

Subchapter E. Texas Windstorm Insurance Association
Division 4. Consumer Assistance; Claim Processes
28 TAC §5.4211

INTRODUCTION. The commissioner of insurance adopts amendments to 28 TAC §5.4211, concerning the establishment of a time period for the Texas Windstorm Insurance Association (TWIA) appraisal process. The amendments to §5.4211 implement House Bill 3310, 88th Legislature, 2023. The amendments are adopted without changes to the proposed text published in the November 10, 2023, issue of the *Texas Register* (48 TexReg 6567).

REASONED JUSTIFICATION. HB 3310 requires the commissioner to adopt rules that establish a time period for an appraisal demanded under Insurance Code §2210.574. Amendments to §5.4211 are necessary to establish the required deadline.

Amendments to subsections (a)(2) and (b)(1) insert the titles of cited Insurance Code sections.

The amendments also add new subsections (e), (f), (j), (k), and (m). The other subsections are redesignated as appropriate to reflect the addition of these new subsections.

New subsection (e) sets a deadline by which appraisers must disclose their projected fees to the parties and agree on an umpire. The deadline helps ensure that appraisers begin their involvement with the appraisal in a timely manner, and it helps claimants evaluate the anticipated cost of the appraisal.

New subsection (f) establishes a deadline by which the appraisers must agree on the amount of loss. One way to complete an appraisal is for the appraisers to agree on

the amount of loss, so subsection (f) establishes a deadline to complete that effort. The deadline is longer for commercial claims because losses are frequently larger or more complex than the losses in residential claims.

The amendment to redesignated subsection (i) provides for an umpire to become involved if the appraisers do not agree on the amount of loss by the applicable deadline in adopted subsection (f). The amendment does not prevent an umpire from becoming involved before the deadline.

If the appraisers do not agree on the amount of loss, the way to complete the appraisal is for the appraisal panel to decide on the amount of loss. The appraisal panel consists of the two appraisers and the umpire. Accordingly, new subsection (j) establishes a deadline for the appraisal panel to decide on the amount of loss. The deadline is based on when the umpire becomes involved in the appraisal. The deadline is longer for commercial claims because losses are frequently larger or more complex than losses in residential claims.

New subsection (k) provides that TWIA and the claimant may extend the deadlines in subsections (f) or (j) by written agreement. Giving the parties the ability to extend the deadlines adds flexibility to provide more time for the appraisal when both parties agree it is appropriate. The subsection also recognizes that the commissioner may extend deadlines under 28 TAC §5.4222.

The amendment to redesignated subsection (l) provides that when the appraisers—rather than the parties—cannot agree on the amount of loss, and the umpire participates, an itemized decision agreed to by any two of these three is binding on the parties. In an appraisal, decisions about the amount of loss are made by appraisers and umpires, not the parties. The amendment clarifies that distinction.

New subsection (m) allows the appraisers to select a new umpire if a decision is not issued within the deadlines. Allowing the appraisers to select a new umpire helps ensure the appraisal is completed in a timely manner. If the appraisers cannot agree on a new umpire, either of the appraisers may ask TDI to select one. This subsection follows the same process used to select an umpire at the outset of an appraisal.

The amendment to redesignated subsection (n) removes an obsolete applicability date. The subsection's applicability remains the same.

Other amendments add articles "the" or "an" before "appraisal" as appropriate to conform with current agency drafting style.

As required by HB 3310, TDI developed the amendments in consultation with TWIA.

SUMMARY OF COMMENTS AND AGENCY RESPONSE

Commenters: TDI received one comment on the proposal, from the Office of Public Insurance Counsel, in support of it.

Comment on §5.4211

Comment. One commenter broadly expressed support for the proposal. Agency Response. TDI appreciates the support.

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STATUTORY AUTHORITY. TDI adopts amendments to §5.4211 under Insurance Code §§2210.008, 2210.574(d-1), 2210.580, and 36.001.

Insurance Code §2210.008 provides that the commissioner may adopt rules as reasonable and necessary to implement Chapter 2210.

Insurance Code §2210.574(d-1) requires the commissioner to adopt rules establishing the period in which an appraisal demand must be completed.

Insurance Code §2210.580 requires the commissioner to adopt rules regarding procedures and deadlines for payment and handling of claims.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

TEXT.**§5.4211. Appraisal Process.**

(a) Applicability. This section and §§5.4212 - 5.4222 of this title describe the appraisal process and apply when:

- (1) the association has accepted coverage for a claim, in full or in part; and
- (2) the claimant disputes the amount of loss the association will pay for the accepted portion of the claim within the time allowed by Insurance Code §2210.574, concerning Disputes Concerning Amount of Accepted Coverage, or §2210.5741, concerning Replacement Cost Coverage Claim Processing.

(b) Appraisal explanation. The association must include an explanation of the appraisal process, and the process for requesting a supplemental payment, with each notice either:

- (1) accepting coverage under Insurance Code §2210.573, concerning Filing of Claim; Claim Processing; or

- (2) stating the amount of the replacement cost payment the association will make in response to a request under Insurance Code §2210.5741.

(3) The explanation must include the deadlines for demanding an appraisal and requesting a supplemental payment.

(c) Appraisal demand.

(1) A claimant may demand an appraisal under Insurance Code §2210.574 or §2210.5741 by telling the association that the claimant disagrees with the amount of loss the association will pay for the accepted portion of the claim. A disagreement includes asking for additional money or telling the association that the amount may not be enough.

(2) A claimant may demand an appraisal under Insurance Code §2210.5741:

(A) at any time after the claimant receives the claim acceptance notice described in Insurance Code §2210.573(d)(1) or (2), but not later than the 30th day after the date the claimant receives the replacement cost notice described by Insurance Code §2210.5741(b);

(B) if the claimant has not demanded an appraisal on the claim under Insurance Code §2210.574; and

(C) regardless of whether repairs are complete.

(3) If the association receives an appraisal demand from a claimant, the association must, in writing, acknowledge the appraisal demand not later than the 10th day after the date of receipt.

(4) The acknowledgment of an appraisal demand must include an explanation of the:

(A) appraisal process, including that the process begins when the claimant hires an appraiser; and

(B) process for requesting a supplemental payment, including the opportunity to seek a supplemental payment before the appraisal process begins.

(d) Appraiser selection. The association and the claimant must each hire an appraiser who is independent and qualified under §5.4212 of this title (relating to Appraisal Process - Appraiser Qualifications and Conflicts of Interest).

(e) Deadline for appraisal budget disclosure and naming an umpire. Within 15 days of the date by which the appraisers are named by the parties, the appraisers must disclose their projected fees to the parties and agree on an umpire. If the appraisers cannot agree on an umpire, they may ask the department to select an umpire under subsection (h) of this section. The deadlines in this subsection may be extended as provided by subsection (k) of this section.

(f) Deadline for appraiser agreement. Except as provided by subsection (k) of this section, appraisers must agree on the amount of loss:

(1) for residential claims, within 90 days of the date by which both appraisers were named; or

(2) for commercial claims, within 120 days of the date by which both appraisers were named.

(g) Appraiser fee information. No later than five days after hiring an appraiser, each party must tell the other party the fees to be charged by the appraiser.

(h) Umpire selection.

(1) The appraisers must select an umpire who is independent and qualified under §5.4214 of this title (relating to Appraisal Process - Umpire Qualifications and Conflicts of Interest).

(2) If the appraisers are unable to agree on an umpire, either appraiser may ask the department to select an umpire. The appraiser must submit the request under §5.4251 of this title (relating to Requests and Submissions to the Department). The request must include the following information:

- (A) the type of policy;
- (B) a description of the claim and, if known, the claimed value of the covered loss;
- (C) the association's claim acceptance letter, including the amount the association will pay for the loss; and
- (D) any other information that the department requests.

(i) Umpire participation. The selected umpire must participate in the resolution of the dispute if the appraisers fail to agree on a decision by the deadlines specified in subsection (e) of this section.

(j) Deadline for appraisal panel decision. Except as provided by subsection (k) of this section, the appraisal panel must decide on the amount of loss:

- (1) for residential claims, within 60 days of the date by which the umpire becomes involved; or
- (2) for commercial claims, within 90 days of the date by which the umpire becomes involved.

(k) Extension of deadlines. The association and the claimant may extend deadlines by written agreement of both parties. The commissioner may also extend deadlines, as provided in §5.4222 of this title (relating to Appraisal Process - Extensions of Deadlines).

(l) Decision. If the appraisers agree on the amount of loss, their decision is binding on the parties as to the amount of loss the association will pay for the claim. If the

appraisers cannot agree, and the umpire participates, an itemized decision agreed to by any two of these three is binding on the parties as to the amount of loss the association will pay for the claim. Parties may challenge the decision only as permitted by Insurance Code §2210.574.

(m) New umpire. If a decision is not issued within the deadlines established by subsection (j) of this section, or as extended by subsection (k) of this section, the appraisers may select a new umpire as described in subsection (h)(1) of this section, or either appraiser may ask the department to select a new umpire as described in subsection (h)(2) of this section.

(n) Notice for actual cash value coverage. The association must send a notice to the claimant for each accepted claim for damage to a structure, or part of a structure, on which the claimant has only actual cash value coverage and an appraisal has not been demanded.

(1) The association must send the notice not earlier than the 45th day before but not later than the 30th day before the deadline to demand an appraisal under Insurance Code §2210.574.

(2) The notice must inform the claimant that:

(A) an appraisal has not been demanded; and

(B) if the claimant disagrees with the amount the association will pay for the accepted part of the claim or thinks the amount may not be enough, the claimant must tell the association before the appraisal deadline. If the claimant does not tell the association before the deadline, the claimant cannot ask for a supplemental payment after the deadline passes.

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(C) The notice must also inform the claimant of the deadline for demanding an appraisal and requesting a supplemental payment.

(3) The association is required to send the notice only one time, unless the department extends the appraisal deadline after the association sends the notice.

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on January 2, 2024.

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Jessica Barta
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Jessica Barta, General Counsel
Texas Department of Insurance

The amendments to 28 TAC §5.4211 are adopted.

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Cassie Brown
Commissioner of Insurance

Commissioner's Order No. 2024-8458.