Mediation of Emergency or Disaster-Related Insurance Claims

This Act:

- provides for a voluntary mediation program for residential property insurance claims caused by disasters;
- requires sellers of property insurance to disclose major perils that are not covered;
- provides for the tolling of time periods in property insurance policies in disaster situations;
- provides for the tolling of time periods if the operations of the department of insurance are interrupted by force majeure, and
- authorizes motor vehicle self-insurance for certain religious organizations.

Submitted as:
North Carolina
Session Law 2006-145
Status: Enacted into law in 2006.

Suggested State Legislation

(Title, enacting clause, etc.)

Section 1. [Short Title.] This Act shall be cited as “An Act to Address Mediating Residential Property Insurance Claims Caused by Disasters.”

Section 2. [Purpose and Scope.]

(a) This Act 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 Act applies only if a state of disaster has been proclaimed for the state or for an area within the state by the governor under [insert citation], 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 Act is available to all first-party claimants who have insurance claims resulting from damage to residential property occurring in this state. This Act does not apply to commercial insurance, motor vehicle insurance, or to liability coverage contained in property insurance policies.

(c) The [state commissioner of insurance] may designate a person, either within the [state insurance department] or outside the [state insurance department], as the administrator or other functionary to carry out any of the [commissioner’s] duties under this Act.

Section 3. [Definitions.] As used in this Act:

(1) Administrator. – The state [Commissioner of Insurance] or the [Commissioner’s designee]; and the term is used interchangeably with regard to the [Commissioner’s] duties under this Act.

(2) Disaster. – As defined in [insert citation].

(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 [insert citation].

(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 underwriting associations as defined in [insert citation], when applicable.

Section 4. [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 [insert state] legislature 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, and

(3) state that the [Administrator] will select the mediator.

Section 5. [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; and
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.

Section 6. [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.

Section 7. [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 [insert citation]; 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 good standing with the state Bar. A mediator shall not make an award or render a judgment as to the merits of the action.

Section 8. [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 [insert citation], for the conduct of mediation conferences under this Act. 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, [insert citation].

(h) All statements made and documents produced at a settlement conference shall be deemed settlement negotiations in anticipation of litigation.

(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 9. [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.

Section 10. [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 state law.

Section 11. [Commissioner’s Review.] If the insured rescinds a settlement agreement in accordance with [Section 9 (c)] of this Act, 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.

Section 12. [Relation to Administrative Procedure Act.] The applicable provisions of the [state Administrative Procedure Act] shall govern issues relating to mediation that are not addressed in this Act.

Section 13. [Notice to Property Insurance Policyholder about Flood, Earthquake, Mudslide, Mudflow, and Landslide Insurance Coverage.]

(a) Every insurer that sells 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.”

(b) As used in this section, “insurer” includes an entity that sells property insurance under [insert citation].

Section 14. [State of Disaster; Automatic Stay of Proof of Loss Requirements; Premium and Debt Deferrals; Loss Adjustments For Separate Windstorm Policies.] Whenever a state of disaster is proclaimed for the state or for an area within the state under [insert citation] or whenever the President of the United States has issued a major disaster declaration for the state or for an area within the state under the Stafford Act, 42 U.S.C. § 5121, et seq., as amended:

(1) The application of any provision in an insurance policy insuring real property and its contents that are located within the geographic area designated in the proclamation or declaration, which provision requires an insured to file a proof of loss within a certain period of time after the occurrence of the loss, shall be stayed for the time period not exceeding the expiration of the disaster proclamation or declaration and all renewals of the proclamation or [45 days], whichever is later.

(2) As used in this subdivision, “insurance company” includes a service corporation, HMO, MEWA, surplus lines insurer, and the underwriting associations under [insert citation]. All insurance companies, premium finance companies, collection agencies, and other people subject to this Act shall give their customers who reside within the geographic area designated in the proclamation or declaration the option of deferring premium or debt payments that are due during the time period covered by the proclamation or declaration. This deferral period shall be [30 days] from the last day the premium or debt payment may be made under the terms of the policy or contract. This deferral period shall also apply to any statute, rule, or other policy or contract provision that imposes a time limit on an insurer, insured, claimant, or
customer to perform any act during the time period covered by the proclamation or declaration, including the transmittal of information, with respect to insurance policies or contracts, premium finance agreements, or debt instruments when the insurer, insured, claimant, or customer resides or is located in the geographic area designated in the proclamation or declaration. Likewise, the deferral period shall apply to any time limitations imposed on insurers under the terms of a policy or contract or provisions of law related to people who reside within the geographic area designated in the proclamation or declaration. The [Commissioner] may extend any deferral period in this subdivision, depending on the nature and severity of the proclaimed or declared disaster. No additional rate or contract filing shall be necessary to effect any deferral period.

(3) With respect to health benefit plans, after a deferral period has expired, all premiums in arrears shall be payable to the insurer. If premiums in arrears are not paid, coverage shall lapse as of the date premiums were paid up, and preexisting conditions shall apply as permitted under this Act; and the insured shall be responsible for all medical expenses incurred since the effective date of the lapse in coverage.

(4) In addition to the requirements of [insert citation] for separate windstorm policies that are written by an insurer other than the [Underwriting Association], losses shall be adjusted by the insurer that issued the property insurance and not by the insurer that issued the windstorm policy. The insurer that issued the windstorm policy shall reimburse the insurer that issued the property insurance for reasonable expenses incurred by that insurer in adjusting the windstorm losses.

Section 15. [Incident Affecting Operations of the Department; Stay of Deadlines and Deemer Provisions.] Regardless of whether a state of disaster has been proclaimed under [insert citation] or declared under the Stafford Act, whenever an incident beyond the [Department’s] reasonable control, including an act of God, insurrection, strike, fire, power outage, or systematic technological failure, substantially affects the daily business operations of the [Department], the [Commissioner] may issue an order, effective immediately, to stay the application of any deadlines and deemer provisions imposed by law or rule upon the [Commissioner] or [Department] or upon people subject to the [Commissioner’s] jurisdiction, which deadlines and deemer provisions would otherwise operate during the time period for which the operations of the [Department] have been substantially affected. The order shall remain in effect for a period not exceeding [30 days]. The order may be renewed by the [Commissioner] for successive periods not exceeding [30 days] each for as long as the operations of the [Department] remain substantially affected, up to a period of [one year] from the effective date of the initial order.

Section 16. [Religious Organizations; Self-Insurance.] (a) Notwithstanding any other provision of this Act, any recognized religious organization having established tenets or teachings and that has been in existence at all times since [December 31, 1950], may qualify as a self-insurer by obtaining a certificate of self-insurance from the [Commissioner] as provided in [subsection (c)] of this section if the [Commissioner] determines that all of the following conditions are met:

(1) members of the religious organization operate [five or more] vehicles that are registered in this state and are either owned or leased by them;

(2) members of the religious organization hold a common belief in mutual financial assistance in time of need to the extent that they share in financial obligations of other members who would otherwise be unable to meet their obligations;

(3) the religious organization has met all of its insurance obligations for the [five years] preceding its application;
(4) the religious organization is financially solvent and not subject to any actions in bankruptcy, trusteeship, receivership, or any other court proceeding in which the financial solvency of the religious organization is in question.

(5) neither the religious organization nor any of its participating members has any judgments arising out of the operation, maintenance, or use of a motor vehicle taken against them that have remained unsatisfied for more than [30 days] after becoming final.

(6) there are no other factors that cause the [Commissioner] to believe that the religious organization and its participating members are not of sufficient financial ability to pay judgments against them; and

(7) the religious organization and its participating members meet other requirements that the [Commissioner] by administrative rule prescribes.

(b) The [Commissioner] may, in the [Commissioner’s] discretion, upon the application of a religious organization, issue a certificate of self-insurance when the [Commissioner] is satisfied that the religious organization is possessed and will continue to be possessed of an ability to pay any judgments that might be rendered against the religious organization. The certificate shall serve as evidence of insurance for the purposes of [insert citation].

(c) A group issued a certificate of self-insurance under this section shall notify the [Commissioner] in writing if any person ceases to be a member of the group. The group shall notify the [Commissioner] within [10 days] of the person’s removal or departure from the group.

(d) The [Commissioner] may, at any time after the issuance of a certificate of self-insurance under this subsection, cancel the certificate by giving [30 days’] written notice of cancellation to the religious organization whenever there is reason to believe that the religious organization to whom the certificate was issued is no longer qualified as a self-insurer under this section.

Section 17. [Severability.] [Insert severability clause.]

Section 18. [Repealer.] [Insert repealer clause.]

Section 19. [Effective Date.] [Insert effective date.]