

## QUESTIONS AND ANSWERS HOUSE BILL 3

### FREQUENTLY ASKED QUESTIONS - GENERAL

**Q. What is House Bill 3 (“HB 3”)?**

**A. The 82nd Texas Legislature, 1st Called Special Session, enacted House Bill 3, legislation to address issues related to the operations of TWIA, such as, create new timelines and procedures for claims handling, develop alternative dispute resolution procedures for accepted and denied claims, enable TWIA to fund certain losses resulting from a catastrophe, require TWIA to issue annual reports on specific subjects, and require TWIA to study certain issues with the Texas Department of Insurance (“TDI”) and the Legislature to address future legislative changes to TWIA.**

**Q. When did HB 3 become effective?**

**A. HB 3 became effective on September 28, 2011.**

**Q. What changes are effective immediately for policyholders under HB 3?**

**A. Use of appraisal:**

**For claims filed on policies delivered/issued/renewed before November 27, 2011, if the policyholder disputes the amount TWIA will pay for a partially or fully accepted claim, the policyholder must attempt to resolve the dispute through appraisal.**

**Deadline to file a claim:**

**For policies delivered, issued for delivery, or renewed on or after the effective date (9/28/11), the deadline to file a claim is not later than one year from the date on which the damage to property occurs (The commissioner, on a showing of good cause, may provide an additional 180 days).**

**Limitations on recovery from litigation**

**For any cause of action that accrues on or after September 28, 2011 (regardless of the date the policy was issued), the policyholder's recovery under any cause of action is limited to:**

- 1. Policy benefits for a covered loss, less prior payments**
- 2. Prejudgment interest from the first day after the date TWIA would have been required to pay an accepted claim at the rate provided in Finance Code Chap. 304**
- 3. Court costs and reasonable and necessary attorney's fees**

4. Consequential damages as provided under common law
5. An aggregate of (1) + (4) as "additional damages" if policyholder proves by clear and convincing evidence that TWIA intentionally mishandled the claim to policyholder's detriment by conduct set out in Tex. Ins. Code, §2210.576(d) of HB 3.

**Settlement Agreements**

Pursuant to Tex. Ins. Code §2210.108(b), TWIA settlement agreements must:

1. Include the name of the attorney of record for the plaintiff(s) and TWIA in the settlement agreement.
2. Include the name of any adjuster representing the policyholder and any adjuster representing TWIA in the settlement agreement.
3. Omit confidentiality clauses.

**Q. What changes are effective on November 27, 2011 for policyholders under HB3?**

**A.** For new policies issued by TWIA, HB 3 establishes specific deadlines for filing claims, procedures for adjusting claims, processes for dispute resolution, and limitations on recovery. See additional Q and A discussions.

**Q. When will new policy forms be issued that include changes from HB 3?**

**A.** New policies will begin to be issued for new and renewal policies on and after November 27, 2011.

**Q. Where can I find out more about these changes?**

**A.** The TWIA website has been updated to provide information about HB 3 and changes resulting from HB 3. Please visit:  
<http://www.twia.org/HouseBill3.aspx>

## **FREQUENTLY ASKED QUESTIONS - FILING A CLAIM**

**Q. Does HB 3 impact filing a claim?**

**A. Yes, the deadline to file a claim is not later than one year from the date on which the damage to property occurs. The commissioner, on a showing of good cause, may provide an additional 180 days.**

**Q. How do I contact TWIA if I have a question about my claim?**

**A. TWIA has a toll-free number (800) 788-8247 to the Claims Department. You can speak to a claims examiner about your claim.**

**Q. Can I review the status of my claim on-line?**

**A. Yes. TWIA's website ([www.twia.org](http://www.twia.org)) provides a policyholder portal with useful information that may be reviewed, downloaded, or printed. Just click on the Policyholder Login tab on the left side of the TWIA website to link you to the information. There is also a policyholder portal FAQ and user guide on the website. You'll need your policy number, claim number and a valid e-mail address to register.**

**Q. What happens after filing a claim?**

**A. You may submit any information relating to your claim with the claim. TWIA may request in writing information that is necessary to determine whether to accept or reject your claim. TWIA must make this request no later than the 30th day after you file your claim. You must provide TWIA with the information TWIA requested, if the written request is made during the 30-day period.**

**Q. When will I know if my claim has been accepted or denied?**

**A. No later than the 60th day after the date TWIA received your claim or the date TWIA received the information requested within the 30-day period, whichever is later, TWIA must provide you a written notice of the amount of loss TWIA will pay.**

**TWIA must also provide notice that:**

- 1. TWIA has accepted coverage for the claim in full;**
- 2. TWIA has accepted coverage for the claim in part and has denied coverage for the claim in part; or**
- 3. TWIA has denied coverage for the claim in full.**

**Q. If I want to know additional information about how my claim decision was made, can I request that information from TWIA?**

**A. Yes, upon request, TWIA must provide you reasonable access to all information relevant to TWIA's determination concerning your claim.**

**Q. When will I receive my claim payment?**

**A. TWIA must make payment no later than the 10th day after:**

- 1. TWIA notifies you that TWIA will pay your claim or part of your claim; or**
- 2. The date you perform an act that is required to pay your claim or part of your claim.**

**Q. Does HB 3 impact how much I can recover from a legal dispute with TWIA under a policy issued on or after November 27, 2011?**

**A. Yes. HB 3 includes new limitations on recovery. If the policyholder disputes the amount TWIA will pay for a *partially* or *fully accepted claim*, the policyholder must resolve the dispute through appraisal.**

**If the policyholder disputes TWIA's decision to partially or fully deny a claim, the policyholder's recovery under any cause of action is limited to the following:**

- 1. Policy benefits for a covered loss, less prior payments**
- 2. Prejudgment interest from the first day after the date TWIA would have been required to pay an accepted claim at the rate provided in Finance Code Chap. 304**
- 3. Court costs and reasonable and necessary attorney's fees**
- 4. Consequential damages as provided under common law**
- 5. An aggregate of (1) + (4) as "additional damages" if policyholder proves by clear and convincing evidence that TWIA intentionally mishandled the claim to policyholder's detriment by conduct set out in Tex. Ins. Code, §2210.576(d) of HB 3.**

**Q. What if I have a question about the new claim dispute process under HB3?**

**A. The Texas Department of Insurance has established the Coastal Outreach and Assistance Services Team (COAST) Program to assist consumers with understanding the TWIA claim process. To obtain assistance from the COAST Program, please call the TDI Consumer Protection hotline at 800-252-3439.**

## **FREQUENTLY ASKED QUESTIONS - UNDER APPRAISAL**

**Q. What is Appraisal?**

**A. Appraisal is a process under your insurance policy that allows you and TWIA to each select an individual (appraiser) to determine the amount of the loss. Your appraiser and TWIA's appraiser will select a competent and independent umpire to review any differences between the two appraisers' estimation of the loss. An agreement by any two of the three will determine the amount of loss. If the two appraisers cannot agree on an umpire, rules adopted by the Commissioner of Insurance will be used to determine the umpire. Appraisal only applies to disputes over the amount of a partially or fully accepted claim.**

**Q. TWIA accepted my claim, but I think TWIA owes me more money on the claim. What do I do?**

**A. First, contact TWIA to review your claim for any additional amounts you may be due including any supplemental payments under the claim. If you dispute the amount TWIA will pay for a claim, your exclusive remedy under the policy is appraisal. If TWIA denied all or a portion of your claim, that decision is not addressed through the appraisal process. There is a separate procedure for appealing TWIA's decision on the denial of all or a portion of a claim.**

**Q. Do I have to use Appraisal?**

**A. Yes. If the policyholder disputes the amount TWIA will pay for a partially or fully accepted claim, the policyholder must resolve the dispute through appraisal.**

**Q. Are there differences in the Appraisal process?**

**A. Yes, it depends if your policy was delivered/issued/renewed before, on, or after November 27, 2011, and TWIA made the disputed claim decision on or after September 28, 2011.**

**Claims filed on policies delivered/issued/renewed before November 27, 2011.**

The appraisal is conducted under the appraisal conditions of the policy that applies to the claim -- the current appraisal clause, not the appraisal procedures of HB3. TWIA interprets this provision as applicable to claims existing before or after September 28, 2011 if TWIA made a disputed claim decision on or after September 28, 2011.

TWIA's existing appraisal clause includes an agreement to be bound by the appraisal. Any lawsuit shall be abated until appraisal is completed.

**Claims filed on new and renewal policies delivered/issued/renewed on or after November 27, 2011.**

The TDI will adopt new rules governing the appraisal process under new and renewal policies issued on and after November 27, 2011. The appraisal provision in the insurance policies will govern appraisal procedures until a rule is adopted by TDI.

You must demand appraisal no later than the 60th day after the date you receive notice that TWIA accepts coverage for a claim in full or in part.

You may request in writing that the 60-day period to demand appraisal be extended:

1. No later than the 75th day after the date you receive notice from TWIA that TWIA accepts coverage for a claim in full or in part; and
2. TWIA may grant an additional 30-day period in which you may demand appraisal on a showing of good cause.

If you do not demand appraisal within the 60 days or before the 31st day after TWIA granted an extension, you waive your right to contest TWIA's determination of the amount of loss TWIA will pay for your claim.

**Q. Who can be an Appraiser?**

**A. The policy requires you and TWIA to select a "competent and independent" appraiser. This may include, but is not limited to, an adjuster or public insurance adjuster, or an individual who can estimate building repairs and replacement costs. The TDI may adopt rules governing appraisers in the near future.**

**Q. What is Good Cause?**

**A. Good cause will be defined by rule. The TDI has not published this rule yet.**

**Q. Who pays for the appraisal process?**

**A. You and TWIA are responsible for paying equal shares of any costs incurred or charged in connection with the appraisal including any costs related to an appraisal umpire registering with the Texas Department of Insurance.**

**Q. Is there someone I can call if I have any questions about this process?**

**A. Yes, the Texas Department of Insurance has established the Coastal Outreach and Assistance Services Team (COAST) Program to assist consumers with understanding the TWIA claim process. To obtain assistance from the COAST Program, please call the TDI Consumer Protection hotline at 800-252-3439.**

## **FREQUENTLY ASKED QUESTIONS - UNDER DISPUTES**

**Q. What is Mediation?**

**A. Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. It is one form of alternative dispute resolution (“ADR”).**

**Q. What is Moderated Settlement Conference?**

**A. A moderated settlement conference is a forum for case evaluation and realistic settlement negotiations. Each party and counsel for the party presents the position of the party before a panel of impartial third parties. The panel may issue an advisory opinion regarding the liability or damages of the parties or both liability and damages. The advisory opinion is not binding on the parties, but it may assist the parties in evaluating their case and reaching a settlement. It is one form of alternative dispute resolution (“ADR”).**

**Q. After my claim is denied, can I sue TWIA?**

**Lawsuit based on claim under a policy delivered/issued/renewed on or after November 27, 2011**

**A. If you dispute TWIA’s decision to deny coverage for a claim in full or in part, prior to bringing a lawsuit against TWIA, you must provide notice to TWIA of your intent to bring a lawsuit. If you do not provide notice of your intent to bring a lawsuit against TWIA within two years after the date you receive notice from TWIA that your claim was denied in full or in part, you waive your right to contest TWIA’s denial and you are barred from bringing a lawsuit against TWIA concerning the denial.**

**You may only bring a lawsuit against TWIA concerning the denial of a claim to determine:**

- 1. Whether TWIA’s denial of coverage was proper; and**
- 2. The amount of damage to which you are entitled to recover, if any.**

**Lawsuit based on claim under a policy delivered/issued/renewed before November 27, 2011**

**A. Any lawsuit will be subject to the new limitations of recovery under HB 3, any conditions in your policy, and any defenses existing under current law.**

**Q. Do I have to use alternative dispute resolution (“ADR”)?**

**A. As a prerequisite for filing a lawsuit, TWIA may require you to submit the dispute to alternative dispute resolution (“ADR”) by mediation or moderated settlement conference. If TWIA requires ADR:**

1. TWIA must request it in writing not later than the 60th day after the date TWIA receives your notice of intent to bring a lawsuit; and
2. ADR must be completed not later than the 60th day after the date TWIA requests it.

You may not bring a lawsuit against TWIA prior to the expiration of the 60-day period, unless TWIA waives this right in writing. The 60-day period for completion of the ADR may be extended by mutual consent or by rule adopted by the commissioner of insurance.

If TWIA requests ADR by mediation and you and TWIA are unable to agree on a mediator, the Commissioner of Insurance must select a mediator from a roster of qualified mediators maintained by the Texas Department of Insurance.

**Q. What happens after I provide notice to TWIA?**

- A1. You and TWIA can mutually resolve the dispute within the 60 days.
- A2. If 60 days have passed after providing the notice to TWIA that you wish to file a lawsuit and there is no response, you may proceed with your lawsuit against TWIA.
- A3. If TWIA requested alternative dispute resolution after you provided notice, you may bring a lawsuit against TWIA if:
  1. The alternative dispute resolution was not completed within 60 days and no extension was granted;
  2. The alternative dispute resolution was not completed prior to the expiration of an authorized extension of the 60-day period; or
  3. You are not satisfied after the completion of the alternative dispute resolution.

**Q. Who pays for mediation?**

- A. You and TWIA are responsible for paying equal shares of any costs incurred or charged in connection with the mediation.

**Q. How is the mediator selected?**

- A. You and TWIA may agree on the selection of the mediator. In the event you and TWIA are unable to agree on a mediator, rules adopted by the Commissioner of Insurance will be used to select a mediator.

**Q. Is there someone I can call if I have any questions about this process?**

- A. Yes, the Texas Department of Insurance has established the Coastal Outreach and Assistance Services Team (COAST) Program to assist consumers with understanding the TWIA claim process. To obtain assistance from the COAST Program, please call the TDI Consumer Protection hotline at 800-252-3439.