

Virginia Insurance Law On Waiving Contract Defenses To Coverage

Virginia Code section 38.2-2226 provides that insurers cannot deny coverage based on breaches of policy conditions by their insureds if they do not notify the claimant (the person seeking money from the insured) both (1) with 45 days after discovering the alleged breach; and (2) at least 30 days before trial. It also provides that a carrier must notify the claimant within 45 days of reserving its rights or entering a non-waiver agreement based on the purported breach of any condition.

Specifically, that statute provides for the 45-day deadline as follows:

Whenever any insurer on a policy of liability insurance discovers a breach of the terms or conditions of the insurance contract by the insured, the insurer shall notify the claimant or the claimant's counsel of the breach. Notification shall be given within forty-five days after discovery by the insurer of the breach or of the claim, whichever is later.

The statute also provides for the pre-trial deadline as follows:

Notwithstanding the provisions of this section, in any claim in which a civil action has been filed by the claimant, the insurer shall give notice of reservation of rights in writing to the claimant, or if the claimant is represented by counsel, to claimant's counsel not less than thirty days prior to the date set for trial of the matter. The court, upon motion of the insurer and for good cause shown, may allow such notice to be given fewer than thirty days prior to the trial date. Failure to give the notice within thirty days of the trial date, or such shorter period as the court may have allowed, shall result in a waiver of the defense based on such breach to the extent of the claim by operation of law.

The deadline regarding a reservation of rights or non-waiver agreement stems from the following language:

Whenever, on account of such breach, a nonwaiver of rights agreement is executed by the insurer and the insured, or a reservation of rights letter is sent by the insurer to the insured, notice of such action shall be given to the claimant or the claimant's counsel within forty-five days after that agreement is executed or the letter is sent, or after notice of the claim is received, whichever is later. Failure to give the notice within forty-five days will result in a waiver of the defense based on such breach to the extent of the claim by operation of law.