall include, at a separately stated premium, residential coverage unless waived in writing by the insured. Beginning January 1, 1994, every policy issued or renewed insuring a commercial building on a direct basis shall include at a separately stated premium, commercial coverage unless waived in writing by the insured. Beginning January 1, 1994, every policy issued or renewed insuring a living unit on a direct basis shall include, at a separately stated premium, living unit coverage unless waived in writing by the insured.

(b) If the insured has previously waived mine subsidence coverage in writing, the insurer or agent need not offer mine subsidence coverage in any renewal or supplementary policy in connection with a policy previously issued to such insured by the same insurer, unless the insured subsequently makes a written request for mine subsidence coverage.

(c) The premium charged for residential, commercial or living unit coverage shall be the premium level set by the Fund. The loss covered shall be the loss in excess of the deductible or retention established by the Fund and contained in a mine subsidence endorsement to the policy. For all policies issued or renewed on or after January 1, 2008, the reinsured loss per residence, per commercial building, and per living unit shall be the amounts established by the Fund and approved by the Director. For all policies issued or renewed on or after January 1, 1996, the amount of reinsurance available from the Fund shall not be less than $200,000 per residence, $200,000 per commercial building, or $15,000 per living unit. The Fund may, from time to time, adjust the amount of reinsurance available as long as the minimum set by this Section is met.

(d) The residential coverage provided pursuant to this Article may also cover the additional living expenses reasonably and necessarily incurred by the owner of a residence who has been temporarily displaced as the direct result of damage to the residence caused by mine subsidence if the underlying policy also covers this type of loss, provided however, that the loss covered under living unit coverage shall be limited to losses to improvements and betterments, and reimbursement of additional living expenses and assessments made against the insured on account of mine subsidence loss.

(e) The total amount of the loss reimbursable to an insurer shall be limited to the amount of insurance reinsured by the Fund in force at the time when the damage first becomes reasonably observable. All damage caused by a single mine subsidence event or several subsidence events which are continuous shall constitute one occurrence. As set forth in subsections (a) and (c) of this Section, a policy issued or renewed must provide coverage, unless waived in writing by the insured, and the insurer must continue to charge the premium level set for that coverage by the Fund. If mine subsidence coverage is in force when the mine subsidence damage first becomes reasonably observable, then the insurer shall notify the insured making the mine subsidence claim that continuation of that coverage thereafter may not be necessary and is optional, but that continued coverage on the damaged residence or commercial building shall terminate only upon written waiver by the insured. The notification shall be made within 60 days after the insurer receives written confirmation from the Fund that the cause of loss is active mine subsidence. The notification shall be in the form of a separate mailing to the insured from the insurer via the United States Postal Service and shall include notification to the insured that mine subsidence premiums paid for coverage on a damaged residence or commercial building subsequent to the established date of loss shall be refunded to the insured within 60 days after the insured provides a signed waiver of mine subsidence coverage to the insurer. The notification shall be accompanied by a waiver of coverage form for the insured to sign and return to the insurer.

(f) No insurer shall be required to offer mine subsidence coverage in excess of the reinsured limits.

(Source: P.A. 95-92, eff. 1-1-08; 95-334, eff. 1-1-08.)

**Effective Date:** 1/1/2015

IMSIF ILLINOIS MINE SUBSIDENCE INSURANCE FUND

# Circular 02 (08/2014)

August 2014

**Subject:** **Residential Property Underwriting Guidelines**
**Mine Subsidence Insurance Coverage**

**Purpose:** This Circular supersedes Circular 02 (11/2007) and provides changes to reflect Illinois statutory provisions as amended by the General Assembly and signed by the Governor in 2014. Additional changes to clarify other underwriting guidelines are also included.

**Intended Recipients:** Underwriting and Marketing Management, and those who sell or underwrite residential property policies in Illinois

Company agents and/or contracted independent agents

Reinsurance Management

**Background:** In 2014, the Illinois General Assembly adopted an amendment placing additional requirements on Primary Insurers once a claim determination has been made that the cause of loss is active mine subsidence. These additional requirements are found in the Post Loss Underwriting section (6) of this circular.

**Effective Date:** This edition is effective for all new or renewed residential policies with an effective date of 01/01/2015 or later, and applicable to claims confirmed on or after 01/01/2015.

**Underwriting Guidelines:**

**1. Limits of Liability**

The maximum limits of liability reinsured by the Illinois Mine Subsidence Insurance Fund, for any one mine subsidence occurrence, may not exceed the following:

For any one residential structure, excluding "living units", $750,000

For policies insuring "living units", $15,000 per policy

The limit of liability for the peril of mine subsidence shall be the amount of coverage provided by the primary insurer on the residential structure or living unit, but not more than their respective maximum limits, as listed above.

**2. Limits of Reinsurance**

On residential policies that have multiple limits (e.g., Homeowners Policies), the reinsured limit and rating basis is the principal structure (typically Coverage A). The amount reinsured is the amount stated on the policy. Provisions such as "inflation guard" and "guaranteed replacement cost" may not be covered by reinsurance. If an insurer desires to exclude those provisions from losses caused by mine subsidence, appropriate policy forms should be developed.

Under Dwelling and Homeowner policies, Appurtenant/Other Structures may include those structures on the described premises that are not attached to the dwelling. There is no automatic increase in the mine subsidence reinsurance limit for loss to other structures or appurtenant private structures. Under no circumstances will the amount reinsured for other structures or appurtenant private structures exceed the underlying policy's sub-limit. If higher limits are desired for other structures on the described premises, those structures must be specifically scheduled for mine subsidence, with the appropriate mine subsidence premium charge.

**3. Territory**

Non-Exempt (Mandatory Roll-On) Counties

Those counties that have a significant area of their land surface undermined are listed below. By statute, policies issued in these counties must provide mine subsidence coverage **unless waived by the insured in writing. (See section 4.)**

| | | | |
|---|---|---|---|
| Bond | Jackson | Marshall | St. Clair |
| Bureau | Jefferson | Menard | Saline |
| Christian | Knox | Mercer | Sangamon |
| Clinton | La Salle | Montgomery | Tazewell |
| Douglas | Logan | Peoria | Vermilion |
| Franklin | McDonough | Perry | Washington |
| Fulton | Macoupin | Putnam | Williamson |
| Gallatin | Madison | Randolph | |
| Grundy | Marion | Rock Island | |

Exempt (Non-Mandatory Roll-On) Counties

The Director of Insurance has exempted those counties with 1,000,000 or more inhabitants and any county contiguous to any such counties, or any other specified county of the State from the provisions of Section 807.1 of the Insurance Code. The Director has also exempted those counties where there are no known man-made underground mines or where man-made underground mines in such counties are so few that mine subsidence is less likely to affect structures. In the counties listed below, mine subsidence insurance is not automatically attached to the policy. The insured may purchase mine subsidence insurance if he or she requests the coverage from the primary insurer.

**Note: Even in exempt counties, mine subsidence risk may exist. The Illinois State Geological Survey (ISGS) has developed an online tool to help property owners better assess mine subsidence risk. To access this tool, go to isgs.illinois.edu and select the Illinois Coal Mines section.**

Exempt Counties

| | | | | |
|---|---|---|---|---|
| Adams | Dekalb | Iroquois | Macon | Shelby |
| Alexander | De Witt | Jasper | Mason | Stark |
| Boone | Du Page | Jersey | Massac | Stephenson |
| Brown | Edgar | Jo Daviess | Monroe | Union |
| Calhoun | Edwards | Johnson | Morgan | Wabash |
| Carroll | Effingham | Kane | Moultrie | Warren |
| Cass | Fayette | Kankakee | Ogle | Wayne |
| Champaign | Ford | Kendall | Piatt | White |
| Clark | Greene | Lake | Pike | Whiteside |
| Clay | Hamilton | Lawrence | Pope | Will |
| Coles | Hancock | Lee | Pulaski | Winnebago |
| Cook | Hardin | Livingston | Richland | Woodford |
| Crawford | Henderson | McHenry | Schuyler | |
| Cumberland | Henry | McLean | Scott | |

## 4. Waiver of Coverage

In a non-exempt county, when the policyholder elects not to purchase mine subsidence insurance coverage, the waiver must be in writing. The Waiver of Coverage form should be developed by the insurer. A waiver remains in effect until it is rescinded in writing. The policyholder may rescind the waiver of coverage at any time by requesting mine subsidence insurance coverage in writing from the insurer.

The insurer must maintain records of waivers of coverage. Failure to maintain waiver records may expose the insurer to liability in a non-exempt county, without the availability of reinsurance.

When a waiver of coverage is executed by the policyholder, and the policy is subsequently assigned to a new owner, the insurer should offer mine subsidence insurance coverage to the new policyholder. If the new policyholder rejects mine subsidence coverage, a new waiver of coverage should be obtained. Failure to do so may expose the insurer to liability without the availability of reinsurance.

## 5. Prior Damage Not Repaired

If a property has evidence of previous, unrepaired mine subsidence damage, an insurer may refuse to provide mine subsidence coverage even in a non-exempt county. Insurers are advised to check for prior mine subsidence damage whenever a waiver is rescinded. Usually, the policyholder is allowed time to make repairs after the damaging ground movement has ended and loss payment has been received. Insurers may find it helpful to develop a means of obtaining such information during the underwriting of a new policy.

**6. Post Loss Underwriting**

When a mine subsidence loss is confirmed by the Fund, the primary insurer must consider the impact of statutory language on the policyholder.

The Fund's reinsurance obligation as set forth in Statute section 805.1(e) is as follows:

***The total amount of the loss reimbursable to an insurer shall be limited to the amount of insurance reinsured by the Fund in force at the time when the damage first becomes reasonably observable. All damage caused by a single mine subsidence event or several subsidence events which are continuous shall constitute one occurrence.***

Many primary insurers have incorporated this statutory language into their Mine Subsidence Coverage endorsements. To the policyholder, this generally means loss recovery is limited to the amount of insurance in force during the policy year damage was first observed, and no new mine subsidence claim is allowed until after the first occurrence ceases.

The Illinois Insurance Code provides that policies in non-exempt counties must continue to provide mine subsidence coverage unless waived in writing by the insured, and that insurers must continue to charge premium for that coverage. HOWEVER, the law, as amended in 2014, states that if mine subsidence coverage is in force when mine subsidence damage first becomes reasonably observable, the insurer "shall notify" the insured who made the mine subsidence claim that continuation of mine subsidence coverage thereafter may not be necessary and is optional, but that mine subsidence coverage on the damaged residence shall terminate only if the insured waives that coverage in writing. The notice from the insurer to the insured shall be given within 60 days after the insurer receives written confirmation from the Illinois Mine Subsidence Insurance Fund that the cause of loss is active mine subsidence. The notification must be in the form of a separate mailing to the insured from the insurer via the United States Postal Service and shall include notification to the insured that mine subsidence premiums paid for coverage on a damaged residence subsequent to the established date of loss shall be refunded to the insured within 60 days after the insured provides a signed waiver of mine subsidence coverage to the insurer. The notification shall be accompanied by a waiver of coverage form for the insured to sign and return to the insurer.

The Fund believes it would be prudent for insurers to remind the insured that under the Statute, loss recovery is limited to the amount of insurance in force when damage first becomes reasonably observable. The limit of coverage cannot be increased by paying mine subsidence premium for successive years, while movement from mine subsidence is continuing. The Fund also believes that companies would be well advised to notify insureds that they may wish to consider whether or not to reinstate the mine subsidence coverage once the Fund notifies the company that mine subsidence movement has ceased, so that coverage will be in place in the event of a subsequent mine subsidence occurrence.

This situation may be complicated when the property is sold before damaging movement from the mine subsidence occurrence ceases. The new owner may choose to purchase insurance and pay premium for mine subsidence coverage. However a new mine subsidence occurrence cannot exist until movement from the original occurrence ends. Even with an assignment of claim rights, the new owner's recovery for the ongoing mine subsidence occurrence is limited to the original owner's policy limit, less the amount already paid to the prior owner(s).

Primary insurers may wish to establish new business underwriting procedures to identify any property that is being or has been affected by an active mine subsidence event (see section 5 above).

### 7. Coverage & Policy Forms

Reinsurance is available only if the primary coverage is being provided by a contract or contracts of insurance affording the coverage of the Standard Fire Policy and Extended Coverage Endorsement. This includes simplified language policies that do not include the standard 165 lines.

Mobile home and builders risk exposures may be covered only if they are written on the Standard Fire Policy, not on an Inland Marine policy. Fire policies which cover structures under construction must be insured for the full value.

When reinsurance applies, it protects against the damage to the insured residential structure caused by mine subsidence. It also covers the additional living expenses reasonably and necessarily incurred by the owner of an insured dwelling who has been temporarily displaced as the direct result of damage to the dwelling caused by an insured occurrence.

Additional living expense does not increase the mine subsidence reinsurance limit and is not payable in advance. Other than additional living expense, any other "time element" coverage such as loss of use is not reinsured by the Fund.

Losses covered under policies insuring "living units" are limited to losses to improvements and betterments, and reimbursement of additional living expenses and assessments made against the insured as a result of mine subsidence loss.

All damage caused by a single mine subsidence event or several subsidence events which are continuous shall constitute one occurrence.

### 8. Mine Subsidence Endorsement Forms

Insurers are responsible for verifying that the Mine Subsidence Coverage Endorsement form they are using complies with the Fund's Plan of Operation and is compatible with the provisions of the underlying policy. Differences in the coverage provisions may leave an insurer contractually liable for a loss that will not be reimbursed by the Fund.

### 9. Deductible

The deductible for mine subsidence losses is the deductible the primary insurer's policy has set for other property fire losses.

### 10. Coinsurance & Apportionment

In view of the coverage amount limitation for mine subsidence, the policy provisions for coinsurance will not apply. The apportionment provisions will only be applicable to those policies with the Mine Subsidence Coverage Endorsement.

**11. Blanket Insurance**

Although primary insurance may be written by an insurer on a blanket basis, it is necessary to schedule and to ensure an appropriate premium is charged for each building to be insured for mine subsidence coverage. Failure to do so may result in a lack of coverage under the Reinsurance Agreement.

**12. Multiple Policies**

In case of multiple policies insuring the same structure or living unit for mine subsidence, the total amount reinsured by the Fund and all total contributions by all participating insurers shall not exceed total insured values or $750,000 maximum, if a residential structure; or $15,000 maximum if covering a living unit. If the participating insurers agree, only one insurer may provide the entire mine subsidence coverage (750,000/$15,000 or the total insured value, whichever is less). The other insurers must obtain a waiver of coverage from the insured.

**13. Higher Limits**

On a voluntary basis, individual insurers may offer mine subsidence insurance coverage in excess of the limits prescribed herein. However, such excess limits provided by the primary insurer will not be reinsured by the Fund. Insurers should not provide statutory mine subsidence coverage at limits higher than the primary policy provides for other causes of loss.

The Fund does not provide a rate structure for mine subsidence coverage in excess of statutory requirements. Mine Subsidence endorsements available from suppliers such as Insurance Services Office were not designed to provide mine subsidence coverage beyond these limits. Any endorsement offering excess coverage must not change the provisions of the underlying Mine Subsidence Coverage endorsements.

**14. Insurable Interest**

The Fund will not provide reinsurance for losses where, at the time of loss, the insured had no insurable interest in the property.

**15. Backdating Coverage**

Coverage for the peril of mine subsidence must be placed into effect on or prior to the time of the first noticeable damage. Backdating of coverage for the purpose of covering a loss is not reinsured. It should be noted that this coverage is "occurrence based", meaning that the date of loss determines the policy period from which coverage responds. Consequently, the policy that responds may often <u>not</u> be the current policy.

**16. Self Insured Owners Not Eligible**

As used in Article XXXVIIIA of the Illinois Insurance Code, "insurer" or "insurers" means insurance companies and reciprocals licensed and authorized to write policies of insurance within Illinois. Therefore the Fund does not provide Mine Subsidence Reinsurance to property owners that are self insured.

## 17. Definitions

"Mine Subsidence" means lateral or vertical ground movement caused by a failure initiated at the mine level of man-made underground mines, including, but not limited to coal mines, clay mines, limestone mines, and fluorspar mines that directly damage structures. Mine subsidence is not lateral or vertical ground movement caused by earthquake, landslide, volcanic eruption, soil conditions, soil erosion, soil freezing and thawing, improperly compacted soil, construction defects, roots of trees and shrubs or collapse of storm and sewer drains and rapid transit tunnels.

"Residence" means a building used principally for residential purposes up to and including a four family dwelling, permanently affixed to realty located in Illinois, including appurtenant structures, driveways, sidewalks, basements, footing, foundations, septic systems and underground pipes directly servicing the dwelling or building, but does not include living units, land, trees, plants, crops or agricultural field drainage tile.

"Living Unit" means that physical portion designated for separate ownership or occupancy for residential purposes, of a building or group of buildings, permanently affixed to realty located in Illinois, having elements which are owned or used in common, including a condominium unit, a cooperative unit or any other similar unit.

## 18. Premium

Premium calculation instructions for both residential structures and living units are contained in Circular 03 Residential Rate Schedule. For instructions on premium reporting and ceding commission, refer to Circular 04 Premium Reporting Requirements.

## 19. Processing Errors

Processing errors, inadvertent or otherwise, do not release an insurer from its obligation to the insured. Likewise, the Fund will not be obligated to reinsure losses for which no coverage was reported, or to reinsure for more than was actually reported or remitted when such errors occur.

## 20. Agency Relationships

Contract errors or omissions on the part of primary insurers or their agents are not to be imputed to the Illinois Mine Subsidence Insurance Fund. Primary insurers and their agents are not representatives of the Fund, and the Fund is not the agent of the insurer.

**Questions on this Circular should be addressed to:**

Kathy Moran, Industry and Consumer Education Manager
kamoran@imsif.com
312.521.5161
Illinois Mine Subsidence Insurance Fund
P.O. Box 812060
Chicago Illinois 60681-2060