

Appraisal – If, When and How - A Procedural and Practical Look From Both Sides

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Appraisals in Texas

I. Introduction

What is the purpose of an appraisal, when should it be employed, what are the benefits/disadvantages, and what happens during and after appraisal? This article addresses these issues from both perspectives, that of a policyholder lawyer and a lawyer who typically represents carriers.

II. What is the purpose of appraisal and when should it be employed?

A. Carrier's Perspective

Appraisal provisions are designed to resolve disputes over the amount of damage or loss. Appraisal provisions “are uniformly included in most forms of property insurance policies” and appear “in almost every homeowners, automobile, and property policy in Texas.” *State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 888 (Tex.2009). Appraisal is not the same as arbitration, as consistently recognized by the Texas Supreme Court:

But here the [appraisal clause] does not divest the courts of jurisdiction, but only binds the parties to have the extent or amount of the loss determined in a particular way, leaving the question of liability for such loss to be determined, if necessary, by the courts.

Johnson, 290 S.W.3d at 889 (quoting *Scottish Union & Nat'l Ins. Co. v. Clancy*, 71 Tex. 5, 8 S.W. 630, 631 (1888)) (alteration in original). Frequently, however, appraisal may provide a means to avoid litigation or streamline litigation following payment of an appraisal award. See *Blum's Furniture Co. v. Certain Underwriters at Lloyds London*, 459

Fed. Appdx. 366, 2012 WL 181413 (5th Cir. 2012) (affirming district court's granting summary judgment to carrier on grounds that policyholder's acceptance of payment of award estopped it from pursuing breach of contract, and, consequently, extra-contractual claims).

In a recent appeal involving appraisal of a property damage claim, the Third Court of Appeals addressed the following typical appraisal provision:

7. Appraisal. If you and we do not agree on the actual cash value, amount of loss or cost of repair or replacement, either can make a written demand for appraisal. Each will then select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers will chose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a district court of a judicial district where the loss occurred. The two appraisers will then set the amount of loss, stating separately the actual cash value and loss to each item. If you or we request that they do so, the appraisers will also set:

- a. the full replacement cost of the dwelling.
- b. the full replacement cost of any other building upon which loss is claimed.
- c. the full cost of repair or replacement of loss to such building, without deduction for depreciation.

If the appraisers fail to agree, they will submit their differences to the umpire. An itemized decision agreed to by any two of these three and filed with us will set the amount of the loss. Such award shall be binding on you and us.

Each party will pay its own appraiser and bear the other expenses of the appraisal and umpire equally.

Cantu v. Southern Ins. Co., 03-14-00533-CV, 2015 WL 5096858, at *1 (Tex. App.—Austin Aug. 25, 2015, no pet.). According to the Court, the effect of the provision resulted in the following:

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