S T A T E O F N E W Y O R K

---

2088--A

Cal. No. 50

2009-2010 Regular Sessions

I N S E N A T E

February 11, 2009

---

Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading -- reported favorably from said committee and committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Subsection (g) of section 3404 of the insurance law, as added by chapter 27 of the laws of 1990, is amended to read as follows:

(g) Notwithstanding any other provision of law to the contrary, the provisions of the appraisal clause set out on the second page of the standard fire policy and the provisions of section three thousand four hundred eight of this [chapter] ARTICLE, including determinations as to the amount of loss or damage rendered thereunder, shall be binding on all parties to the contract of [fire] insurance evidenced by the policy AND MAY BE ENFORCED BY EITHER THE INSURER OR THE INSURED BY APPLICATION MADE PURSUANT TO SUBSECTION (C) OF SECTION THREE THOUSAND FOUR HUNDRED EIGHT OF THIS ARTICLE.

S 2. Section 3408 of the insurance law is amended by adding a new subsection (c) to read as follows:

(C) IN THE EVENT OF A COVERED LOSS, WHENEVER AN INSURED OR INSURER FAILS TO PROCEED WITH AN APPRAISAL UPON DEMAND OF THE OTHER, EITHER PARTY MAY APPLY TO THE COURT IN THE MANNER PROVIDED IN SUBSECTION (A) OF THIS SECTION FOR AN ORDER DIRECTING THE OTHER TO COMPLY WITH SUCH DEMAND. IF AN APPRAISAL IS SO ORDERED, IT SHALL BE LIMITED TO A DETERMINATION OF ACTUAL CASH VALUE AND/OR REPLACEMENT COST, OR THE AMOUNT OF

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

LBD03015-06-9

LOSS WHICH SHALL BE DETERMINED AS SPECIFIED IN THE POLICY AND SHALL PROCEED PURSUANT TO THE TERMS OF THE APPLICABLE APPRAISAL CLAUSE OF THE INSURANCE POLICY AND NOT AS AN ARBITRATION.

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

S 7601. Special proceeding to enforce agreement that issue or controversy be determined by a person named or to be selected. A special proceeding may be commenced to specifically enforce an agreement[, other than one contained in the standard fire insurance policy of the state,] that a question of valuation, appraisal or other issue or controversy be determined by a person named or to be selected. The court may enforce such an agreement as if it were an arbitration agreement, in which case the proceeding shall be conducted as if brought under article seventy-five OF THIS CHAPTER. Where there is a defense which would require dismissal of an action for breach of the agreement, the proceeding shall be dismissed. PROVIDED, HOWEVER, THAT THIS SECTION SHALL NOT APPLY TO ANY AGREEMENT CONTAINED IN THE STANDARD FIRE INSURANCE POLICY OF THE STATE WITH THE EXCEPTION OF AN ACTION TO ENFORCE THE APPRAISAL CLAUSE PURSUANT TO SECTION THREE THOUSAND FOUR HUNDRED EIGHT OF THE INSURANCE LAW WHICH SHALL NOT BE ENFORCED AS AN ARBITRATION AGREEMENT.

S 4. This act shall take effect immediately.