

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

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Appraisal Provisions are Commonplace

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).

Typical Appraisal Clause

Appraisal. If you and we fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, disinterested appraiser. Each shall notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire.... The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss. *Johnson*, 290 S.W. 3d at 887-88.

Mandatory Appraisal Clause

Suit Against Us. Appraisal is a condition precedent to suit against us only if you and we fail to agree on the amount of loss from an occurrence claimed by you. Suit Against Us provisions of the policy apply as modified by this Endorsement. Before you file or proceed with suit or action against us under this policy concerning the amount of loss payment from an occurrence claimed by you:

- (1) You must provide written notice of your dispute to us and make a written demand for appraisal of the amount of loss: and
- (2) The appraisal process must be completed and a determination of the amount of loss made as described in SECTION I - CONDITIONS, paragraph

7. Appraisal as modified by this Endorsement.

This condition precedent cannot be waived absent a written agreement signed by you and us specifically and unequivocally waiving this condition.

When should Appraisal be Invoked?

- **When parties dispute the amount of loss.** *See State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 890 (Tex.2009) (policy direct appraisers to decide “amount of loss,” not to construe policy or decide coverage).
- **After parties have reached an impasse;**
- **And within reasonable time after impasse.** *See In re Universal Underwriters of Tex. Ins. Co.*, 345 S.W.3d 404, 410 (Tex. 2011).

Impasse Defined

- Impasse is the apparent breakdown of good-faith negotiations. *In re Universal Underwriters of Tex. Ins. Co.*, 345 S.W.3d at 409.

An impasse is not the same as a disagreement about the amount of loss. Ongoing negotiations, even when the parties disagree, do not trigger a party’s obligation to demand appraisal. Nor does an insurer’s offer of money to cover damages necessarily indicate a refusal to negotiate further, or to recognize additional damages upon reinspection.

Id. at 408 (internal citation omitted).

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