



GOVERNMENT OF PUERTO RICO
Office of the Commissioner of Insurance

March 20, 2019

RULING LETTER NO. CN-2019-248-D

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

APPRAISAL PROCESS ESTABLISHED IN LAW NO. 242-2018

Dear Sirs and Madams:

The passing of Law No. 242-2018 amends the Insurance Code of Puerto Rico, among other things, to establish the legal framework for implementing the appraisal process, (hereinafter “appraisal”), and to provide the parties with a speedy, low-cost, and non-contentious way to resolve disputes with regard to the true value of the damages or losses related to commercial and personal property insurance policy claims.

Law No. 242-2018, in its relevant part, reinstated the use of the appraisal clause for commercial and personal property insurance policies, as an alternate way for resolving disputes related to the value of damages or loss in a claim, provided that it did not supersede or constitute a waiver of the right of the insured to go before the courts. The amendment established by this law to subparagraph (3) of Section 11.190 of the Insurance Code, 26 L.P.R.A. § 1119, expressly provides the following:

“Section 11.190.- Limitation of actions on policies; jurisdiction

...

(3) Provided that it does not supersede or constitute a waiver of the right of the insured to bring legal action in the courts, an appraisal stipulation or clause in a commercial or personal property insurance policy may validly provide that “**any of the parties may make a written request for the resolution of a dispute before an impartial and competent arbitrator**, with regard to the appraisal of damages or loss in a claim that the insurer has accepted as being covered.” (Our emphasis)

(...)

This subparagraph (3) of Section 11.190 of the Insurance Code, *ante*, also provided that the decision of the arbitrator in the appraisal process **will be binding**, when two (2) of the three (3) parties (the insured’s appraiser, the insurer’s appraiser, and the arbitrator) reach an agreement, without prejudice, with regard to an unsatisfied party being able to turn to the Court of First Instance to challenge the decision. Furthermore, this subparagraph stated that the arbitrator will not have the authority to decide on controversies related to coverage or issues of law.



Although Section 6 of Law No. 242-2018 does not refer to the retroactive application of the provisions of the appraisal, from the Statement of Purpose of that law it may be inferred that the legislative intent was clearly to make such provisions of law be applicable to the claims that have arisen due to hurricanes Irma and María that are pending resolution, even when these were made before the approval of this law. We note that the Statement of Purpose of Law No. 242-2018, among other things, clearly states:

It is high time, given the experiences we have endured, to codify the current protections for consumers provided under common law and adopt innovative initiatives, with a view to obtaining a swifter and better response from the insurance industry **“for the victims of hurricanes Irma and María”** and in the event of a future natural catastrophe. This legislative measure proposes several amendments to the Insurance Code of Puerto Rico that reflects the sense of what was discussed at the summit meeting [regarding the “Response of the Insurance Industry in view of Catastrophic Events and Mechanisms to Ensure the Protection of the Insureds”] directed at establishing more agile processes that facilitate an appropriate response to the insureds and payment of claims.

(Our emphasis). Regarding the retroactive applicability of Law No. 242-2018, see the Opinion of the Secretary of Justice, Op. 2019-01, Consultation A-14-19, March 8, 2019.

In view of the approval of Law No. 242-2018, and according to the provisions of Section 11.190(3) of the Insurance Code, *ante*, this letter establishes the guidelines to be followed in the appraisal process for the resolution of conflicts regarding to the appraisal of damages or losses in a claim related to a commercial or personal property insurance policy, including the claims that have been submitted due to hurricanes Irma and María that are pending resolution, as well as establishing the criteria for the suitability and competence of the persons who act as arbitrators in this process.

The following guideline shall be observed in the appraisal process:

A. Requirements for an appraisal process

The following conditions must be present to be able to request conflict resolution through the appraisal process:

1. A claim must have been filed with the insurer.
2. The insurer must have recognized coverage and made an offer to pay for the damage or loss being claimed.
3. There is a dispute between the insurer and the insured regarding the value of the loss or damages in one or more items of the claim that is related to a commercial or personal property insurance policy.

4. No legal action has been initiated in the Courts of Law with regard to the claim. If legal proceedings have begun, it will be necessary for the Court, whether *sua sponte* or at the request of any of the parties, to authorize referring the controversy regarding the value of the loss or damages to the appraisal process.

B. Nature of the appraisal process

1. The appraisal process is an alternate informal conflict-resolution method, in which the parties submit in good faith to an impartial and competent arbitrator for the resolution of disputes related to the appraisal of damages or losses in a claim.
2. The insured will have the option of requesting an appraisal process from the insurer, without limiting thereby the power to turn to the courts directly. The appraisal process does not supersede or constitute a waiver of the right of the insured to go before the courts, nor will the appraisal process prevent an insured from requesting an investigation at the Office of the Commissioner of Insurance or initiating any other legal process as may be warranted under the law.
3. If the appraisal process was requested by the insured, the insurer shall have the obligation to participate in the appraisal process according to the appraisal stipulation or clause in the policy, as required in subparagraph (3) of Section 11.150 of the Insurance Code.
4. All oral or written information provided during the appraisal process, including the documents and working records of the parties that are involved in the process, shall be confidential and privileged. Said information or documentation may not be required for production in court or administrative proceedings, nor may the arbitrator be called to testify regarding the content thereof or regarding the proceedings before the arbitrator.
5. The decision that the arbitrator may make in the appraisal process will be binding when two (2) of the three (3) parties (the insured's appraiser, the insurer's appraiser, and the arbitrator) reach an agreement, without prejudice with regard to an unsatisfied party being able to turn to the Court of First Instance to challenge the decision.

D. Procedure to be followed in the appraisal process

1. The following requirement must be met to initiate the process:
 - a) The interested party shall notify in writing the other party of the request for an appraisal process. For this, the party may use the form titled "Request for Appraisal Proceeding," which is established hereby and made a part of this Ruling Letter.
2. After notifying the request by using the form "Request for Appraisal Proceeding," the appraisal process will be carried out as follows:

- a) The insured and the insurer will select their own appraiser to represent them during the appraisal process and will notify the other party of the identity of such appraiser.
- b) The insured's appraiser and the insurer's appraiser will meet initially in good faith to arrive at an agreement to resolve the differences with regard to the value of the loss or damages in the claim or items of the claim in controversy.
- c) If an agreement is not reached, the insured's appraiser and the insurer's appraiser will select by mutual accord an impartial and competent arbitrator for the appraisal process.
- d) If any party refuses to participate in the appraisal process or acts in bad faith to prevent or in any manner obstruct the proceedings, the other party may continue with the process and the decision of the arbitrator will be binding if the party that continued with the process agrees with the decision.
- e) If within fifteen (15) calendar days from the date of the request for the appraisal process the insured's appraiser and the insurer's appraiser have not agreed on the selection of the arbitrator, the Office of the Commissioner of Insurance will be notified by email at appraisal@ocs.pr.gov and the Commissioner will proceed to select the arbitrator from the list of arbitrators that will be kept available for this purpose.
- f) Once the arbitrator has been selected, he or she will review the documents, photos, estimates, expert reports, itemized lists, and amount in dispute with regard to the loss or damages of the claim that has been submitted to the appraisal process, as well as inspecting the property or properties and making his or her own estimate.
- g) The proceedings before the arbitrator will be held informally.
- h) For all claims before his or her consideration, the arbitrator may set the date, place, and time for the meetings, and the guidelines to be followed during such meetings.
- i) During the appraisal process the arbitrator may make oral recommendations regarding the possible means of settlement before making a decision.
- j) The arbitrator will issue a written decision and provide a detailed list of the amount of money for each item in the claim that is the subject of the appraisal. The decision made by the arbitrator in the appraisal process will be binding when two (2) of the three (3) parties (the insured's appraiser, the insurer's appraiser, and the arbitrator) reach an agreement.
- k) Any claim that has been referred to an appraisal process must be concluded within thirty (30) days from the date of the request. The arbitrator may, on his or her own initiative or at the request of a party, extend or shorten the term.

- l) If during the appraisal process any party goes before a court to request a review of any matter of law, this will not stay the appraisal process, unless there is a direct court order to that effect, since these are two independent processes.
- m) The insured and the insurer may appear *pro se* or through counsel representing them.

E. Arbitrator's Duty of Impartiality

1. All persons who act as an arbitrator in an appraisal process of damages or loss in a claim related to a commercial or personal property insurance policy shall be independent, impartial, competent, and objective.
2. As provided in Section 9.301 of the Insurance Code, the following practices will constitute a violation of the duty to act impartially and objectively:
 - (a) Having a direct or indirect financial interest in the claim or result of the process;
 - (b) Establishing fees based on the result of the process;
 - (c) Being a current employee, shareholder, member, partner, director, officer, or representative of the insurer or insured or the appraisers, to include independent or public adjusters;
 - (d) Having kinship relationship to the fourth degree of consanguinity or second degree of affinity, or living with one of the parties or appraisers who are participating in the process;
 - (e) Failing to report to the parties any prior professional relationships or personal circumstances that the person may have had with any of the parties or their representatives that could raise any question about their impartiality;
 - (f) Failing to notify in a timely manner or failing to perform duties in the process when a potential conflict of interest arises.

F. Competence and Suitability Requirement for the Arbitrator

Any person who wants to act an arbitrator in an appraisal process shall:

1. Complete the "Arbitrator Application" that is established by and made a part of this Ruling Letter. Once completed, the application shall be submitted to the Office of the Commissioner of Insurance at the following email address: appraisal@ocs.pr.gov.
2. Include with the application a Curriculum Vitae, showing prior employment experiences, certifications, and training.
3. Have had training, at least for twelve (12) contact hours, in alternative conflict-resolution courses approved by the Alternate Conflict-Resolution Methods Bureau of the Judicial Branch or courses on loss appraisal under property insurance policies approved by the Office of the Commissioner of Insurance.

4. Professional qualification or education, for any kind of appraisal process:
 - (i) Loss appraisal for interruption of business: the person must have a current Adjuster or Certified Public Account license to exercise the profession in Puerto Rico;
 - (ii) Loss or damage appraisal of physical structures of the property: the person must have a current Adjuster license; or be an Engineer, with a Professional Engineer (PE) certification; Licensed Architect, or Professional Real Estate Appraiser licensed to exercise the profession in Puerto Rico.
5. Under appropriate circumstances, the Commissioner of Insurance, with the consent of the parties, may designate as arbitrator a person who is considered to have sufficient training or experience to understand the appraisal process in question, even though the person lacks the professional qualification or education requirement established herein.
6. The arbitrator may not decide on disputes regarding coverage or any issue of law.
7. The arbitrator will have no legal liability related to the discharge of his or her duties as arbitrator.
8. The Office of the Commissioner of Insurance shall keep a list of arbitrators who are approved to participate in the appraisal process

G. Appraisers

The insured and the insurer may each select their own appraiser to represent them in the appraisal. The insurer's appraiser may be an independent adjuster. The appraiser of the insured may be a public adjuster. Each party shall notify the other of the identity of its appraiser.

H. Appraisers and Arbitrators Fees

- (a) The arbitrator's fees will be paid by the insurer and the insured, in equal parts, and must be agreed to in writing, before initiating the process, specifying the rate (by the hour, by day, or by session) and the duration of the services.
- (b) The arbitrator shall set forth his or her fees in writing, specifying the rate (by the hour, by day, or by session), before the appraisal process begins. The arbitrator's fees 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 in the event of extraordinary circumstances that would justify a higher rate. These fees may not be based on a percentage of what is received for the claim or of the value of the loss.

- (c) Each party will be responsible for paying for the appraisers that represent them in the appraisal process.

I. Sanctions

Any violation of the provisions of Sections 9.301, 11.150 (3), and 11.190(3) of the Insurance Code, will entail the imposition of the sanctions set forth in Chapter 2 or Chapter 27 of the Insurance Code, as applicable.

J. Scope and Effect

Under Law No. 242-2018, the guidelines established in this Ruling Letter will be applicable to the appraisal processes related to claims under commercial and personal property insurance arising from hurricanes Irma and María, that are pending of resolution, and to all claims that entail an adjustment process, under commercial and personal property insurance that may arise after the approval of that statute.

This letter repeals Ruling Letter No. CN-2018-241-D, issued on June 12, 2018.

The provisions of this Ruling Letter enter into effect immediately.

Strict compliance with this letter is hereby required.

Very truly yours,

Javier Rivera-Ríos, LUTCF
Commissioner of Insurance