

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Insurance
1511 Pontiac Avenue
Cranston, RI 029209

INSURANCE REGULATION 42

MOTOR VEHICLE DAMAGE APPRAISERS

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Section 1 **Authority**

This Regulation is promulgated pursuant to R.I. Gen. Laws §§ 27-10.1-1 *et seq.* and 42-14-17.

Section 2 **Purpose and Applicability**

This regulation shall apply to any person that practices as a business the appraising of damages to motor vehicles being repaired under insurance policies.

The purpose of this regulation is to establish standards and procedures for the issuance of motor vehicle damage appraiser licenses and to govern the conduct of motor vehicle damage appraisers.

Section 3 **Definitions**

As used in this Regulation:

- (A) "Aftermarket Part" means a motor vehicle body replacement part that is not an original equipment manufacturer part.

- (B) "Applicant" shall mean a person applying for a motor vehicle damage appraiser license.
- (C) "Damaged Motor Vehicle Body Part" means any part of the body of a motor vehicle which is damaged as the result of a collision with another vehicle or object. Such parts shall include fenders, bumpers, chassis, windshields, glass and similar components of motor vehicle bodies as distinguished from the, seats, motor, transmission, air conditioning condenser, radiator, and other accessories for propulsion and general running gear of motor vehicles.
- (D) "Department" shall mean the Department of Business Regulation.
- (E) "Director" shall mean the Director of the Department or his or her designee.
- (F) "License" shall mean the motor vehicle damage appraiser license issued by the Department to a person engaged in the business of motor vehicle damage appraising.
- (G) "Licensee" shall mean a person or legal entity holding a motor vehicle damage appraiser license.
- (H) "NAIC" shall mean the National Association of Insurance Commissioners.
- (I) "On-Site Visit" shall mean any time an appraiser appears at an automobile body repair shop for the purpose of inspecting, appraising, supplementally appraising or re-inspecting.
- (J) "Original Equipment Manufacturer Part" or "OEM part" means a motor vehicle body replacement part manufactured by the manufacturer of the motor vehicle being repaired.
- (K) "Uniform individual application" means the current version of the NAIC Uniform Individual Application for resident and nonresident individuals.
- (L) "Uniform business entity application" means the current version of the NAIC Uniform Business Entity Application for resident business entities.

Section 4 License Required

- (A) No Person may engage in the business of motor vehicle damage appraising without first obtaining a License from the Department.
- (B) The Department may issue business entity licenses to residents on a discretionary basis. Application shall be made using the Uniform business entity application as modified and provided by the Department. A business entity license is not required. All persons associated with a business entity performing motor vehicle

appraisal services must hold a valid individual license. Before approving the application for a business entity license, the department shall find that:

- (1) The business entity is a resident of the State of Rhode Island;
 - (2) The business entity has paid the applicable fees;
 - (3) The business entity has designated a licensed appraiser responsible for the business entity's compliance with the insurance laws, rules and regulations of this state.
- (C) Every Applicant for a new or renewal License must submit an application or a renewal application to the Department. In order to be licensed, Applicants must fulfill the requirements set forth in said application, successfully pass an examination and pay the applicable fees to the Department.
- (D) If applicable, an applicant must file an affidavit, in the form directed by the Department, at the time of license that he, she or it operates separate and apart from any body repair shop or motor vehicle repair shop of any new or any new or used automobile dealership.
- (E) A person, shall not act or hold him/her or itself out as an appraiser in this state unless the person is licensed as an appraiser by the State of Rhode Island. Application shall be made using the Uniform Individual Application as modified and provided by the Department.
- (F) An appraiser doing business under any name other than the appraisers' legal name is required to notify and obtain the consent of the Department prior to using the assumed name.
- (G) Each appraiser license is issued on a biennial basis. An appraiser who obtains a license during the license term shall be issued a license for the time period remaining and will have to renew at the expiration of the License, regardless of the period of time he, she or it has been licensed. The Department does not prorate license fees.
- (H) A licensed appraiser that is unable to comply with license renewal procedures due to military service or some other extenuating circumstance (e.g., a long-term medical disability) may request a waiver of those procedures. The appraiser may also request a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with renewal procedures.
- (I) The Department may contract with non-governmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees and data, related to licensing that the Department may deem appropriate.

Section 5 Examination

- (A) An individual applying for an appraiser license shall pass a written examination unless exempt pursuant to Section 6 of this Regulation. The examination shall test the knowledge of the individual concerning the duties and responsibilities of an appraiser and the insurance laws and regulations of this state.
- (B) The Department may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee for said examinations.
- (C) An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall register for another examination and is required to pay the fees and complete the necessary forms before being rescheduled for another examination.

Section 6 Exemptions from Examination

An appraiser who allows his, her or its license to expire may, within twelve (12) months from the due date of the renewal, reinstate the license without the necessity of passing a written examination. A reinstatement fee is required along with the unpaid renewal fee which shall be paid at the time of reinstatement. This exemption is only available if the application is received within twelve (12) months of the due date and the Applicant was in good standing in this state at the time of renewal. The Applicant is required to file a reinstatement application, file the appropriate affidavit and pay all applicable fees.

Section 7 Conduct

- (A) A licensee shall inform the Department in writing of any change of address or any change of name within thirty (30) days of the change.
- (B) If a licensee holds an insurance license in any other state, he or she shall immediately notify the Department if his or her insurance license is suspended or revoked or not renewed for any reason.
- (C) Licensees shall comport themselves in accordance with all Rhode Island laws including but not limited to R.I. Gen. Laws § 27-10.1-6 and all regulations issued thereunder.
- (D) Each appraiser, while engaged in appraisal duties, shall carry the license issued to that appraiser and shall display it, upon request, to an owner whose vehicle is being inspected, to the auto body shop representative involved, or to any authorized representative of the Department.
- (E) The appraiser shall prepare and leave a legible copy of his or her independent appraisal with the auto body shop selected to make the repairs

at time of initial inspection, which appraisal shall contain the name of the insurance company ordering it, if any, the insurance file number, the number of the appraiser's license, and the proper identification number of the vehicle being inspected and notice in boldface type, reading as follows:

PURSUANT TO RHODE ISLAND LAW, THE CONSUMER HAS THE RIGHT TO CHOOSE THE REPAIR FACILITY TO COMPLETE REPAIRS TO A MOTOR VEHICLE;AND AN INSURANCE COMPANY MAY NOT INTERFERE WITH THE CONSUMER'S CHOICE OF REPAIRER.

All damage unrelated to the incident or accident that occasioned the appraisal of the vehicle, or old damage, shall be clearly indicated in the appraisal. If it becomes impracticable to leave a legible copy of the appraisal at the time of initial inspection, whether due to unavailability of the required information or for other good explained reason, the appraiser can either leave, fax, e-mail or mail a legible copy of the appraisal to the auto body shop within a period not later than 24 hours of the initial inspection by the appraiser.

- (F) The appraiser shall not obtain a competitive estimate from another auto body shop unless the owner of that other shop, or his or her authorized agent, has inspected the vehicle. No competitive estimate shall be obtained by the use of photographs, telephone calls, or in any manner other than a personal inspection.
- (G) No appraiser shall request that repairs be made in a specified auto body shop. Once the insured or claimant has advised the insurer that an auto body repair shop has been selected, the appraiser may not recommend that a different auto body repair shop be selected to repair the automobile.
- (H) Every appraiser shall re-inspect damaged vehicles when supplementary allowances are requested by the auto body shops, unless the request was not for supplementary allowances but for allowances previously considered, discussed and disallowed, in which case they would not be supplementary. In the course of inspection for supplementary allowance visits, the appraiser shall not adjust allowances previously considered and approved, unless agreed to by the auto body shop. The purpose of the supplementary allowance is solely to re-inspect hidden or supplemental damage not visible during initial inspection. This does not prohibit the insurer from informing the owner of the vehicle or investigating further if it finds that work was not done in accordance with the appraisal.
- (I) No appraiser shall receive or pay directly or indirectly any gratuity or other consideration in connection with his or her appraisal services from or to any person except his or her employer, or, if self-employed, his or her customers.
- (J) No appraiser shall traffic in automobile salvage if it is obtained in any way as a result of appraisal services rendered by the appraiser.
- (K) No appraiser shall obtain an estimate from an unlicensed automobile body repair shop nor shall any appraiser agree on a price for repairing a damaged motor

vehicle with an unlicensed automobile body repair shop. Nothing contained in this section shall be construed to preclude an appraiser from dealing with any entity not subject to the licensing provisions of R.I. Gen. Laws § 5-38-4.

- (L) Where applicable, licensees shall comply with the requirements of R.I. Gen. Laws § 31-46-1.1 regarding the classification of salvage vehicles.
- (M) No appraiser shall request or advise any motor vehicle owner or operator to operate his or her vehicle on any public thoroughfare for the purpose of obtaining a written estimate of damage at a drive-in claims center, unless it ascertained that the vehicle meets safety requirements as determined by the department of transportation. A vehicle is unsafe for driving under this section if the vehicle has (1) damage to its unitized body construction; (2) damage to its hood catch which would probably result in an unexpected opening; (3) damage to the front suspension; (4) metal in contact with any tire; (5) any door which can't be easily opened or which opens unexpectedly; (6) inoperable tail lights; (7) broken glass affixed to the vehicle or a cracked windshield; or (8) any other condition deemed to be unsafe by the department of transportation pursuant to rules and regulations.
- (N) An appraiser appraising a claim for motor vehicle physical damage shall assure that the claimant is notified in writing if he or she intends to specify the use of aftermarket parts. To comply with this provision written notice may be provided on the original appraisal.
- (O) An appraiser shall not require the use of aftermarket parts when negotiating repairs of vehicles which are less than thirty (30) months beyond the date of manufacture, unless written consent from the vehicle owner to install aftermarket parts has been obtained.
- (P) For any automobile which is less than thirty (30) months beyond the date of manufacturer, the insurer must provide a written notice to the vehicle owner that: (i) he or she may require the insurer to pay for and the auto body shop to install "original equipment manufacturer parts " or "OEM parts" in the repair of a motor vehicle body replacement; or (ii) he or she may require the insurer to pay for and the auto body shop to install "non-original equipment manufacturer parts" (non-"OEM parts") in the repair of a motor vehicle body replacement. To comply with this provision, written notice may be provided on the appraisal.
- (Q) Whenever aftermarket parts are used for repairs to physically damaged motor vehicles, the following standards shall apply:
 - (1) The aftermarket parts shall be at least equal in kind and quality to the OEM parts in terms of fit, quality and performance;
 - (2) To the extent practical, an insurance company shall not require the use of multiple aftermarket parts distributors to provide parts for a single repair;

- (3) Insurers specifying the use of aftermarket parts shall make allowances for the reasonable cost of any modifications to the aftermarket parts which may become necessary when making the repair, and for the cost of fitting, removing, and/or handling aftermarket parts which do not result in the vehicle being repaired to its condition prior to the loss;
 - (4) If the aftermarket part specified by the insurer does not result in the vehicle being repaired to its condition prior to the loss, the insurer shall then specify the use of an OEM part;
 - (5) The automobile body shop shall promptly notify the appraiser if the aftermarket part specified by the insurer does not result in the vehicle being repaired to its condition prior to the loss and permit the appraiser to reinspect the vehicle and make appropriate supplemental authorizations, if necessary;
 - (6) The automobile body shop shall provide documentation of aftermarket parts, which do not meet the requirements of this section, as reasonably requested by the insurer. The insurer shall be permitted to exercise any available rights of recovery against the aftermarket parts distributor.
- (R) All persons, partnerships, corporations, or individuals engaged in the motor vehicle physical damage appraisal business shall operate separate and apart from any body repair shop, or motor vehicle repair shop, of any new or used automobile dealership. Those engaged in this business shall retain a permanent established address affording themselves to the general public during normal business hours.
- (S) Records shall be maintained for at least 5 years after the termination of the appraisal and shall be open to examination by the Department at all times.
- (T) An appraiser shall make an independent appraisal of any motor vehicle damage and shall not be influenced by the adjuster or insurer requiring the appraisal, nor the body shop representative selected by the claimant to repair the vehicle.
- (U) (a) If the claimant or insured elects to have a vehicle repaired at an auto body shop of the claimant or insureds choice, the appraiser may not:
- 1. Modify any published manual (i.e. motors, mitchells, or any automated appraisal system) relating to auto body repair unless there is prior agreement between the insurer and the owner of the vehicle to do so. The owner of the vehicle may delegate the ability to agree to modifications to an auto body repairer in writing.
 - 2. Refuse to include in the appraisal documented charges as identified through industry recognized software programs or systems for paint and refinishing materials in auto body repair claims;

3. Fail to use a manual or system in its entirety in the appraisal of a motor vehicle;
 4. Limit or discount the reasonable repair costs based upon the charges that would have been incurred had the vehicle been repaired by the insurer's chosen shop(s).
- (b) Subsection (U)(a) does not apply to direct repair programs where an insurer and body shop have entered into a contract.
- (V) Appraisers shall not terminate an appraisal or inspection from the time it begins until it is completed during the normal business hours of the shop unless it becomes impracticable whether due to unavailability of required information or for other good explained reason.
- (W) Appraisers shall conduct themselves in a professional manner by fair and honorable dealings and shall refrain from intimidation and/or threats.
- (X) Appraisers are expected to contact the auto body shop in advance to establish an opportunity for an On-Site Visit.
- (Y) If the appraiser asks the auto body shop to create access to a compartment of the vehicle, the appraiser shall allow reasonable collision access time. In the event that a vehicle has been disassembled, the appraiser may require the auto body shop to re-assemble the vehicle, and the appraiser shall allow reasonable re-assembly time.

Section 8 *Submissions Regarding Statutory/Regulatory Violations*

- (A) Submissions regarding alleged violation of this regulation by auto body repair shops, regarding the conduct of appraiser(s), may be presented in writing to the Department subject to the following:
- (1) Such submissions will be processed by the Department in its discretion if the Department believes reasonable cause exists to investigate the allegations.
 - (2) Such submissions shall provide documentary evidence of alleged violations which substantiate the allegations with specific reference to both statutory and regulatory sections at issue.
 - (3) If the submission evidences statutory and/or regulatory violations, the Department may prosecute said issues pursuant to its authority to initiate Departmental Hearings pursuant to Central Management Regulation 2.
 - (4) Such submissions may, and are encouraged to, combine allegations of multiple violations in one correspondence.

- (B) Any abuse of the process under this section by auto body shops shall result in a bar of the ability of that auto body shop to file any future submissions under this section. Said bar shall be at the discretion of the Director.

Section 9 License Denial, Non-Renewal or Revocation

- (A) The Department may deny an Application for a License or revoke or suspend a License, or deny renewal of a License for the following:

- (1) Failing to respond to any written inquiry (including electronic communications) from the Department within 21 calendar days of receipt of such inquiry.
 - (2) Providing incorrect, misleading, incomplete or materially untrue information in the License application.
 - (3) Violating any insurance law, or any regulation issued thereunder, subpoena or order of the Department or of another state's insurance commissioner.
 - (4) Obtaining or attempting to obtain a license through misrepresentation or fraud.
 - (5) Being convicted of a felony.
 - (6) Having admitted or been found to have committed any insurance unfair trade practice or insurance fraud.
 - (7) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness or financial irresponsibility in this state or in another place.
 - (8) Having a motor vehicle damage appraiser license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory.
 - (9) Forging another's name to any document.
 - (10) Cheating on an examination, including improperly using notes or any other reference material, for a motor vehicle damage insurance appraiser license.
 - (11) Failing to comply with an administrative or court order imposing a child support obligation.
 - (12) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.
- (B) In the event that the action by the Department is to deny an application for or not renew a license, the Department shall notify the Applicant or licensee, in writing, the reason for the non-renewal or denial of the license. The Applicant or licensee may make written demand upon the Department within ten days for a hearing before the Department to determine the reasonableness of the Department's

action. The hearing shall be held pursuant to R.I. Gen. Laws § 42-35-9 through 14.

- (C) The license of a business entity may be suspended, revoked or refused if the Department finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the Department nor corrective action taken.
- (D) In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a fine and/or any other appropriate remedies according to R.I. Gen. Laws. § 42-14-16.
- (E) The Department shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by R.I. Gen. Laws §§ 27-10.1-1 *et seq.*, 42-14-16 and/or this Regulation against any person who is under investigation for or charged with a violation even if the person's license or registration has been surrendered or has lapsed by operation of law.

Section 10 Reporting of Actions

- (A) The appraiser shall report to the Department any administrative action taken against the appraiser in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.
- (B) Within thirty (30) days of the initial pretrial hearing date, the appraiser shall report to the Department any criminal prosecution of the appraiser taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

Section 11 Severability

If any provision of this Regulation or the application thereof to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Regulation which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Regulation are severable.

Section 12 Effective Date

This Regulation and the amendments thereto shall be effective as indicated below.

EFFECTIVE DATE:	March 27, 2006
AMENDED:	June 3, 2008
AMENDED:	February 26, 2009