

February 22, 2008

Task Force on Citizens Claims Handling & Resolution

Mr. Chairman and Members of the Task Force:

Thank you for the opportunity to once again present my comments on the pending matter of the regulation of Property Appraisal Umpires.

By way of background, I am a licensed independent property adjuster in Florida and elsewhere, and a licensed public adjuster elsewhere. For the past 16 years, I have specialized in catastrophic property losses throughout the country as an adjuster, appraiser, umpire and expert witness.

Having participated in the property appraisal process in different states, I would like to share with you some of my experience and thoughts.

I am not qualified to write or amend legislation, therefore, please permit me to reference the proposed legislation conceptually, rather than by amendment, as follows:

I agree that your proposal to regulate umpires rather than appraisers is a well conceived approach. I recommend that the regulation be done through certification rather than licensing under the following considerations:

- Licensing is appropriate for full-time professionals whose education, expertise and conduct are to be relied upon by the public where the licensing is an indicator of a level of service to be expected. Appraisal umpires do not necessarily practice their craft full-time, and may hail from a variety of professions.
- I would recommend that an Appraisal Umpire Commission be established, comprised of: a representative from the Department of Financial Services; an independent adjuster; a public adjuster, a property insurance defense counselor; a property insurance plaintiffs' counsel; an appointee of the Florida Insurance Council; an appointee of the Collins Group; and an appointee of the Florida Windstorm Association. This Commission would be charged with the responsibility and authority: to create and implement primary and continuing education requirements for umpires; to create and monitor standards of conduct for umpires; to certify umpires; to hear matters where umpires may be alleged to have breached the standards of conduct, failed to meet the education requirements, or have been found guilty in a court of competent jurisdiction of any felony; and to de-certify umpires who have been judged to have been in breach of any of the foregoing.
- I would also recommend that the appraisal process be codified to the extent that it differs from arbitration. Presently the courts are only able to exercise control over the beginning and the end of the process.

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In the beginning, the courts are looked upon to provide an umpire, when selected appraisers are not able to agree upon an umpire acceptable to both sides. However, the courts have no guidelines as to who may be an appropriate candidate, and often will choose someone whose familiarity with the law may be considerable, but whose lack of expertise in the ancillary aspects (eg. construction and construction defects, concurrent and/or efficient causation, claims handling, mitigation) to be able to properly and fairly render a judgment.

At the end of the process, the courts are charged with the responsibility of entering an appraisal award as a judgment in favor of one of the parties.

In the interim, many states' courts have attempted to rely upon arbitration statutes and precedents to determine the equitable determination of an appraisal award. However, as appraisal differs from arbitration, codification and/or regulation of the process would provide all parties and the courts with a roadmap.

- With respect to education, as prospective umpires come to the table with a variety of expertise, I would recommend that 40 hours of training be required of all umpires, irrespective of current professional licensing. The education should be comprised of training in: the basic components and materials utilized in residential and commercial construction; the causes and effects of wind and flood damage on structures; the repair vs. replacement of damaged building components; the initiation and effect of mold; finding and choosing experts to provide information beyond the knowledge and expertise of the appraisers and umpires; formal vs. informal appraisals; ethical and professional standards of conduct for umpires; the law as it pertains to the appraisal process. I would further recommend that a certified umpire be required to complete a minimum of 8 hours of continuing education biennially in order to maintain certification status.

- Finally, I would recommend that the Task Force consider an enforceable penalty process, wherein an umpire judged to have violated the standards of conduct in the process, would be able to be held accountable for damages in a court of competent jurisdiction.

Respectfully submitted by,

Daniel R. Montgomery

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