

4758

2009-2010 Regular Sessions

I N A S S E M B L Y

February 6, 2009

Introduced by M. of A. MORELLE, COOK, FIELDS, SCHROEDER, JAFFEE, CAHILL, KOON, MAISEL, ZEBROWSKI, EDDINGTON -- Multi-Sponsored by -- M. of A. BOYLAND, GOTTFRIED, MILLMAN, PHEFFER, SWEENEY, TITONE, WEISENBERG -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law and the civil practice law and rules, in relation to standard fire insurance policies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subsection (g) of section 3404 of the insurance law, as
2 added by chapter 27 of the laws of 1990, is amended to read as follows:
3 (g) Notwithstanding any other provision of law to the contrary, the
4 provisions of the appraisal clause set out on the second page of the
5 standard fire policy and the provisions of section three thousand four
6 hundred eight of this [chapter] ARTICLE, including determinations as to
7 the amount of loss or damage rendered thereunder, shall be binding on
8 all parties to the contract of [fire] insurance evidenced by the policy
9 AND MAY BE ENFORCED BY EITHER THE INSURER OR THE INSURED BY APPLICATION
10 MADE PURSUANT TO SUBSECTION (C) OF SECTION THREE THOUSAND FOUR HUNDRED
11 EIGHT OF THIS ARTICLE.
12 S 2. Section 3408 of the insurance law is amended by adding a new
13 subsection (c) to read as follows:
14 (C) IN THE EVENT OF A COVERED LOSS, WHENEVER AN INSURED OR INSURER
15 FAILS TO PROCEED WITH AN APPRAISAL UPON DEMAND OF THE OTHER, EITHER
16 PARTY MAY APPLY TO THE COURT IN THE MANNER PROVIDED IN SUBSECTION (A) OF
17 THIS SECTION FOR AN ORDER DIRECTING THE OTHER TO COMPLY WITH SUCH
18 DEMAND. IF AN APPRAISAL IS SO ORDERED, IT SHALL BE LIMITED TO A DETERMI-
19 NATION OF ACTUAL CASH VALUE AND/OR REPLACEMENT COST, OR THE AMOUNT OF
20 LOSS WHICH SHALL BE DETERMINED AS SPECIFIED IN THE POLICY AND SHALL
21 PROCEED PURSUANT TO THE TERMS OF THE APPLICABLE APPRAISAL CLAUSE OF THE
22 INSURANCE POLICY AND NOT AS AN ARBITRATION.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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1 S 3. Section 7601 of the civil practice law and rules is amended to
2 read as follows:

3 S 7601. Special proceeding to enforce agreement that issue or contro-
4 versy be determined by a person named or to be selected. A special
5 proceeding may be commenced to specifically enforce an agreement[, other
6 than one contained in the standard fire insurance policy of the state,]
7 that a question of valuation, appraisal or other issue or controversy be
8 determined by a person named or to be selected. [The] EXCEPT FOR THE
9 PROVISIONS OF THE APPRAISAL CLAUSE IN THE STANDARD FIRE INSURANCE POLICY
10 OF THE STATE WHICH SHALL BE ENFORCED BY APPRAISAL PURSUANT TO SECTION
11 THREE THOUSAND FOUR HUNDRED EIGHT OF THE INSURANCE LAW, THE court may
12 enforce such an agreement as if it were an arbitration agreement, in
13 which case the proceeding shall be conducted as if brought under article
14 seventy-five OF THIS CHAPTER. Where there is a defense which would
15 require dismissal of an action for breach of the agreement, the proceed-
16 ing shall be dismissed.

17 S 4. This act shall take effect immediately.