



# Dora

Department of Regulatory Agencies

Division of Insurance

## 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**

Colorado Division of Insurance  
Property/Casualty Section  
1560 Broadway, Ste 850  
Denver, CO 80202  
Tel. 303-894-7499  
Internet: <http://www.dora.state.co.us/insurance>

## The Kaudy Law Firm LLC A Personal Injury Law Firm

Have You Been Treated Poorly by Your Insurance Company? We Can Help You:  
800-716-3759

### Colorado Law Regarding Unfair Claim Settlement Practices

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Colorado Revised Statute 10-3-1104 (1)(h): The Unfair Claim and Settlement Practices Act.

Here are some unfair claim settlement practices:

Committing or performing, either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:

- Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue; or
- (II) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies; or
- (III) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; or
- (IV) Refusing to pay claims without conducting a reasonable investigation based upon all available information; or
- (V) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; or
- (VI) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear; or
- (VII) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds; or
- (VIII) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application; or
- (IX) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured; or
- (X) Making claims payments to insureds or beneficiaries not accompanied by statement setting forth the coverage under which the payments are being made; or
- (XI) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration; or
- (XII) Delaying the investigation or payment of claims by requiring an insured or claimant, or the physician of either of them, to submit a preliminary claim report, and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information; or
- (XIII) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or
- (XIV) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or

- (XV) Raising as a defense or partial offset in the adjustment of a third-party claim the defense of comparative negligence as set forth in section 13-21-111, C.R.S., without conducting a reasonable investigation and developing substantial evidence in support thereof. At such time as the issue is raised under this subparagraph (XV), the insurer shall furnish to the commissioner a written statement setting forth reasons as to why a defense under the comparative negligence doctrine is valid; or
- (XVI) Excluding medical benefits under health care coverage subject to article 16 of this title to any covered individual based solely on that individual's casual or nonprofessional participation in the following activities: Motorcycling; snowmobiling; off-highway vehicle riding; skiing; or snowboarding; or
- (XVII) Failing to adopt and implement reasonable standards for the prompt resolution of medical payment claims.

## **Insurance Disputes & Bad Faith**

- [An Overview of Insurance "Bad Faith"](#)
  - [Colorado Law Regarding Unfair Claim Settlement Practices](#)
  - [How Insurance Companies Should Handle Claims](#)
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### **The Kaudy Law Firm LLC**

333 W. Hampden Avenue,  
Suite 850,  
Englewood, CO 80110  
Toll Free: 800-716-3759  
Fax: 303-623-1825  
[Map and Directions](#)

# ARBITRATION LAW IN COLORADO

FIRST EDITION



ROBERT E. BENSON

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CONTINUING LEGAL EDUCATION IN COLORADO, INC.  
COLORADO BAR ASSOCIATION • DENVER BAR ASSOCIATION

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2006

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**SUBJECT INDEX**

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# Dora

Department of Regulatory Agencies

Division of Insurance

## 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.

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Colorado Division of Insurance  
Property/Casualty Section  
1560 Broadway, Ste 850  
Denver, CO 80202  
Tel. 303-894-7499  
Internet: <http://www.dora.state.co.us/insurance>