

## Bulletin No. B-5.26

### 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, insureds, and licensed public adjusters, when a person or entity entitled to invoke their rights under the appraisal clause found in most, if not all, property insurance policy contracts, exercises such right.

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 insurers providing property coverage, the insured and the insured's representatives, including licensed public adjusters.

#### 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 over the settlement amount or, as provided in some policy contracts, over a coverage determination. To the extent that these policies include an appraisal provision, and a person or entity has invoked their rights to an appraisal pursuant to the appraisal clause, the selected appraiser and/or umpire must be fair, competent and impartial.

It has come to the Division's attention that parties to an appraisal may not be selecting "fair, competent and impartial" appraisers and/or umpires. Furthermore, disputed claims subject to appraisal are being delayed and insurers, insureds, and their representatives, including licensed public adjusters, are not communicating in a fair and consistent manner.

The position of the Division is that insurers, insureds and their representatives, including licensed public adjusters, must comply with the 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, 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, including licensed public adjusters, a witness, another appraiser or the umpire.
2. The appraiser shall have a continuing obligation to disclose to all parties to the agreement to appraise or 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 grounds, under §13-22- 223(1)(b), C.R.S., for vacating an award.

3. The insurer, insured and their representative, including a licensed public adjuster, must not have *ex parte* communications with the appraiser or umpire during the appraisal process. The appraisers and umpire shall not have any substantive communication with any insurer, insured or their representative, including licensed public adjuster, without participation by both parties and/or their representatives.
4. Upon reaching an agreed upon value (either through the selected appraisers or an umpire), the insurer shall comply with the clean claim standards found in Colorado Regulation 5-1-14.

#### IV. Additional Division Resources

##### A. For More Information

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##### B. Related Division Regulations

Colorado Insurance Regulation 5-1-14

#### V. History

- Issued March 9, 2011
- Re-Issued December 3, 2014