



# Legislative Alert

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## Key Amendments to Insurance Claims-Handling Regulations in Puerto Rico

Policyholders in Puerto Rico should be aware of significant benefits provided by recent amendments to the Insurance Code. New rules establish an expedited method of property insurance dispute resolution, mandatory expedited partial payments in the event of catastrophic events, and protection against bad faith claims handling by insurers.

### Appraisal process with a Puerto Rican twist

A key amendment is the establishment of an appraisal process, widely used for many years in the United States and now adopted in Puerto Rico. Commercial and personal property insurers in Puerto Rico shall include, in their policies, a clause for an appraisal process according to Article 11.150 of the Insurance Code of Puerto Rico, 26 L.P.R.A. § 101 et seq. (“the Code”).

The appraisal process provides both policyholders and insurers the option to submit insurance claims to an impartial umpire if a dispute arises over the value of covered damages or losses. The umpire and appraisers do not have authority to resolve coverage or legal issues. They can only resolve disputes over the quantum claimed for losses already determined to be covered by the insurer. *Id.* Each party is required to pay its own appraiser’s fees and split equally the fees of the umpire. *Id.* The impartial umpire must be appointed by mutual agreement between the appraiser of the insured and the appraiser of the insurer. Absent an agreement by the appraisers, however, the Office of the Puerto Rico Insurance Commissioner shall appoint the impartial umpire within 15 calendar days from the date any party demanded the appraisal. *Id.*

The umpire’s decision is binding if a majority of the appraisers and umpire agree; the parties are, however, allowed to file a judicial proceeding to overturn the appraisal decision. *Id.* Appraisal was previously frowned upon in Puerto Rico because it was regarded as limiting policyholders’ rights. However, the newly-established appraisal process rules expressly avoid this result by not limiting an insured’s right to file suit against the insurance company or seek relief from administrative authorities. *Id.*

### Mandatory Insurance Partial Payments in Catastrophic Events

Another significant amendment to the Code is the establishment of required partial payments by insurers with respect to uncontested losses when the Governor of Puerto Rico declares a state of emergency due to a catastrophic event. Article 27.166 of the Code. Remarkably, for the benefit of policyholders, any partial payment offer by an insurer that does not identify the coverage section under which it is made or if it fails to break down the items and quantum covered for which a partial payment is made, is considered an unfair insurance claims handling practice and is subject to penalties. Article 27.166 of the Code.

Additionally, acceptance by insureds of any partial payment does not waive any defenses or rights the insureds may have with respect to other coverage disputes under the policy. *Id.* The purpose of the regulation is to expedite partial payments for items that have already been determined to be covered even if there are other items under dispute in the context of a catastrophic event.

*The Right Choice for Policyholders*

## Unfair Claims Practices Suits

Puerto Rico has its own version of an unfair insurance practices legislation under Article 27.164 of the Code. Unfair settlement and claims handling practices in Puerto Rico include failure by the insurer to acknowledge, diligently investigate, and fairly adjust an insurance claim. The Code further requires an insurer to issue a coverage determination within 90 days of receiving a notice of loss. Unfair or deceitful conduct by insurers is also prohibited, and expressly includes forcing policyholders to litigate claims under a wrongful denial of coverage, offering to settle claims for unfair or unreasonably low settlement amounts, and refusal to settle clearly covered claims or provide a reasonable explanation of the policy terms and applicable law in connection with the denial of a claim.

Notably, unlike other States, Puerto Rico does not require insureds to show a general commercial practice of the insurer to have standing to sue for bad faith insurance claims handling practices. Article 27.164 of the Code.

## Condition Precedent to Sue Insurers for Unfair Practices

As a condition precedent to filing suit against an insurer for delay, denial or bad faith, an insured must first submit a notification form outlining the alleged unfair practice to the Insurance Commissioner's Office. Article 27.164 of the Code. The insurer has 60 days to correct its practices or pay the insurance claim. Such notice tolls the limitation period to file suit against the insurer for 65 days from the date the notification is sent to the insurer. If the claim is not resolved within the 60 days period, the insured can file a complaint in a court with jurisdiction.

Policyholders can obtain the necessary form [here](#), which must be submitted to the Insurance Commissioner before filing a complaint. It is a two-page PDF form in which the insured outlines the facts of the loss and the alleged violations incurred by the insurer.

Policyholders have the right to recoup reasonable attorney's fees and legal costs if a court later issues a judgment against the insurer. Article 27.164 of the Code. Also, punitive damages are allowed only if the insured proves that the unfair practices by the insurer are a general commercial practice and those practices are willful, insensitive, malicious, and in reckless disregard of insured's rights. *Id.* Further, policyholders are able to claim damages that reasonably resulted from the unfair practices by the insurer, in some cases even beyond policy limits. *Id.*

Policyholders in Puerto Rico now have more ammunition to press for prompt resolution of their insurance claims through the appraisal process, the demand of partial payments in case of catastrophic events, and protect themselves against insurers that employ unfair settlement and claims handling practices in the adjustment of a claim.

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