



GOVERNMENT OF PUERTO RICO
Office of the Commissioner of Insurance

June 12, 2018

RULING LETTER NO. CN-2018-241-D

TO ALL INSURERS THAT WRITE PROPERTY AND CASUALTY INSURANCE IN PUERTO RICO, THEIR GENERAL AGENTS, AUTHORIZED REPRESENTATIVES, PRODUCERS, ADJUSTERS, AND GENERAL PUBLIC

APPRAISAL PROCEDURES FOR INSURANCE CLAIMS FOR COMMERCIAL PROPERTY RELATED TO CATASTROPHIC EVENTS

Dear Sirs and Madams:

Alternative conflict resolution methods are an alternative that is complementary to the adjudicatory system in insurance. Given that it is public policy of the Judicial Branch to encourage the use of mechanisms that are complementary to the traditional adjudicatory system, with a view to administering justice more efficiently, rapidly, and economically, the Office of the Commissioner of Insurance (OCI) considers it necessary to facilitate the use of alternative conflict resolution methods in insurance, which are complementary to the processes of legal action. As provided in Section 2.030(16) of the Code, 26 L.P.R.A. §235(16), the Commissioner is authorized to refer the parties to a dispute under the Commissioner's consideration to submit to a voluntary conflict resolution procedure.

The appraisal process is one of the alternative conflict resolution methods in the insurance industry for voluntarily addressing conflicts. Appraisal is a method that facilitates the resolution of disagreements regarding the amount of a loss. Unlike court proceedings, appraisal is a voluntary informal process that is faster and expedited, relatively less expense, and non-contentious.

The OCI hereby establishes the standards to be followed in appraisal processes in cases where there are disputes regarding the amount of the loss in the insurance claims for commercial property, including claims by divisions of the central government and municipalities, to encourage the use of alternative expeditious methods of resolving such claims. The following minimum standards are hereby established for an effective appraisal process:



A. Requirements for performing an appraisal

The following conditions must be met for a dispute to be referred to an appraisal process:

1. A claim must have been submitted to the insurer.
2. The insurer has acknowledged coverage for the loss being claimed.
3. There is a dispute between the insurer and the insured or claimant regarding the amount of one or more items of the claim.
4. The controversy regarding the monetary amount of the loss is related to a commercial property policy, including the policies of government agencies and divisions, whether of the central government or the municipalities (no other matters related to any other kind of controversy will be resolved).
5. The Commissioner may, on the Commissioner's own initiative, refer disputes regarding the amount of an insurance claim for commercial property or, under exceptional circumstances, insurance claims related to personal property, for an appraisal process.
6. No legal action has been brought in any court with regard to the claim.

B. Nature of the process

1. Appraisal is an informal, private, and voluntary process, carried out in good faith and by mutual accord. The parties are not bound to submit to an appraisal process without their written consent.
2. The appraisal process does not supplant or substitute the right of the insurer, insured or claimant to bring an action in court. The appraisal process also does not prevent an insured or claimant from requesting an investigation by this Office or initiating any other legal proceedings as may be provided by law.
3. All oral or written information provided during the appraisal process, including the documents and work records of the appraisers, shall be confidential and privileged.
4. The decision made in the appraisal process will not be binding, unless the parties agree in writing that it will be binding.

C. Appraisers

For the purposes of this Ruling Letter, an appraiser is the person that provides an estimate of the actual value of the losses that are insured under a claim.

The insured or claimant and the insurer may each select an appraiser to represent each of them during the appraisal procedure. The parties, or the appraisers selected by them, will in turn select, by mutual accord, a neutral umpire.

- (a) Any person who is seeking to act as neutral umpire with regard to the claims that are referred to an appraisal process shall meet the following requirements:
1. Complete the “Neutral Umpire Application” that is established and made a part of this Ruling Letter. Once the application is complied, it shall be submitted to the OCI at the following email address: appraisal@ocs.pr.gov
 2. A resumé or curriculum vitae shall be included with the application, stating prior employment, certifications, and training.
 3. Having training for at least 12 contact hours, in courses on alternative conflict resolution methods, approved by the Alternative Conflict Resolution Methods Bureau of the Judicial Branch or courses on the appraisal of losses under property insurance policies of the OCI.
 4. Professional qualification or training, according to the kind of appraisal process:
 - (i) appraisal of losses under Interruption of Business coverage: the person must have a current license as an Adjuster or Certified Public Accountant, authorized to exercise the profession in Puerto Rico;
 - (ii) appraisal of losses or damages to physical property structures: the person must hold a current Adjuster’s license or be a licensed Engineer or Architect, authorized to exercise the profession in Puerto Rico.
 5. Under appropriate circumstances, the Commissioner, with the consent of the parties, may appoint as neutral umpire a person who the Commissioner considers to have sufficient training or experience, to intervene in a given appraisal process, even though the person does not meet the professional qualification or training criteria set forth here.
- (b) The neutral umpire shall carry out the following functions in the performance of the umpire’s duties:
1. Be independent, impartial, and objective.
 2. Encourage and help the parties to reach an agreement.
 3. Maintain a totally impartial position with regard to the parties during the appraisal process.
 4. Reveal to the parties any personal or professional circumstance that could create the appearance of a conflict of interest or raise doubts regarding the umpire’s impartiality.

5. The umpire may not be a shareholder, member, partner, director, officer, representative or employee of any of the parties or their appraisers or have any economic or financial interest or contractual relationship with any of the parties or their appraisers.
 6. The umpire may not have any direct or indirect economic interest in any aspect of the claim.
 7. The umpire shall maintain the confidentiality of the information revealed to the umpire during the appraisal process.
- (c) The neutral umpire does not assume any legal liability in the performance of the umpire's duties as such.
- (d) The OCI will have a list of neutral umpires available, which shall be taken from a database of professionals who are members of the Engineers and Surveyors Association of Puerto Rico, the Certified Public Accountants Association of Puerto Rico, and the Architects Association of Puerto Rico. When the parties are unable to select a neutral umpire by mutual accord, the Commissioner will select a neutral umpire from the available list of neutral umpires.

D. Fees for the Appraisers and the Neutral Umpire

Each party will be responsible for paying the fees of the appraiser that is selected to represent such party and shall pay for half of the fees of the neutral umpire and any other expense related to the appraisal process.

The fees of the neutral umpire shall be agreed on in writing, specifying the rate (by the hour, by day or by session) and the duration of the umpire's services, before the proceedings begin. The fees to be paid for the umpire's services shall be according to the services rendered and the complexity of the claim involved in the appraisal process. The fees shall not exceed \$125 an hour, except under extraordinary circumstances that could justify a higher rate. These fees cannot be based on a percentage of what is received for the claim or the value of the loss.

E. Initiation of the process

Any of the parties involved in the claim, or the Commissioner on the Commissioner's initiative, may request that the controversy regarding the amount of one or more items of the claim be submitted to an appraisal process according to the following requirements:

1. The interested party shall notify the other party in writing of its interest in carrying out an appraisal process.
2. The party that receives the notice regarding an appraisal process shall accept or refuse to participate in such a process, within five (5) working days of receiving of the notification.

3. The acceptance or refusal of the appraisal shall be in writing. Failure to accept the appraisal within (5) business days from the receipt of the notification will be deemed as a tacit refusal of the appraisal.
4. If the parties agree to carry out the appraisal process, they shall sign the “Agreement for Submission to Appraisal Proceeding” form, which is established and made a part of this Ruling Letter.

F. Appraisal process

1. Each party will select an appraiser to represent the party during the appraisal process, who may be an independent adjuster, in the case of the insurer, or a public adjuster, in the case of the insured or claimant, and the identity of such appraiser will be notified to the other party.
2. The parties, or the appraisers selected by them, will in turn select, by mutual accord, a neutral umpire. If they are unable to select a neutral umpire by mutual accord, the Commissioner will assign a neutral umpire from the list of neutral umpires that the OCI will have available for that purpose, according to the kind of loss, as may be appropriate.
3. The information provided by the parties in an appraisal process shall be confidential and privileged, as will be all of the documents and work records of the neutral umpire. This information or documentation may not be required to be produced in court or administrative proceedings, nor may the neutral umpire be ordered to testify regard the content thereof or the procedure followed by the umpire.
4. Once the appraisers have been selected, the neutral umpire will review the documents, photographs, estimates, expert reports, itemized lists, and amounts in controversy for the loss that has been submitted to the appraisal process.
5. Procedures before the neutral umpire will be informal.
6. For all claims under consideration, the neutral umpire may set the date, time, and guidelines to be followed during the meetings.
7. During the appraisal process, the neutral umpire may hold joint or separate meetings with the appraisers of the parties and make oral recommendations on the possible ways of reaching an agreement before making a decision.
8. The neutral umpire will issue a final decision in writing, including an itemized list of the amounts of the claim that are the subject of the appraisal process.
9. The final decision made by the neutral umpire will not be binding on the parties, unless they execute a written agreement ratifying the terms of the decision that has been agreed to, stating the agreements between the parties for the partial or total solution of the controversy with regard to the amount of the loss. If the parties enter into an agreement

that disposes of the controversy, it will be binding on the parties, as would be any other written contract.

10. All claims that are referred to an appraisal process shall be decided within thirty (30) days of the date on which the parties sign the “Agreement for Submission to Appraisal Proceeding.” The neutral umpire may, on the umpire’s own initiative or upon the written request by any of the parties, extend or shorten such term.

G. Meeting place

Meetings on the appraisal shall be held at the OCI offices, unless otherwise agreed to by both parties. The neutral umpire shall request the use of meeting facilities from the Investigations Division of the OCI, at least five (5) days before the date of the meeting on the appraisal. This Office will notify the parties of the availability of the facilities for the date and time that are requested or will contact the parties to coordinate another date and time.

No official of the OCI will be a party to or participate in any way in the appraisal meetings or in the appraisal process, other than being informed of the process and providing the OCI facilities for such.

H. Scope and Effect

No provision of this Ruling Letter is intended to be nor should it be interpreted as a waiver of rights or defenses of any of the parties arising from any applicable provision of an insurance policy or under law.

The provisions of this Ruling Letter shall enter into effect immediately upon approval. Strict compliance with the provisions of this Ruling Letter is hereby required.

Very truly yours,

Javier Rivera-Ríos, LUTCF
Commissioner of Insurance of Puerto Rico