



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON
COMMISSIONER

DIRECTIVE 173 (REVISED AND REISSUED)

TO: ALL AUTHORIZED AND APPROVED UNAUTHORIZED INSURERS AND RATING ORGANIZATIONS

FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE

RE: POLICY FORMS OR INSURANCE CONTRACTS-
BINDING ARBITRATION AND/OR APPRAISAL PROVISIONS

DATE: OCTOBER 5, 2020

Directive 173, originally issued on January 15, 2003, is hereby revised and reissued in order to update references to sections of the Louisiana Insurance Code that were re-codified and renumbered pursuant to Act No. 415 of the 2008 Regular Session of the Louisiana Legislature, and to incorporate amendments to the law made by Act No. 307 of the 2020 Regular Session of the Louisiana Legislature.

Please take note that, pursuant to La. R.S. 22:868(A)(2), arbitration and appraisal provisions that attempt to deprive Louisiana courts of jurisdiction or venue are not permitted in insurance policies or insurance contracts delivered or issued for delivery in Louisiana. As used herein, the term "insurance policy" has the same meaning as ascribed in La. R.S. 22:861(A)(2) and includes any certificate of coverage or any other evidence of coverage, or a subscriber agreement. Thus, the restriction on the use of binding arbitration provisions also applies to any group insurance policy regardless of where it is made or delivered if it covers a resident of this state.

For authorized insurers, the inclusion of such language in a form filing will result in the disapproval of the filing. Further, if an authorized insurer certifies compliance in accordance with Regulation 78 and it is later discovered that the form contains a prohibited binding arbitration or a binding appraisal provision, the authorized insurer will be subject to sanctions including, but not limited to, the imposition of such fines as are authorized by law. The Commissioner will consider for approval provisions that clearly convey to the policyholder that the arbitration process is not binding, does not deprive the Louisiana courts of jurisdiction or venue, and is invoked at the request of the insured. The language used should clearly convey that the insured does not forfeit any right to seek judicial resolution of the dispute.

An appraisal provision that states that the appraisal process is “binding” or “final” or uses similar language is not lawful in Louisiana. As with arbitration provisions, such terminology in an appraisal provision has the effect of removing the matter from the judicial branch contrary to La. R.S. 22:868. Further, such language is misleading. Pursuant to La. R.S. 22:862, policies with misleading language shall not be approved by the Commissioner.

Further, please take note that pursuant to La. R.S. 22:880, any insurance policy, rider, or endorsement which contains any condition or provision that is not in compliance with the law on binding arbitration and/or appraisal shall not be rendered invalid, but the non-compliant condition or provision shall be construed and applied as if such policy, rider, or endorsement was issued in full compliance with the Louisiana Insurance Code. The parties shall proceed as if the non-compliant condition or provision did not exist and/or was worded to be in full compliance with the law as set forth in the Louisiana Insurance Code.

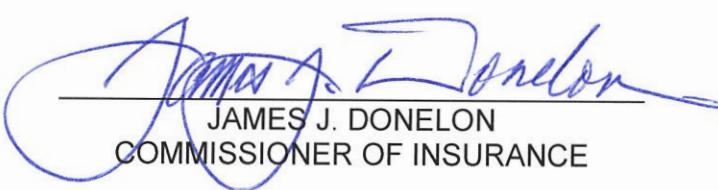
Any action by an insurer, authorized or unauthorized, to place conditions or provisions in its policy form on binding arbitration and/or appraisal that are not in compliance with the Louisiana Insurance Code will subject the insurer to the imposition of such regulatory sanctions as are warranted under the circumstances and authorized by the Louisiana Insurance Code.

Authorized insurers should review their policy forms that are on file with the Louisiana Department of Insurance (the “LDI”) to determine if any forms contain arbitration provisions or appraisal conditions which may be construed as binding. Such forms should be revised and re-filed with the LDI in accordance with Regulation 78 §§10107.H, 10109.H and 10113.H.

Please be governed accordingly.

If there are any questions regarding this Directive, please contact the Deputy Commissioner for the Office of Property and Casualty, electronically at public@ldi.la.gov.

Baton Rouge, Louisiana, this 5th day of October, 2020.


JAMES J. DONELON
COMMISSIONER OF INSURANCE