

Bulletin No. B-5.26

Insurer Requirements Related to Disputed Claims Subject to Appraisal

I. Background and Purpose

The purpose of this bulletin is to clarify the position of the Division of Insurance regarding the consumer's rights when there is a dispute during the claim handling process. Specifically, the bulletin provides guidelines to insurers when an insured has invoked his/her rights relating to the appraisal clause found in most, if not all, property insurance policy contracts.

Bulletins are the Division's interpretations of existing insurance law or general statements of Division policy. Bulletins themselves establish neither binding norms nor finally determine issues or rights.

II. Applicability and Scope

This bulletin is intended for and applies to all property and casualty insurance companies providing real property coverage.

III. Division Position

Most, if not all, property insurance policy contracts include an appraisal clause which may be invoked if there is a dispute between the insured and the insurer regarding a coverage determination, the claim handling process, or the settlement amount. To the extent that these policies include an appraisal provision, and the insured has invoked his/her rights to an appraisal, the selected appraiser and/or umpire must be fair and impartial.

It has come to the Division's attention that insurers may not be selecting "fair and impartial" appraisers. Furthermore, disputed claims subject to appraisal are being delayed and insurers are not communicating in a fair and consistent manner causing significant harm to the Colorado consumer.

The position of the Division is that an insurer must comply with its own policy language when selecting an appraiser and/or umpire under the appraisal clause. For purposes of requiring impartiality of appraisers and umpires, the Division will follow the Uniform Arbitration Act, §13-22-201 *et seq.*, and in particular, §13-22-211 (2), which sets forth the standard for impartiality of an arbitrator as: "An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator if the agreement requires the arbitrator to be neutral." This same standard will apply to appraisers and umpires, and to ensure compliance with this standard the Division requires the following:

1. The appraiser and umpire must disclose to all parties any other appraiser and any other umpire, as well as any known facts that a reasonable person would consider likely to affect the impartiality of the appraiser including:
 - (a) A financial or personal interest in the outcome of the appraisal; and
 - (b) A current or previous relationship with any of the parties to the agreement to appraise or the appraisal proceeding, their counsel or representatives, a witness, or another appraiser or the umpire.
2. The appraiser shall have a continuing obligation to disclose to all parties to the agreement to appraise, the appraisal proceeding and to any other appraisers and the umpire any facts that the appraiser learns after

accepting appointment that a reasonable person would consider likely to affect the impartiality of the appraiser.

In accordance with §13-22-212 (3), C.R.S. if a party timely objects to the appointment or continued services of a selected appraiser the objection may be a ground under §13-22-223(1)(b), C.R.S. for vacating an award.

3. The insurer must not have *ex parte* communications with the appraiser or umpire during the appraisal process. Any communications between the appraiser, the umpire and the insurer shall include the insured or the insured's representative.
4. Upon reaching an agreed upon value (either through the selected appraiser or an umpire) the insurer shall comply with the clean claim standards found in Colorado Regulation 5-1-14.

IV. Additional Division Resources

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