

## 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 Colorado Division of Insurance (“Division”) regarding the consumer’s rights when there is a dispute over the amount of loss during the claim handling process. Specifically, the bulletin provides guidance to insurers, insureds and licensed public adjusters, when a person or entity invokes their rights under 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 to provide guidance 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 amount of loss. 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 provision, the selected appraiser must be fair and competent. If the appraisal process requires an umpire, that umpire must be fair, competent and impartial.

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

The position of the Division is that insurers, insureds and representatives of the insurer or insured, including adjusters and licensed public adjusters, must comply with the policy language when selecting an appraiser and/or umpire under the appraisal clause.

The Division’s standard for the selected appraiser or umpire is an individual that does not have direct and/or material interest in the outcome of the appraisal proceeding. To ensure compliance with these standards, the Division requires the following:



## A. Appraisers

1. An appraiser is considered "fair and competent" if he or she
  - i. Is not a party to the insurance contract;
  - ii. Has no financial interest in the outcome of the appraisal;
  - iii. Is not a current employee of the insurer or policyholder; and
  - iv. Is not a family member or an individual with whom the insured has a personal relationship that could reasonably suggest bias.
2. An appraiser in the appraisal process may not have a direct material interest in the amounts determined by the appraisal process. The appraiser must disclose to all parties any known facts that a reasonable person would consider likely to affect an appraiser's interest in the amounts determined by the appraisal process, including any contingency arrangement related to payment of the appraiser.
3. The appraiser shall have a continuing obligation to disclose to all parties to the appraisal process any facts the appraiser learns after accepting the appointment that a reasonable person would consider likely to affect the appraisers interest in the amounts determined by the appraisal process.
4. Any insurer, insured or representatives of the insurer or insured, including an adjuster and/or licensed public adjuster, may have direct communication with their own appraiser; however no insurer, insured or their representative may communicate with the other party's appraiser without the consent and participation by both parties and/or their representatives. Appraisers may directly communicate with each other as part of the appraisal process in an effort to reach an agreed upon settlement amount.

## B. Umpires

1. The umpire may not have an existing direct and/or material relationship with any party to the appraisal and must remain neutral.
2. The umpire must disclose to all parties in the appraisal process, any known facts that a reasonable person would consider likely to affect the impartiality of the umpire 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, or another appraiser.
3. The umpire shall have a continuing obligation to disclose to all parties to the appraisal process any facts that the umpire learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the umpire.
4. The insurer including adjusters, insured and their representatives, including licensed public adjusters and/or attorney, and appraisers, must not have *ex parte* communications with the umpire during the appraisal process. The umpire shall not have any communication with the insurer including adjusters, insured and their representative, including public adjusters

and/or attorneys and appraisers, without participation by both parties and/or their representatives.

- C. 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

Colorado Division of Insurance  
Consumer Affairs\_Property/Casualty Section  
1560 Broadway, Suite 850  
Denver, CO 80202  
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- B. Related Division Regulations  
Colorado Insurance Regulation 5-1-14

#### **V. History**

- Issued March 9, 2011
- Re-Issued December 1, 2014
- Re-Issued October 26, 2015