

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

**SESSION LAW 2007-300**  
**HOUSE BILL 730**

AN ACT TO MAKE TECHNICAL AND SUBSTANTIVE CHANGES IN THE LAWS GOVERNING MEDIATION OF PROPERTY INSURANCE CLAIMS ARISING OUT OF DISASTERS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 58-44-70 reads as rewritten:

**"§ 58-44-70. Purpose and scope.**

(a) This Part ~~creates~~ provides for 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~~ an event for which there is a state of disaster declared within 60 days of the event. This Part applies only (i) if a state of disaster has been proclaimed for the State or for an area within the State by the Governor or by a resolution of the General Assembly under G.S. 166A-6; or (ii) 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~~ amended; and (iii) if the Commissioner issues an order establishing the mediation procedure authorized by this Part.

(b) The procedure ~~established~~ authorized 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."

**SECTION 2.** G.S. 58-44-80(b) reads as rewritten:

"(b) The insurer shall mail ~~a~~ the notice of the right to mediate disputed claims ~~described in subsection (a) of this section~~ 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:  
...."

**SECTION 3.** G.S. 58-44-95 reads as rewritten:

**"§ 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. G.S. 7A-38.2."~~

**SECTION 4.** G.S. 58-44-100 reads as rewritten:

**"§ 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,~~ 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~~ shall establish and describe the procedures to be followed. The mediator shall conduct the conference in accordance with the ~~standards of professional conduct for mediation~~ Standards of Professional Conduct for Mediators adopted by the ~~American Arbitration Association, the American Bar Association, the Society of Professionals in Dispute Resolution,~~ Supreme Court of North Carolina 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. The Commissioner may refer any matter regarding the conduct of any mediator to the North Carolina Dispute Resolution Commission.

(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. If the Commissioner or an employee or designee of the Commissioner attends a settlement conference, the Commissioner, employee, or designee shall not be compelled to testify about what transpired at the settlement conference or about any other matter in connection with the settlement conference.

(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."

**SECTION 5.** G.S. 58-44-60(a) reads as rewritten:

"(a) Every insurer that sells residential or commercial property insurance policies that do not provide coverage for the perils of flood, earthquake, mudslide, mudflow, or landslide shall, upon the issuance and renewal of each policy, identify to the policyholder which of these perils are not covered under the policy. The insurer shall print the following warning, citing which peril is not covered, in Times New Roman 16-point font or other equivalent font and include it in the policy on a separate page immediately before the declarations page:

"WARNING: THIS PROPERTY INSURANCE POLICY DOES NOT PROTECT YOU AGAINST LOSSES FROM [FLOODS], [EARTHQUAKES], [MUDSLIDES], [MUDFLOWS], [LANDSLIDES]. YOU SHOULD CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING COVERAGE FOR THESE LOSSES. THIS IS NOT A COMPLETE LISTING OF ALL OF THE CAUSES OF LOSSES NOT COVERED UNDER YOUR POLICY. YOU SHOULD READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED AND WHAT IS NOT COVERED."

**SECTION 6.** This act becomes effective October 1, 2007, and applies to policies issued or renewed on or after that date.

In the General Assembly read three times and ratified this the 18<sup>th</sup> day of July, 2007.

s/ Marc Basnight  
President Pro Tempore of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 11:50 a.m. this 28<sup>th</sup> day of July, 2007