

Article 44.

Property Insurance Policies.

Part 1. Policy Provisions.

**§ 58-44-1. Terms and conditions must be set out in policy.**

In all insurance against loss by fire the conditions of insurance must be stated in full, and the rules and bylaws of the company are not a warranty or a part of the contract, except as incorporated in full into the policy. (1899, c. 54, s. 42; Rev., s. 4758; C.S., s. 6434; 2006-145, s. 1.)

**§ 58-44-5. Items to be expressed in policies.**

Upon request there shall be printed, stamped, or written on each fire policy issued in this State the basis rate, deficiency charge, the credit for improvements, and the rate at which written, and whenever a rate is made or changed on any property situated in this State upon request a full statement thereof showing in detail the basis rate, deficiency charges and credits, as well as rate proposed to be made, shall be delivered to the owner or his representative having the insurance on the property in charge, by the company, association, their agent or representative. (1915, c. 109, s. 3; C.S., s. 6435; 1925, c. 70, s. 3; 1945, c. 378.)

**§ 58-44-10: Repealed by Session Laws 1995, c. 517, s. 27.**

**§ 58-44-15: Repealed by Session Laws 2009-171, s. 6, effective January 1, 2010, and applicable to fire insurance policies issued or renewed on and after that date.**

**§ 58-44-16. Fire insurance policies; standard fire insurance policy provisions.**

(a) The provisions of a fire insurance policy, as set forth in subsection (f) of this section, shall be known and designated as the "standard fire insurance policy."

(b) With the exception of policies covering (i) automobile fire, theft, comprehensive, and collision or (ii) marine and inland marine insurance, no fire insurance policy shall be made, issued, or delivered by any insurer or by any agent or representative of the insurer on any property in this State, unless it conforms in substance with all of the provisions, stipulations, agreements, and conditions in subsection (f) of this section.

(c) There shall be printed at the head of the policy the name of the insurer or insurers issuing the policy; the location of the home office of the insurer or insurers; a statement whether the insurer or insurers are stock or mutual corporations or are reciprocal insurers. This section does not limit an insurer to the use of any particular size or manner of folding the paper upon which the policy is printed; provided, however, that any insurer organized under special charter provisions may so indicate upon its policy and add a statement of the plan under which it operates in this State.

(d) The standard fire insurance policy need not be used for effecting reinsurance between insurers.

(e) The provisions of the standard fire policy are stated in this section and shall be incorporated in fire insurance policies subject to this section. If any conditions of this section are construed to be more liberal than any other policy conditions relating to the perils of fire, lightning, or removal, the provisions of this section shall apply.

(f) The following subdivisions comprise all of the provisions, stipulations, agreements, and conditions of the standard fire insurance policy:

(1) General provisions. – In consideration of the provisions, stipulations, agreements, and conditions in this policy or added to this policy, and of the

premium specified in the declarations or in endorsements made a part of this policy, this insurer, for the term of years specified in the declarations from inception date shown in the declarations at 12:01 A.M. to expiration date shown in the declarations at 12:01 A.M. at the location of the property covered, to an amount not exceeding the limit of liability specified in the declarations, does insure the insured named in the declarations and legal representatives to the extent of the actual cash value of the property at the time of loss but not exceeding the amount that it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured against all direct loss by fire, lightning, and other perils insured against in this policy, including removal from premises endangered by the perils insured against in this policy, except as hereinafter provided, to the property described in the declarations while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy but not elsewhere. Assignment of this policy shall not be valid except with the written consent of this insurer. This policy is made and accepted subject to the provisions, stipulations, agreements, and conditions in this section, which are hereby made a part of this policy, together with such other provisions, stipulations, agreements, and conditions that may be added to this policy as provided in this policy.

- (2) Concealment or fraud. – This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject of this insurance, or the interest of the insured in the subject of this insurance, or in the case of any fraud or false swearing by the insured relating the subject of this insurance.
- (3) Uninsurable and excepted property. – This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money, or securities; nor, unless specifically named in this policy in writing, bullion or manuscripts.
- (4) Perils not included. – This insurer shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by enemy attack by armed forces, including action taken by military, naval, or air forces in resisting an actual or an immediately impending enemy attack; invasion; insurrection; rebellion; revolution; civil war; usurped power; order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that the fire did not originate from any of the perils excluded by this policy; neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; or for loss by theft.
- (5) Other insurance. – Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached to this policy.
- (6) Conditions suspending or restricting insurance. – Unless otherwise provided in writing added to this policy, this insurer shall not be liable for loss occurring:

- a. While the hazard is increased by any means within the control or knowledge of the insured;
  - b. While a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of 60 consecutive days; or
  - c. As a result of explosion or riot, unless fire ensues, and in that event for loss by fire only.
- (7) Other perils or subjects. – Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing on this policy or added to this policy.
- (8) Added provisions. – The extent of the application of insurance under this policy and of the contribution to be made by this insurer in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added to this policy; provided, however, no provision may be waived except such as by the terms of this policy is subject to change.
- (9) Waiver provisions. – No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted in this policy or expressed in writing added to this policy. No provision, stipulation, or forfeiture shall be held to be waived by any requirement or proceeding on the part of this insurer relating to appraisal or to any examination provided for in this policy.
- (10) Cancellation of policy. – This policy shall be cancelled at any time at the request of the insured, in which case this insurer shall, upon demand and surrender of this policy, refund the excess of paid premium above any short rates for the expired time. This policy may be cancelled at any time by this insurer by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.
- (11) Mortgagee interests and obligations. – If loss is made payable, in whole or in part, to a designated mortgagee not named in this policy as the insured, such interest in this policy may be cancelled by giving to such a mortgagee a ten days' written notice of cancellation. If the insured fails to render proof of loss, the mortgagee, upon notice, shall render proof of loss as specified in this policy within 60 days thereafter and shall be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit. If this insurer claims that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing the mortgagee's right to sue; or this insurer may pay off the mortgage debt and require an assignment of that debt and of the mortgage. Other provisions relating to the interests and obligations of the mortgagee may be added to this policy by agreement in writing.
- (12) Pro rata liability. – This insurer shall not be liable for a greater proportion of any loss than the amount insured by this policy bears to all insurance covering the property against the peril involved, whether collectible or not.

- (13) Requirements in case loss occurs. – The insured shall give immediate written notice to this insurer of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, and furnish a complete inventory of the destroyed, damaged, and undamaged property, showing in detail quantities, costs, actual cash value, and amount of loss claimed. Within 60 days after the loss, unless that time is extended in writing by this insurer, the insured shall render to this insurer a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item of the property and the amount of loss to the property, all encumbrances on the property, all other contracts of insurance, whether valid or not, covering any of the property, any changes in the title, use, occupation, location, possession, or exposures of the property since the issuing of this policy, by whom and for what purpose any building described in this policy and the several parts of the building were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this insurer all that remains of any property described in this policy, and submit to examinations under oath by any person named by this insurer, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies of them if originals are lost, at such reasonable time and place as may be designated by this insurer or its representative, and shall permit extracts and copies of them to be made.
- (14) Appraisal. – If the insured and this insurer fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days after the demand. The appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon a competent and disinterested umpire, on the request of the insured or this insurer, a competent and disinterested umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit only their differences to the umpire. An award in writing, so itemized, of any two when filed with this insurer shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.
- (15) Company's options. – It shall be optional with this insurer to take all, or any part, of the property at the agreed or appraised value and also to repair, rebuild, or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss required in this policy.

- (16) Abandonment. – There can be no abandonment to this insurer of any property.
- (17) When loss payable. – The amount of loss for which this insurer may be liable shall be payable 60 days after proof of loss, as provided in this policy, is received by this insurer and ascertainment of the loss is made either by written agreement between the insured and this insurer or by the filing with this insurer of an award as provided in this policy.
- (18) Suit. – No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law unless all the requirements of this policy have been complied with and unless commenced within three years after inception of the loss.
- (19) Subrogation. – This insurer may require from the insured an assignment of all rights of recovery against a party for loss to the extent that payment therefor is made by this insurer. (2009-171, s. 1.)

**§ 58-44-20. Standard policy; permissible variations.**

With the exception of policies covering (i) automobile fire, theft, comprehensive, and collision or (ii) marine and inland marine insurance, no fire insurance company shall issue fire insurance policies on property in this State other than those containing the provisions set forth in G.S. 58-44-16 except as follows:

- (1) A company may print on or in its policies the date of incorporation, the amount of its paid-up capital stock, the names of its officers, and to the words at the top of the back of said policy, "Standard Fire Insurance Policy for" may be added after or before the words "North Carolina" the names of any states or political jurisdiction in which the said policy form may be standard when the policy is used.
- (2) A company may print in its policies or use in its policies written or printed forms of description and specification of the property insured.
- (3) A company may write or print upon the margin or across the face of a policy, in unused spaces or upon separate slips or riders to be attached thereto, provisions adding to or modifying those contained in the standard form, and all such slips, riders, and provisions must be signed by an officer or agent of the company so using them. Provided, however, such provisions shall not have the effect of making the provisions of the standard policy form more restrictive except for such restrictions as are provided for in the charter or bylaws of a domestic mutual fire insurance company doing business in no more than three adjacent counties of the State and chiefly engaged in writing policies of insurance on rural properties upon an assessment or nonpremium basis, provided all such restrictions contained in the charter and bylaws of such domestic mutual fire insurance company shall be actually included within the printed terms of the policy contract so affected as a condition precedent to their being effective and binding on any policyholder. The iron safe or any similar clause requiring the taking of inventories, the keeping of books and producing the same in the adjustment of any loss, shall not be used or operative in the settlement of losses on buildings, furniture and fixtures, or any property not subject to any change in bulk and value.

- (4) Binders or other contracts for temporary insurance may be made, orally or in writing, for a period which shall not exceed 60 days, and shall be deemed to include all the terms of such standard fire insurance policy and all such applicable endorsements, approved by the Commissioner, as may be designated in such contract of temporary insurance; except that the cancellation clause of such standard fire insurance policy, and the clause thereof specifying the hour of the day at which the insurance shall commence, may be superseded by the express terms of such contract of temporary insurance.
- (5) Two or more companies authorized to do in this State the business of fire insurance, may, with the approval of the Commissioner, issue a combination standard form of fire insurance policy which shall contain the following provisions:
  - a. A provision substantially to the effect that the insurers executing such policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of such insurance under such policy.
  - b. A provision substantially to the effect that service of process, or of any notice or proof of loss required by such policy, upon any of the companies executing such policy, shall be deemed to be service upon all such insurers.
- (6) Appropriate forms of supplemental contract or contracts or extended coverage endorsements and other endorsements whereby the interest in the property described in such policy shall be insured against one or more of the perils which the company is empowered to assume, in addition to the perils covered by said standard fire insurance policy may be approved by the Commissioner, and their use in connection with a standard fire insurance policy may be authorized by him. In his discretion the Commissioner may authorize the printing of such supplemental contract or contracts or extended coverage endorsements and other endorsements in the substance of the form of the standard fire insurance policy. The first page of the policy may in form approved by the Commissioner be arranged to provide space for listing of amounts of insurance, rates and premiums, description of construction, occupancy and location of property covered for the basic coverages insured under the standard form of policy and for additional coverages or perils insured under endorsements attached or printed therein, and such other data as may be conveniently included for duplication on daily reports for office records.
- (7) A company may print on or in its policy, with the approval of the Commissioner, any provisions which it is required by law to insert in its policies not in conflict with the substance of provisions of such standard form. Such provisions shall be printed apart from the other provisions, agreements, or conditions of the policy, under a separate title, as follows: "Provisions Required by Law to Be Inserted in This Policy." (1899, c. 54, s. 43; 1901, c. 391, s. 4; Rev., s. 4759; 1907, c. 800, s. 1; 1915, c. 109, s. 10; C.S., s. 6436; 1925, c. 70, s. 5; 1945, c. 378; 1949, c. 418; 1951, c. 767; c. 781, s. 5; 1955, c. 807, s. 3; 1979, c. 755, ss. 5-7; 2009-171, s. 4.)

**§ 58-44-25. Optional provisions as to loss or damage from nuclear reaction, nuclear radiation or radioactive contamination.**

Insurers issuing the standard fire insurance policy pursuant to G.S. 58-44-16, or any permissible variation of that policy, and policies issued pursuant to G.S. 58-44-20 and Article 36 of this Chapter, are authorized to affix to the policy or include in the policy a written statement that the policy does not cover loss or damage caused by nuclear reaction, nuclear radiation, or radioactive contamination, all whether directly or indirectly resulting from an insured peril under the policy; provided, however, that nothing in this section shall be construed to prohibit the attachment to any such policy of an endorsement or endorsements specifically assuming coverage for loss or damage caused by nuclear reaction, nuclear radiation, or radioactive contamination. (1963, c. 1148; 1987, c. 864, s. 7; 2009-171, s. 3.)

**§ 58-44-30. Notice by insured or agent as to increase of hazard, unoccupancy and other insurance.**

If notice in writing signed by the insured, or his agent, is given before loss or damage by any peril insured against under the standard fire insurance policy to the agent of the company of any fact or condition stated in G.S. 58-44-16, it is equivalent to an agreement in writing added to the policy and has the force of the agreement in writing referred to in the standard fire insurance policy with respect to the liability of the company and the waiver; but this notice does not affect the right of the company to cancel the policy as stipulated in the policy. (1899, c. 54, s. 43; Rev., s. 4761; 1907, c. 578, s. 1; 1915, c. 109, s. 11; C.S., s. 6438; 1929, c. 60, s. 1; 1945, c. 378; 2009-171, s. 2.)

**§ 58-44-35. Judge to select umpire.**

Any resident judge of the superior court of the district in which the property insured is located is designated as the judge of the court of record to select the umpire referred to in the standard form of policy as set forth in G.S. 58-44-16(f)(14). The judge may not select the umpire until all of the following conditions have been met:

- (1) Proof of notice to all parties of record has been filed with the court, and at least 15 days have passed since the filing of the proof of notice.
- (2) Upon the request of any party of record, the judge has conducted a hearing. The hearing by the judge shall be governed by the practice for hearings in other civil actions before a judge without a jury and shall be limited to the issue of umpire selection. (1945, c. 378; 2013-199, s. 23.)

**§ 58-44-40. Effect of failure to give notice of encumbrance.**

No policy of insurance issued upon any property shall be held void because of the failure to give notice to the company of a mortgage or deed of trust existing thereon or thereafter placed thereon, except during the life of the mortgage or deed of trust. (1915, c. 109, s. 4; C.S., s. 6440.)

**§ 58-44-45. Policy issued to husband or wife on joint property.**

Any policy of fire insurance issued to husband or wife, on buildings and household furniture owned by the husband and wife, either by entirety, in common, or jointly, either name of one of the parties in interest named as the insured or beneficiary therein, shall be sufficient and the policy shall not be void for failure to disclose the interest of the other, unless it appears that in the procuring of the issuance of such policy, fraudulent means or methods were used by the insured or owner thereof. (1945, c. 378.)

**§ 58-44-50. Bar to defense of failure to render timely proof of loss.**

In any action brought to enforce an insurance policy subject to the provisions of this Article, any party claiming benefit under the policy may reply to the pleading of any other party against whom liability is sought which asserts as a defense, the failure to render timely proof of loss as required by the terms of the policy that such failure was for good cause and that the failure to render timely proof of loss has not substantially harmed the party against whom liability is sought in his ability to defend. The issues raised by such reply shall be determined by the jury if jury trial has been demanded. (1973, c. 1391.)

**§ 58-44-55. Farmowners' and other property policies; ice, snow, or sleet damage.**

Under any policy of farmowners' or other property insurance that insures against all direct loss by fire, lightning, or other perils that may be delivered or issued for delivery in this State with respect to any farm dwellings, appurtenant private structures, barns, or other farm buildings or farm structures located in this State, coverage shall be available for inclusion therein or supplemental thereto to include direct loss caused by weight of ice, snow, or sleet that results in physical damage to such buildings or structures, and shall be offered to all insureds requesting these policies. (1981, c. 550, s. 1.)

**§ 58-44-60. Notice to property insurance policyholder about flood, earthquake, mudslide, mudflow, landslide, and windstorm or hail insurance coverage.**

(a) Every insurer that sells residential or commercial property insurance policies that do not provide coverage for the perils of flood, earthquake, mudslide, mudflow, landslide, or windstorm or hail 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], [WINDSTORM OR HAIL]. 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 Articles 21, 45, or 46 of this Chapter. (2006-145, s. 2; 2007-300, s. 5; 2012-162, s. 5.)

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

**§ 58-44-70. Purpose and scope.**

(a) This Part 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 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-19.21 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; and (iii) if the Commissioner issues an order establishing the mediation procedure authorized by this Part.

(b) The procedure 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. (2006-145, s. 1; 2007-300, s. 1; 2012-12, s. 2(m); 2013-199, s. 22(d).)

#### **§ 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) Repealed by Session Laws 2013-199, s. 22(e), effective June 26, 2013.
- (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. (2006-145, s. 1; 2012-12, s. 2(n); 2013-199, s. 22(e).)

#### **§ 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 the notice 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:

- (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. (2006-145, s. 1; 2007-300, s. 2.)

**§ 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. (2006-145, s. 1.)

**§ 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. (2006-145, s. 1.)

**§ 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. (2006-145, s. 1; 2007-300, s. 3.)

**§ 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) Repealed by Session Laws 2007-300, s. 4, effective October 1, 2007, and applicable to policies issued or renewed on or after that date.

(c) The mediator shall terminate the negotiations if the mediator determines that either party is unable or unwilling to participate meaningfully in the process or upon mutual agreement of the parties.

(d) Repealed by Session Laws 2007-300, s. 4, effective October 1, 2007, and applicable to policies issued or renewed on or after that date.

(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 shall establish and describe the procedures to be followed. The mediator shall conduct the conference in accordance with the Standards of Professional Conduct for Mediators adopted by the 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. (2006-145, s. 1; 2007-300, s. 4.)

#### **§ 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. (2006-145, s. 1.)

#### **§ 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. (2006-145, s. 1.)

#### **§ 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. (2006-145, s. 1.)

**§ 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. (2006-145, s. 1.)