



LOUISIANA DEPARTMENT OF INSURANCE  
JAMES J. DONELON  
COMMISSIONER

**DIRECTIVE 173  
(REVISED AND REISSUED)**

**TO: ALL AUTHORIZED AND SURPLUS LINES INSURERS AND RATING ORGANIZATIONS**

**FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE**

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

**DATE: JANUARY 25, 2022**

Directive 173, originally issued on January 15, 2003 (revised and reissued on October 5, 2020) is hereby revised and reissued to provide updated guidance in light of recent jurisprudence and Act No. 345 of the 2021 Regular Session of the Louisiana Legislature (“Act 345”) that mandates the inclusion of newly enacted appraisal provisions for all residential property insurance policies effective January 1, 2022.

Pursuant to La. R.S. 22:868(A)(2), arbitration 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 defined in La. R.S. 22:861(A)(2) and includes any certificate of coverage or any other evidence of coverage, or a subscriber agreement. Therefore, the prohibition 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.

Authorized and surplus lines insurers should note that, pursuant to La. R.S. 22:880, any insurance policy, rider, or endorsement containing any condition or provision that is noncompliant with the applicable laws on binding arbitration shall not be rendered invalid, but the noncompliant 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 noncompliant provision did not exist or was worded to be in full compliance with the Louisiana Insurance Code. Any action by an authorized or surplus lines insurer to place provisions in its policy form on binding arbitration that is noncompliant with the Louisiana Insurance Code will subject such insurer to the imposition of regulatory sanctions authorized by the Louisiana Insurance Code. However, please be mindful that, pursuant to recent jurisprudence outlined in *McDonnell Group, L.L.C. v. Great Lakes Insurance SE, UK Branch*<sup>1</sup>, arbitration provisions under the

---

<sup>1</sup> 923 F.3d 427 (5<sup>th</sup> Cir. 2019).

Convention on the Recognition of Foreign Arbitral Awards are governed by federal treaty and not subject to the statutory provisions of La. R.S. 22:868.

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

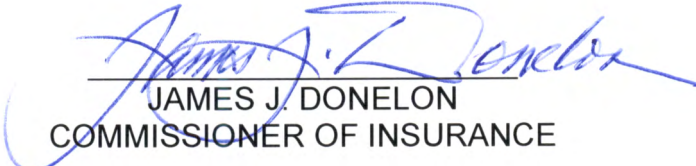
Authorized insurers should review their policy forms regarding arbitration that are currently on file with the Louisiana Department of Insurance ("LDI") to determine if any forms contain any noncompliant arbitration provisions that may be construed as binding. Such forms should be revised and re-filed with the LDI in accordance with Regulation 78.

Finally, all authorized and surplus lines insurers and rating organizations are advised to comply with Act No. 345 of the 2021 Regular Session of the Louisiana Legislature. Act 345 requires that all residential property insurance policies contain the appraisal provision that is set forth in newly enacted La. R.S. 22:1892(G). That provision of Act No. 345 becomes effective on January 1, 2022. All non-residential property insurance policies, including but not limited to Commercial Property, Commercial Multi-Peril, Commercial Residential Property, and Commercial Farm and Ranch, that provide coverage for the peril of fire shall continue to comply with the specific appraisal provisions set forth in La. R.S. 22:1311.

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](mailto:public@ldi.la.gov).

Please be governed accordingly.

Baton Rouge, Louisiana, this 25<sup>th</sup> day of January 2022.

  
JAMES J. DONELON  
COMMISSIONER OF INSURANCE