



# WHY CONSUMERS NEED APPRAISAL CLAUSE INSURANCE LEGISLATION

ECONOMIC AFFAIRS INTERIM COMMITTEE  
HELENA, MT, MARCH 10, 2026

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# APPRAISAL CLAUSE: WHAT IS IT?

Often referred to as Right to Appraisal (“RTA”)

- Alternate dispute resolution mechanism
- Determine property loss claim value
- Included in policy (first party only)

# How RTA Works:

- Each side selects an evaluator
  - *Each side pays own evaluator*
  - *Evaluators create expert reports*
    - Concern monetary value supported by process
    - Not address liability/fault
  - *Evaluators exchange reports*
    - Issue might resolve at this stage
- Evaluators select an umpire
  - *Each side pays half umpire's fee*
- Umpire determines proper claim amount

# Typical Auto Appraisal Disputes:

## □ Partial Loss:

### ➤ *Overall payment cost for repair*

#### ■ Parts

❖ *Repair or replace parts*

❖ *Type of parts*

■ New auto maker (OEM)

■ New imitation (non-OEM)

■ Salvage (presumably OEM, but not assured)

#### ■ Procedures

❖ *Safety-related*

❖ *Auto-maker recommended*

❖ *Insurer alleged “cost of doing business”*

## □ Total Loss:

### ➤ *Cost of replacement vehicle/value of lost vehicle*

# THIS IS ABOUT SAFETY

- Today's vehicles are complicated machines
- Need specially trained technicians
- Need correct, complicated equipment to repair

**Peoples' lives are at stake**

# Advantages for Consumer:

- Preferable to a lawsuit
  - *Easier*
  - *Less costly*
  - *Greater availability of evaluators than attorneys*
  - *Resolution faster*
  - *Insurers historically honored umpire awards*

# Disadvantages:

- Not governed by American Arbitration Association or other non-profit, independent organization rules
- No (independent) penalties for delay, improper behavior
- More expensive for consumer than formal AAA arbitration
  - *Under \$10,000, average cost to consumer = \$96*  
<https://go.adr.org/consumer-arbitration>
  - *RTA \$500 - \$1,500 average*

But MUCH less costly than litigation

# CONSUMER SUCCESS RATE:

Historically, Extremely High  
(98% ↑)

# Recent Insurer Changes to RTA Process:

## ■ Previously:

- *Each side chose independent evaluators*
- *Evaluators chose independent umpire*

## ■ Now:

- *Insurers utilize employee adjuster/appraiser as evaluator*
- *Insurer evaluator:*
  - *Proposes insurance industry employee as umpire*
  - *Rejects most umpires proposed by consumer's evaluator*
  - *Months-long delays*
- *Insurer refuses to pay umpire's award*
  - *Consumer must file suit*

# Insurers Forcing Consumers to Sue:

- Contrary to MT Law: *Mont. Code Ann. § 33-18-201*
- Lack of attorney representation for consumer property loss suit
  - *Gives insurer incentive to maintain lower claim payout*

# APPRAISAL REQUIREMENTS MUST HAVE DETAILS AND TEETH

## Details: e.g.

- *Who may serve as “appraiser” or umpire (independent)*
- *Maximum allowable cost to consumer*
- *Maximum length for entire process*
- *Payment within 30 days of award, without fail*

## Penalties:

- Substantial and exponentially increasing daily monetary fines for failure to comply*
- Potential suspension from marketplace*

# TOTAL LOSS ISSUES

- SYSTEMATIC UNDERVALUATION OF ACV
  - *Offers often \$3,000 -- \$4000 less than true value*
  - *Consumers cannot replace vehicle for payout*
  - *Insurers' use of comps with negative vehicle history*
    - Not apples to apples comparison
  - *Manipulated software determinations*
    - Insurers have agreements with estimating companies to develop specialty software allowing manipulation of outcomes

# COMPARABLE SOURCE LIMITS

- INSURER REFUSAL TO CONSIDER COMPS FROM:
  - *CARMAX*
  - *CARVANA*
  - *CRAIGSLIST*
  - *FACEBOOK MARKETPLACE*
  - *KELLY BLUE BOOK*
  - *VROOM*
  - *ANY AUCTION SITES*

# SYSTEMATIC ACV UNDERVALUATION

## ■ THIRD PARTY VALUATION SOFTWARE PROVIDERS

- *Not truly independent*
- *Develop “special” software for different insurers*
  - Special software produces lower valuations than true value
  - “Some insurers require that bidders commit to spending \$ 500,000 to \$ 600,000 per year-to develop software that is unique to that customer.” *FTC v. CCC Holdings Inc.*, Defendants’ Post Trial Brief, 2009 U.S. Dist. Ct. Briefs LEXIS 377, \*32  
Case 1:08-cv-02043-RMC Document 80 Filed 02/11/2009 Page 23 of 56 (original source)
  - “That the insurers have enough sophistication and buying power to force CCC, Audatex, and Mitchell to produce customized products is another factor that cuts against the likelihood of coordination.” *Id.*, *ftnt 10.*

# Recommendations:

- Enact right to appraisal litigation
  - *making right to appraisal mandatory in auto policies for full and partial property losses*
  - *Require insurers to notify consumers that right to appraisal exists if they disagree with offer*
- Require:
  - *Use of independent, evaluators and umpires*
  - *Establish timeframe for RTA completion and maximum consumer expense permitted*
  - *Inclusion of appraisal use, result, and \$ value change as data elements for market conduct analysis*

# QUESTIONS?

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