

SECTION 1 OF:

SESSION LAW 2006-145 SENATE BILL 277

SECTION 1. Article 44 of Chapter 58 of the General Statutes is amended by renaming the title of Article 44 to "Property Insurance Policies," by designating G.S. 58-44-1 through G.S. 58-44-55 of Article 44 as Part 1, entitled "Policy Provisions," and by adding the following new Part 2:

"Part 2. Mediation of Emergency or Disaster-Related Property Insurance Claims.

"§ 58-44-70. Purpose and scope.

(a) This Part creates a nonadversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the critical need for effective, fair, and timely handling of insurance claims arising out of damages to residential property as the result of a disaster. This Part applies only if a state of disaster has been proclaimed for the State or for an area within the State by the Governor under G.S. 166A-6; or if the President of the United States has issued a major disaster declaration for the State or for an area within the State under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended.

(b) The procedure established by this Part is available to all first-party claimants who have insurance claims resulting from damage to residential property occurring in this State. This Part does not apply to commercial insurance, motor vehicle insurance, or to liability coverage contained in property insurance policies.

(c) The Commissioner may designate a person, either within the Department or outside of the Department, as the Administrator or other functionary to carry out any of the Commissioner's duties under this Part.

"§ 58-44-75. Definitions.

As used in this Part:

- (1) Administrator. – The Commissioner or the Commissioner's designee; and the term is used interchangeably with regard to the Commissioner's duties under this Part.
- (2) Disaster. – As defined in G.S. 166A-4(1).
- (3) Disputed claim. – Any matter on which there is a dispute as to the cause of loss or amount of loss, for which the insurer has denied payment, in part or whole, with respect to claims arising from a disaster. Unless the parties agree to mediate a disputed claim involving a lesser amount, a "disputed claim" involves the insured requesting one thousand five hundred dollars (\$1,500) or more to settle the dispute, or the difference between the positions of the parties is one thousand five hundred dollars (\$1,500) or more. "Disputed claim" does not include a dispute with respect to which the insurer has reported allegations of fraud, based on a referral to the insurer's special investigative unit, to the Commissioner. A disputed claim does not include one in which there has been a denial of coverage

for the loss because of exclusions in the policy, terms in the policy, conditions in the policy, or nonexistence of the policy at the time of the loss.

- (4) Mediation. – As defined in G.S. 7A-38.1(b)(2).
- (5) Mediator. – A neutral person who acts to encourage and facilitate a resolution of a claim.
- (6) Party or parties. – The insured and his or her insurer, including a surplus lines insurer and the underwriting associations in Articles 45 and 46 of this Chapter, when applicable.

"§ 58-44-80. Notification of right to mediate.

(a) Insurers shall notify their insureds in this State who have claimed damage to their residential properties as a result of a disaster of their right to mediate disputed claims. This requirement applies to all disputed claims, including instances where checks have been issued by the insurer to the insured.

(b) The insurer shall mail a notice of the right to mediate disputed claims to an insured within five days after the time the insured or the Administrator notifies the insurer of a dispute regarding the insured's claim. The following apply:

- (1) If the insurer has not been notified of a disputed claim before the time an insurer notifies the insured that a claim has been denied in whole or in part, the insurer shall mail a notice of the right to mediate to the insured in the same mailing as the notice of denial.
- (2) The insurer is not required to send a notice of the right to mediate if a claim is denied because the amount of the claim is less than the insured's deductible.
- (3) The mailing that contains the notice of the right to mediate shall include any consumer brochure on mediation developed by the Commissioner.
- (4) Notification shall be in writing and shall be legible, conspicuous, and printed in at least 12-point type.
- (5) The first paragraph of the notice shall contain the following statement: "The General Assembly of North Carolina has enacted a law to facilitate fair and timely handling of residential property insurance claims arising out of disasters. The law gives you the right to attend a mediation conference with your insurer in order to settle any dispute you have with your insurer about your claim. An independent mediator, who has no connection with your insurer, will be in charge of the mediation conference."

(c) The notice shall also:

- (1) Include detailed instructions on how the insured is to request mediation, including name, address, and phone and fax numbers for requesting mediation through the Administrator.
- (2) Include the insurer's address and phone number for requesting additional information.
- (3) State that the Administrator will select the mediator.

"§ 58-44-85. Request for mediation.

(a) If an insured requests mediation before receipt of the notice of the right to mediate or if the date of the notice cannot be established, the insurer shall be notified by the Administrator of the existence of the dispute before the Administrator processes the insured's request for

mediation. An insured must request mediation within 60 days after the denial of the claim; failure to request mediation within this time period shall only bar the right to demand mediation; it shall not prejudice any other legal right or remedy of the insured nor prohibit the insurer from voluntarily accepting the request for mediation.

(b) If an insurer receives a request for mediation, the insurer shall electronically transmit the request to the Administrator within three business days after receipt of the request. If the Department receives any requests, it shall electronically transmit those requests to the Administrator within three business days after receipt. The Administrator shall notify the insurer within 48 hours after receipt of a request that has been filed with the Department.

(c) In the insured's request for mediation, the insured shall provide the following information, if known:

- (1) Name, address, and daytime telephone number of the insured and location of the property if different from the address given.
- (2) The claim and policy number for the insured.
- (3) A brief description of the nature of the dispute.
- (4) The name of the insurer and the name, address, and phone number of the contact person for scheduling mediation.
- (5) Information with respect to any other policies of insurance that may provide coverage of the insured property for named perils such as flood, earthquake, or windstorm.

"§ 58-44-90. Mediation fees.

(a) The fees of the mediator and of the Administrator as established by the Commissioner shall be borne by the insurer. All other mediation costs, fees, or expenses shall be borne by the party incurring such costs, fees, or expenses unless otherwise provided in a settlement agreement.

(b) The Commissioner may establish fee schedules, through emergency rules, for fees to be paid to the Administrator, the mediator, and for timely and untimely mediation cancellations.

"§ 58-44-95. Scheduling of mediation; qualification of mediator.

(a) The Administrator shall select a mediator and schedule the mediation conference.

(b) In order to be approved, a mediator must be certified by the Dispute Resolution Commission under G.S. 7A-38.2; or, if not, shall be approved at the discretion of the Administrator only if the parties agree on the selected mediator and the proposed mediator is a licensed attorney in North Carolina in good standing with the North Carolina State Bar. A mediator shall not make an award or render a judgment as to the merits of the action.

"§ 58-44-100. Conduct of the mediation conference.

(a) The Commissioner may adopt rules, in addition to the provisions of this section and that are not in conflict with G.S. 7A-38.1 or the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions adopted by the Supreme Court of North Carolina pursuant to G.S. 7A-38.1 and G.S. 7A-38.2, for the conduct of mediation conferences under this Part. The rules adopted by the Commissioner shall include a requirement of the mediator to advise the parties of the mediation process and their rights and duties in the process.

(b) All parties shall negotiate in good faith. A decision by an insurer to stand by a coverage determination shall not be considered a failure to negotiate in good faith. A party shall be determined to have not negotiated in good faith if the party or a person participating on the

party's behalf, becomes unduly argumentative or adversarial or continuously disrupts or otherwise inhibits the negotiations, as determined by the mediator.

(c) The mediator shall terminate the negotiations if the mediator determines that either party is not negotiating in good faith, either party is unable or unwilling to participate meaningfully in the process, or upon mutual agreement of the parties.

(d) The party responsible for causing termination shall be responsible for paying the mediator's fee and the administrative fee for any rescheduled mediation.

(e) The representative of the insurer attending the conference shall:

(1) Bring, in paper or electronic medium, a copy of the policy and the entire claims file to the conference.

(2) Know the facts and circumstances of the claim and be knowledgeable of the provisions of the policy.

(f) An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle within the limits of the policy.

(g) The mediator shall be in charge of the conference and will establish and describe the procedures to be followed. The mediator shall conduct the conference in accordance with the standards of professional conduct for mediation adopted by the American Arbitration Association, the American Bar Association, the Society of Professionals in Dispute Resolution, and, where not inconsistent, with the Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions adopted by the Supreme Court of North Carolina pursuant to G.S. 7A-38.1 and G.S. 7A-38.2.

(h) All statements made and documents produced at a settlement conference shall be deemed settlement negotiations in anticipation of litigation. The provisions of G.S. 7A-38.1(j), (l), and (m) apply and are incorporated into this Part by reference.

(i) A party may move to disqualify a mediator for good cause at any time. The request shall be directed to the Administrator if the grounds are known before the mediation conference. Good cause consists of conflict of interest between a party and the mediator, inability of the mediator to handle the conference competently, or other reasons that would reasonably be expected to impair the conference.

"§ 58-44-105. Post mediation.

(a) Within five days after the conclusion of the conference, the mediator shall file with the Administrator a mediator's status report, on a form prescribed by the Administrator, indicating whether or not the parties reached a settlement.

(b) Mediation is nonbinding unless all the parties specifically agree otherwise in writing.

(c) If the parties reach a settlement, the mediator shall include a copy of the settlement agreement with the status report. Within three business days after the conclusion of the conference, the insurer shall disburse the settlement funds in accordance with the terms of the settlement agreement. The insured has three business days after receipt of the settlement funds within which to notify the Commissioner and the insurer of the insured's decision to rescind the settlement agreement, as long as the insured has not received the settlement funds by electronic means or has not cashed or deposited any check or draft disbursed to the insured in payment of the settlement funds.

(d) If a settlement agreement is reached and is not rescinded, it shall act as a release of all specific claims that were presented in the conference. Any subsequent claim under the policy shall be presented as a separate claim.

"§ 58-44-110. Nonparticipation in mediation program.

If the insured decides not to participate in this program or if the parties are unsuccessful at resolving the claim, the insured may choose to proceed under the appraisal process set forth in the insurance policy, by litigation, or by any other dispute resolution procedure available under North Carolina law.

"§ 58-44-115. Commissioner's review.

If the insured rescinds a settlement agreement in accordance with G.S. 58-44-105(c), the Commissioner may review the settlement agreement to determine if the agreement was fair to the parties to the agreement. If the Commissioner, upon review and within 10 business days after receiving notice of the rescission, deems that it was fair to the parties, the insured, upon notice from the Commissioner, may withdraw the rescission within five business days after receipt of notice from the Commissioner and reinstate the settlement agreement as if no rescission had taken place. The Commissioner's review and findings shall not be offered or accepted as evidence in any subsequent proceedings.

"§ 58-44-120. Relation to Administrative Procedure Act.

The applicable provisions of Chapter 150B of the General Statutes shall govern issues relating to mediation that are not addressed in this Part. The provisions of this Part shall govern in the event of any conflict with Chapter 150B of the General Statutes."