



ROEDER SMITH JADIN  
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**Minnesota Insurance Appraisal**  
**Guide**<sup>©</sup>

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**April 2017**

# Minnesota Insurance Appraisal Guide<sup>©</sup>

## I. Introduction

What happens when an insurance company and a property owner cannot agree on the cost to repair damaged property or what caused the damage? Conventionally, the parties might turn to a lawsuit to resolve such a dispute, but lawsuits are costly and time consuming. Due to this high cost, many people elect to simply not resolve their disputes. In an effort to avoid this problem, the Minnesota Legislature adopted a mandatory appraisal process to resolve disputes involving what caused the loss, the amount of damage, and the proper scope of repairs.

Appraisal is a dispute resolution process built into every property insurance policy written in Minnesota that covers hail or fire damage. It allows the policyholder and insurance company to select a competent and financially disinterested appraisal panel to resolve the dispute. Appraisal does not apply to pure coverage disputes (for example whether a type of damage is covered under the policy), but it can resolve the majority of other factual disputes that arise in an insurance claim.

The appraisal process provides resolution more quickly and less expensive than traditional litigation. This guide addresses some of the most common issues and questions surrounding insurance appraisals.

## II. What is an Insurance Appraisal?

### A. Generally

#### 1. The Parties

Before appraisal is even an option, the property owner must file an insurance claim. When a claim is filed, it triggers the insurance company's obligation to investigate the loss and determine the amount of loss. The claims adjustment period is when the property owner, adjuster, and oftentimes the contractor, work together to settle the claim.

##### a) *Owner/Association*

The owner owns the insured property. The owner also selects which contractor will perform the repair work. An owner who purchases the policy is often referred to as the "named insured" or simply, the "insured."

In this context a Homeowner's Association might also be the "owner" of the property for insurance purposes. An Association is a non-profit corporation which is comprised of all of the owners who live in a common interest community (usually a group of condominiums or townhomes, an office park, or mixed use development). The Association is responsible for purchasing an insurance policy to cover common elements and in some cases, for all buildings in the community.

*b) Insurance Company & Adjuster*

The insurance company drafts the language of the insurance policy and collects the owner's premiums. The insurance company's underwriters and actuaries make an estimate of the likelihood of fires, storms, and other perils, and determine the value of the covered property. The insurance company's goal is to charge enough premium to cover potential losses and remain profitable. Like any other business, the insurance company hopes to bring in more in premiums than it pays out in claims and expenses.

In an insurance claim, the insurance company is usually represented by an insurance adjuster. An adjuster is a professional who works for the insurance company to analyze and approve or deny claims. The adjuster's job consists of four steps: 1) review coverage; 2) investigate the loss; 3) evaluate the amount of the damage; and 4) deny or approve the claim.

*c) Contractors*

Most homeowners hire contractors to estimate the cost to repair damage. In the event that many professional trades are needed (i.e. plumbing, carpentry, electrical), an owner may hire a General Contractor who will coordinate all of the necessary work. General Contractors are construction professionals who coordinate and oversee specialty subcontractors, provide all necessary permits and supervision, and ultimately warrant the finished work.<sup>1</sup> When it comes to repairing damage from an insurance claim, contractors must often coordinate with homeowners and insurance adjusters to ensure that all necessary repairs are addressed within the claim.

*d) Public Adjusters*

Public adjusters are licensed professionals who specialize in evaluating insurance coverage and the scope, cause, and cost to repair damage. Public adjusters are similar to the adjusters retained by insurance companies, except they work on behalf of the property owner to ensure the claim is properly adjusted and settled.

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<sup>1</sup> Minn. Stat. § 327A.01 *et seq.*

## 2. Overview of the Appraisal Process

### a) *The Impasse*

An appraisal is only necessary when there is a disagreement between the policyholder and the insurance company as to the value, scope, or cause of damage.<sup>2</sup>

### b) *Invoking the Appraisal Clause*

Either the policyholder or the insurance company can invoke the appraisal clause to resolve a disputed loss. Appraisal begins when one party makes a written demand to the other and names their own “appraiser.” The insurance policy sometimes prescribes how this demand must be made, when it must be made, and to whom it must be made.

### c) *Establishing the Panel*

The Panel is the group of competent and disinterested parties that resolve the disputed loss. The panel begins to form when appraisal is demanded and the first appraiser is named. Next, the other party (usually the insurance company) has 20 days to name its own appraiser. The appraisers then mutually select an “umpire” whose role is to resolve any disputes the appraisers cannot agree upon. Each party pays their own appraiser, and half the cost of the umpire.

### d) *Before the Appraisal*

Most appraisals include the presentation of evidence by the parties to support their conclusions with respect to the amount of loss. The law does not prescribe or require a specific deadline to submit supporting documentation that the parties may use at an appraisal hearing (such as estimates, photos, engineer reports, etc.). However, it is common practice to establish a deadline to disclose all the evidence and prospective witnesses prior to appraisal. This early disclosure is a mutual courtesy so both parties and the panel avoid unfair surprise at appraisal. The parties can agree upon a deadline together or the panel may set one. Mutual disclosure is also the best way for everyone involved to understand and confirm the scope of the dispute, which ultimately leads to a smoother resolution process.

### e) *The Appraisal*

On an agreed upon date and time, the Appraisal Panel typically meets to inspect the damaged property firsthand. This can take place formally or informally. In the formal process, the Panel inspects the property and then meets the parties and their representatives off-site (usually at an office) where the parties will have a chance to present their evidence and rebut the opposing side’s evidence. A court reporter may also be present to transcribe testimony.

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<sup>2</sup> Minn. Stat. §§ 65A.01, subd. 3 and 65A.26

An informal appraisal is conducted with the parties on-site alongside the Panel. The Panel meets with the parties immediately after inspection and discusses any evidence and questions. This takes place in a conversational format and there is no court reporter to transcribe testimony.

Whether formal or informal, the Panel deliberates after the inspection and presentation of evidence. The Panel's duty is to make a determination based on the evidence presented by the parties to the Panel. The Panel may not to perform its own independent investigation and evaluation.<sup>3</sup> The Panel will render an Appraisal Award which becomes valid upon the signature of any 2 of the 3 Panel members.<sup>4</sup>

*f) The Appraisal Award*

The Appraisal Panel will issue a written award, often with supporting documentation. The award will contain the conclusions of the Panel including the date of loss, cause of loss, and the Actual Cash Value ("ACV") and the Replacement Cost Value ("RCV"). With limited exception, the Panel's decision is binding. Whether that loss is covered under the policy, however, can still be litigated. Thus, not every award is paid in full.

### 3. Pros and Cons for Each Party

*a) Why Appraise?*

The purpose of appraisal is to provide a plain, speedy, inexpensive and just determination of the amount of the loss.<sup>5</sup> Litigation is often the first thing on an owner's mind when an insurance company doesn't offer what is necessary to cover a loss. However, litigation is often a very slow and expensive process. Appraisal remedies this issue.

The cost of appraisal is limited to the cost of the appraisers and umpire, as opposed to the much higher costs of litigation. It allows insurance companies to defend claims that were properly evaluated and owners to pursue a remedy for claims that were incorrectly evaluated without risking tens of thousands of dollars in court.

*b) Owner Considerations*

Owners choose appraisal for many reasons. As outlined above, the cost of litigation is the primary motivating factor for most homeowners who choose appraisal. The delays of litigation also hinder the usual urgency to repair damaged property. Litigation also requires strict adherence to court rules with which most owners are not familiar. An owner's

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<sup>3</sup> Trial Order, Interlachen Prop. Owner's Ass'n. v. Am. Family Mut. Ins. Co., No. 27-CV-11-12855, 2012 WL 7782584 (Minn. Dist. Ct. Dec. 11, 2012); *see also* Christianson v. Norwich Union Fire Ins. Soc., 84 Minn. 526, 88 N.W. 16, 87 Am. St. Rep. 379 (1901).

<sup>4</sup> Minn. Stat. § 65A.01, subd. 3.

<sup>5</sup> Quade v. Secura Ins., 814 N.W.2d 703 (Minn. 2012) (citing Kavli v. Eagle Star Ins. Co., 288 N.W. 723, 725 (Minn. 1939)).

inadvertent mistake may result in losing a case. Appraisal, on the other hand, provides a quick and uncomplicated resolution that does not usually require a law degree.

Owners must also weigh the drawbacks of appraisal. Even though the process is less formal, homeowners still are not likely to have experience disputing and proving an insurance claim. The insurance company, on the other hand, participates in appraisals on a regular basis. They know who the best (and worst) appraisers are, they know what evidence is most useful in obtaining a favorable Panel decision, and they should be experts in estimating damage. Owners are, therefore, at a disadvantage which makes the retention of experienced professionals like a good contractor, public adjuster, or attorney so important.

Another downfall to appraisal is that the rules of evidence and civil procedure that guarantee a fair trial in court do not apply to appraisal. Without these rules, the appraisal process lacks the full protection against unfair results that exists in Court (although the Appraisal Panel may employ a similar set of rules for its own process).

### *c) Insurer Considerations*

The savings offered by appraisal are beneficial for insurance companies as well. The insurer also receives the benefit of a more expeditious and less costly resolution to a disputed claim than would be typical in litigation. Additionally, insurance companies often presume that juries will sympathize with the plaintiff. Many jurors relate more closely to a property owner than an insurance company. A plaintiff property owner therefore has a perceived advantage at trial.

## **B. Authority for Appraisal**

### **1. Statutory Authority**

Minnesota Chapter 65A contains most of the regulations and rules governing insurance policies in Minnesota. That Chapter sets forth a requirement that each property insurance policy issued in the State of Minnesota must have certain provisions. Among those provisions is the process for appraisal.<sup>6</sup> Minnesota law also contains a provision for one party (Party A) to declare appraisal effectively waived by the other party (Party B) if Party B fails to “appoint a[n] . . . [A]ppraiser” within twenty days after a written request to do so.<sup>7</sup>

### **2. Contractual Authority**

The insurance policy is considered an adhesion contract, meaning that the policyholder generally does not negotiate terms and takes the policy on a “take it or leave it” basis.<sup>8</sup> The policy form is the part of the policy which contains all of the specific coverages, exclusions,

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<sup>6</sup> Minn. Stat. §§ 65A.01, subd. 3, 65A.26.

<sup>7</sup> Minn. Stat. § 65A.12.

<sup>8</sup> See *Atwater Creamery Co. v. Western Nat. Mut. Ins. Co.*, 366 N.W.2d 271 (Minn. 1985).

definitions, and conditions for each party. Most policies follow a standard format set forth by the Insurance Services Office (ISO) or the American Association of Insurance Services (AAIS). In these standardized forms, the appraisal clause mirrors Minnesota's statutory language:

## SECTION I – CONDITIONS

### E. Appraisal

If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose 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 court of record in the state where the "residence premises" is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Each party will:

1. Pay its own Appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.<sup>9</sup>

### C. Scope of Appraisal

#### 1. Causation

One frequent point of contention between insurers and owners is the question of what caused damage to the property. Insurance coverage is predicated on the cause of loss being a covered peril. This comes up often in the context of deterioration or normal wear-and-tear, which are not covered under most insurance policies. Another common dispute is over whether certain damage was caused by a recent storm or an older storm.

In Quade v. Secura, the Minnesota Supreme Court held that a panel's duty to determine the amount of loss "necessarily includes a determination of causation. Coverage questions, such as whether damage is excluded because it was not caused by wind, are legal questions for the Court."<sup>10</sup>

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<sup>9</sup> Insurance Services Office, Inc., *Sample HO 3 Form*, INSURANCE INFORMATION INSTITUTE, at 14 (Aug. 1, 2016 2:15 PM) [http://www.iii.org/sites/default/files/docs/pdf/HO3\\_sample.pdf](http://www.iii.org/sites/default/files/docs/pdf/HO3_sample.pdf).

<sup>10</sup> Quade v. Secura Ins., 814 N.W.2d 703, 706–07 (Minn. 2012).

The question of what caused a loss can therefore be decided by an Appraisal Panel.<sup>11</sup> Whether that cause of loss is covered under the policy, however, is a legal question for the court. In most scenarios, the coverage (or lack thereof) is self-evident when the Panel determines what specifically caused the loss.

## 2. Scope of Damage

Appraisals are also useful in determining the scope of loss. The scope of loss includes the amount of damage present and the necessary repairs to fix it.

Scope disputes can sometimes spill over into disputes over policy interpretation. In Itasca Paper, an insurance company wrote a policy for a paper company which insured “all pulpwood.” A fire swept through the paper company’s facility and an insurance claim was filed. The insurance company determined that only some of the damaged wood was “pulpwood,” and offered to pay for what it deemed to be pulpwood. The paper company demanded an appraisal. The Appraisal Panel determined that all of the wood was “pulpwood” and therefore the scope of the loss was larger than what the insurance company had determined. The insurance company challenged the Panel’s authority to determine the scope of loss and alleged that it made an impermissible coverage determination under the policy. The question for the Panel was whether the damaged wood was pulpwood or not.<sup>12</sup> The court held that Appraisal Panels **must** consider the facts presented when arriving at its causation determination.

## 3. Cost of Repair/Replacement

A common dispute in appraisals is the cost to repair or replace damaged property. Such issues include the amount of labor it will take to make a repair, and the cost or type of material required to repair the property. This is generally resolved through the presentation of competing bids or estimates. This issue is present in the majority of appraisals. The only situation where this is not appropriate for appraisal is when the amount of damage represents a “total loss” under the policy (above the policy limits). Total losses may not be appraised.<sup>13</sup>

## 4. Building Codes

Questions of fact often arise when dealing with repairs required by local building code. If the parties dispute whether the building code requires additional repairs, that dispute may also be resolved by an appraisal panel.

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<sup>11</sup> See Itasca Paper Co. v. Niagra Fire Ins. Co., 220 N.W. 425 (Minn. 1928); Orient Ins. Co. v. Skellet Co., 28 F.2d 968 (8th Cir. 1928).

<sup>12</sup> Itasca Paper Co., 220 N.W. at 425.

<sup>13</sup> Auto-Owners Ins. Co. v. Second Chance Invs., LLC, 827 N.W.2d 766 (Minn. 2013).

## 5. Splitting the hair between coverage issues and damage

As noted above, there is a distinction between the Appraisal Panel’s authority to determine factual issues and legal issues.<sup>14</sup> What the policy covers is a legal issue that is reserved for the court.<sup>15</sup> Questions of fact like what caused a loss, how to repair the loss, and whether proposed replacement product matches the existing product, are all with the Panel’s authority to resolve.<sup>16</sup> The line between legal and factual issues often gets blurred when the legal coverage question depends on the panel’s factual finding.

Even after an Appraisal Award, coverage may still be litigated.<sup>17</sup> In Cedar Bluff v. American Family, a townhome Association sustained damage to its siding after a hail storm. The Appraisal Panel determined that replacement siding panels could not be color-matched to other undamaged panels on the building. The Panel determined that the only reasonable way to conduct the repair was to replace all panels (even those undamaged) so that the color matched. The insurance company disputed the Panel’s determination as a determination of coverage. The court concluded that the factual determination as to the reasonableness of replacing undamaged siding to obtain a color match was within the purview of the appraisal panel. The remaining coverage question was left to the Court, and the Court found that the *mismatch itself* qualifies as a “physical loss” which was covered by the policy.<sup>18</sup>

## III. Pitfalls and Common Misconceptions

### A. Deadlines

The appraisal process is conducted in accordance with statutory and policy-required deadlines. The failure to act within the deadline is sometimes considered a waiver of the right to demand an appraisal.<sup>19</sup> A party has twenty (20) days after receiving an appraisal demand to appoint a competent and disinterested appraiser.<sup>20</sup> Once appointed, the appraisers have fifteen days to select an umpire.<sup>21</sup> If the appraisers cannot agree upon an umpire, the court may appoint one by request of either party.<sup>22</sup> In cases where an insurance policy imposes a time period limit for an insured to bring an action against it, that time limit also applies to the right to demand an appraisal.<sup>23</sup>

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<sup>14</sup> See, e.g., Quade v. Secura Ins., 814 N.W.2d 703 (Minn. 2012)

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Harrington v. Agric. Ins. Co. of Watertown, New York, 229 N.W. 792 (Minn. 1930); Itasca Paper Co. v. Niagra Fire Ins. Co., 220 N.W. 425 (Minn. 1928); Orient Ins. Co. v. Skellet Co., 28 F.2d 968 (8th Cir. 1928).

<sup>18</sup> Cedar Bluff Townhome Condo. Ass’n, Inc. v. Am. Family Mut. Ins. Co., 857 N.W.2d 290 (Minn. 2014).

<sup>19</sup> See Boston Ins. Co. v. A.H. Jacobson Co., 33 N.W.2d 602 (Minn. 1948).

<sup>20</sup> Minn. Stat. § 65A.01, subd. 3.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Johnson v. Mut. Serv. Cas. Ins. Co., 732 N.W.2d 340 (Minn. Ct. App. 2007).

## B. Waiver of Appraisal

Under Minnesota Law, a party may voluntarily waive their legal right to appraisal.<sup>24</sup> There are also times when the right to appraise is automatically waived. A party who fails to appoint an appraiser within twenty (20) days of being properly demanded to do so may be deemed by the demanding party to have waived their right to appraisal.<sup>25</sup> Minnesota courts have also construed an insurance company's unqualified coverage denial as a waiver of its appraisal rights.<sup>26</sup> However, an insurance company may preserve its right to resort to appraisal by disclosing intent not to abandon the appraisal provision.<sup>27</sup>

## C. Misconceptions

### 1. What the Panel Can and Cannot Do

Generally speaking, courts give wide deference to appraisal panels as a matter of public policy. To overturn an appraisal award, a party must make a clear showing that the appraisers were unfaithful to their obligations.<sup>28</sup> For instance, appraisal panels must act impartially and hear evidence presented by the parties. In a recent case, the court vacated an appraisal award because the panel refused to hear certain evidence:

[E]ven if the panel merely “declined” or “rejected” a proposal by Plaintiff for her witnesses to testify, the panel's obligation to allow Plaintiff “to present evidence material to the controversy” would not have been honored. *See* Minn. Stat. § 572B.[15] . . . For all these reasons, Plaintiff has made a clear showing that Plaintiff proposed to offer testimony to the panel, but the panel rejected that proposal, and thereby “refused...to consider evidence material to the controversy”. Minn. Stat. § 572B.23 states that the court “shall” vacate an award if “an arbitrator refused...to consider evidence material to the controversy”. The appraisal panel's award should accordingly be vacated, and the amount of damages due to Plaintiff if any, should be determined at trial . . . Plaintiff's counsel was not allowed the opportunity to cross examine [Defendant's Witnesses], who were contacted by the panel to obtain information on using glue to reseal the shingles . . . [T]his requires vacating the appraisal award regardless of whether the panel refused to hear Plaintiff's witnesses . . . Minn. Stat. § 572B.15 states that, “the parties to the arbitration proceeding are entitled to . . . cross-examine witnesses appearing at the hearing”. Under Minn. Stat. § 572B.23, the court “shall” vacate an award if “an arbitrator... exceeded the arbitrator's powers.”

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<sup>24</sup> *See* Minn. Stat. § 65A.12.

<sup>25</sup> *Id.*

<sup>26</sup> *See* Cash v. Des Moines Fire Ins. Co., 126 N.W. 526 (Minn. 1910); Moore v. Sun Ins. Office, 111 N.W. 260 (Minn. 1907).

<sup>27</sup> Lakehead Pipe Line Co., Inc. v. Am. Home Assur. Co., 981 F.Supp. 1205 (D. Minn. 1997) (internal citations omitted).

<sup>28</sup> QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n, 778 N.W.2d 393 (Minn. Ct. App. 2010); *See also* Minn Stat. § 572B.23.

. . . Here, the Appraisers contacted witnesses to obtain information which informed their decision, but did not allow Plaintiff's counsel the opportunity to cross-examine them. This exceeded the Appraisers' powers under Minn. Stat. § 572B.15, and the panel's decision should be vacated.<sup>29</sup>

Even though the courts have widely held coverage questions to be within the purview of the judiciary, a panel may use a coverage analysis for the purposes of analyzing the loss. Such a determination is neither final nor conclusive, and an insurance company may still seek judicial determination notwithstanding.<sup>30</sup>

## 2. Proper Demand

As outlined above, the appraisal process is initiated by one party making a proper written demand. The question arises as to when a demand is “proper.” The court has discussed the issue in a handful of decisions and has held that parties still have to name an appraiser.

The pendency of negotiations for a compromise does not excuse a party from compliance with a demand for appraisal.<sup>31</sup>

## 3. Appraisal when coverage has been denied

In the event the insurance company denies coverage, an insured may still demand and is entitled to an appraisal.<sup>32</sup> The underlying logic is that if an insurance company could merely deny a claim to avoid appraisal it would effectively destroy the insured's right to appraisal altogether.<sup>33</sup>

# IV. After an Appraisal

An insurance company has the choice to either pay a claim after an appraisal award is made, or if it believes that the award is incorrect or that coverage is denied, it may take other action.

## A. Payment on the Award

The final step (unless the award is nil) is for the insurer to pay the property owner pursuant to the appraisal award. The standard policy loss payment provision provides that:

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<sup>29</sup> Trial Order, Interlachen Prop. Owner's Ass'n. v. Am. Family Mut. Ins. Co., No. 27-CV-11-12855, 2012 WL 7782584 (Minn. Dist. Ct. Dec. 11, 2012); *see also* Christianson v. Norwich Union Fire Ins. Soc., 84 Minn. 526, 88 N.W. 16, 87 Am St. Rep. 379 (1901).

<sup>30</sup> Quade v. Secura Ins., 814 N.W.2d 703 (Minn. 2012).

<sup>31</sup> Powers Dry-Goods Co. v. Imperial Fire Ins. Co. of London, 51 N.W. 123 (Minn. 1892).

<sup>32</sup> *See* Itasca Paper Co. v. Niagra Fire Ins. Co., 220 N.W. 425 (Minn. 1928); Orient Ins. Co. v. Skellet Co., 28 F.2d 968 (8th Cir. 1928).

<sup>33</sup> *Id.*

The amount of loss for which [the] company may be liable shall be payable 60 days after . . . the filing . . . of an award . . . . It is moreover understood that there can be no abandonment of the property insured to the company, and that the company will not in any case be liable for more than the sum insured, with interest thereon from the time when the loss shall become payable, as above provided.<sup>34</sup>

However, many policies shorten the payment timeframe to five, ten, or thirty days.

## B. The Insurance Company's Options

After an appraisal, the insurance company may still deny coverage if an award includes items which are not covered by the policy. This is true even where the insurance company knows about the basis for denial before appraisal.<sup>35</sup> The insurance company may also challenge the validity of the award itself.

### 1. Filing an Action in District Court

Although appraisal is designed to resolve an entire disputed loss, litigation is still sometimes necessary to resolve coverage disputes or to address alleged deficiencies with the appraisal process or award.

In the interest of public policy, the standard to overturn an appraisal award is relatively high. Pleadings are only sufficient when they allege specific facts as opposed to general conclusions of error.<sup>36</sup> Clerical errors, such as the amount of stated value coverage, are not grounds for reversal.<sup>37</sup> Inadequacy must rise to the level of fraud in order for a court to vacate an appraisal award.<sup>38</sup> In fact, Courts give a panel's decision every presumption of validity and lay the burden of proof to establish the grounds for invalidity on the party attacking the appraisal award.<sup>39</sup>

#### a) *The Court will use Arbitration Guidelines to Interpret Appraisal Disputes.*

Although appraisal is required by Minn. Stat. § 65A, the statute does not describe how the process is conducted. For that reason, courts apply Minnesota's version of the Uniform Arbitration Act ("UAA") to interpret the scope and authority of judicial review of appraisal

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<sup>34</sup> Minn. Stat. § 65A.01, subd. 3.

<sup>35</sup> Johnson v. Am. Ins. Co., 43 N.W. 59 (Minn. 1889).

<sup>36</sup> Bahr v. Union Fire Ins. Co., 209 N.W. 479 (Minn. 1926).

<sup>37</sup> Id.

<sup>38</sup> Beebout v. St. Paul Fire & Marine Ins. Co., 365 N.W.2d 271 (Minn. Ct. App. 1985) (citing Mork v. Eureka-Sec. Fire & Marine Ins. Co., 42 N.W.2d 33 (Minn. 1950); Baldinger v. Camden Fire Ins. Ass'n, 141 N.W. 104 (Minn. 1913)).

<sup>39</sup> McQuaid Mkt. House Co. v. Home Ins. Co., 180 N.W. 97 (Minn. 1920).

awards.<sup>40</sup> The UAA provides a set of rules and guidelines about how panels must conduct themselves, how to modify an award, and how to challenge one.<sup>41</sup>

b) *Litigating Appraisal Awards: The How and The When*

A party who wants to challenge or confirm an appraisal must do so in District Court. The law imposes strict guidelines on when and how this must be done:

(a) Except as otherwise provided in section 572B.28, an application for judicial relief under sections 572B.01 to 572B.31 must be made by motion to the court and heard in the manner and upon the notice provided by law or rule of court for making and hearing motions.

(b) Notice of an initial motion to the court under sections 572B.01 to 572B.31 must be served in the manner provided by law for the service of a summons in a civil action unless a civil action is already pending involving the agreement to arbitrate [or appraise].<sup>42</sup>

One decision applying this rule disregarded an insurance company's otherwise legitimate motion to vacate an award because the insurance company failed to properly provide notice of the hearing.<sup>43</sup> Any action to modify, confirm, or vacate an award must be initiated within ninety days after the moving party has received notice of the award.<sup>44</sup>

c) *Litigating Appraisal Awards: The What and The Why*

Under Minnesota Law, a party may, upon motion to the Panel, move to amend or correct an award.<sup>45</sup> An award may be modified to be clarified, finalized, or mathematically corrected.<sup>46</sup> Motions to modify must be served upon all parties within twenty days after the movant receives notice of the award.<sup>47</sup> Respondents then have ten days to object.<sup>48</sup>

(1) *Litigating to Confirm an Award*

Appraisal Awards may be confirmed by a District Court. After a party to the arbitration [or appraisal] proceeding receives notice of an award, the party may file a motion with the court for an order confirming the award, at which time the court shall issue such an order unless there is a basis to modify or vacate the award.<sup>49</sup> An award that is not challenged

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<sup>40</sup> *QBE Ins. Corp v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393, 398 (Minn. Ct. App. 2008).

<sup>41</sup> Minn. Stat. §§ 572B.01-31.

<sup>42</sup> Minn. Stat. § 572B.05.

<sup>43</sup> *Haekenkamp v. Allstate Ins. Co.*, 265 N.W.2d 821 (Minn. 1978).

<sup>44</sup> Minn. Stat. §§ 572B.23-572B.24.

<sup>45</sup> Minn. Stat. § 572B.20.

<sup>46</sup> Minn. Stat. § 572B.20 (a)(1)-(3).

<sup>47</sup> Minn. Stat. § 572B.20 (b).

<sup>48</sup> Minn. Stat. § 572B.20 (c).

<sup>49</sup> Minn. Stat. § 572B.22.

through the statutory provisions allowing a court to vacate, modify, or correct an award must be confirmed.<sup>50</sup>

(2) *Litigating to Vacate an Award*

A court must vacate an award if the award was procured by fraud or corruption, the umpire was not impartial, or if the appraiser prejudiced one party during the hearing.<sup>51</sup> If an appraiser refuses to postpone a hearing when there is sufficient cause to do so or refuses to hear material evidence, the court must vacate the award.<sup>52</sup> Finally, an award must be vacated if the appraiser or umpire exceeds his or her powers, or if the notice to appraise was insufficient.<sup>53</sup>

A motion to vacate must be filed within 90 days after the movant receives notice of the award.<sup>54</sup> In a case where corruption, fraud, or other undue means is pled, the 90-day window starts on the date the corruption, fraud, or other undue means are discovered.<sup>55</sup>

If a court vacates an award, it may order a new appraisal.<sup>56</sup> If the award was vacated due to corruption, fraud, or undue influence, the new appraisal must be held before a new and different panel.<sup>57</sup> If the motion to vacate is denied and there is no pending motion to modify or correct the award, the court must confirm the award.<sup>58</sup>

(3) *Litigating to Modify or Correct an Award*

The last means of challenging an award is to file a motion to modify or correct it. Within ninety days of receiving notice of an award, any party may move the court to modify or correct a mathematical or grammatical error, or on issues of form.<sup>59</sup> Awards may also be modified or corrected to nullify any decision on an issue that was not submitted for appraisal.<sup>60</sup> For example, if a house is damaged by wind and hail, and an insurer has agreed to replace the roof but disputes damage to the windows, an appraisal would resolve the issue of the window damage. If the appraisal award also included an award for roof damage, either party could move the court to modify and remove the portion of the award dealing with the roof damage since the roof claim was never submitted to appraisal.

If the court modifies or corrects an award, it must then confirm that award.<sup>61</sup>

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<sup>50</sup> Minn. Stat. § 572B.22

<sup>51</sup> Minn. Stat. § 572B.23(a)(1)-(2).

<sup>52</sup> Minn. Stat. § 572B.23(a)(3).

<sup>53</sup> Minn. Stat. § 572B.23(a)(4), (6).

<sup>54</sup> Minn. Stat. § 572B.23(b).

<sup>55</sup> Id.

<sup>56</sup> Minn. Stat. § 572B.23(c).

<sup>57</sup> Id.

<sup>58</sup> Minn. Stat. § 572B.23(d).

<sup>59</sup> Minn. Stat. § 572B.24(a)(1), (3).

<sup>60</sup> Minn. Stat. § 572B.24(2).

<sup>61</sup> Minn. Stat. § 572B.24(b).

One thing that a panel may do is to clarify an award at the time the award is made. In one such case, the court denied any modification/correction to an award in which a panel clarified that it did not factor undisputed claims into the award.<sup>62</sup>

If an award is challenged, and the result of that challenge is a modification, correction, or confirmation, the resulting judgment is given the full weight of any other judgment.<sup>63</sup> In addition to ruling on the award, the court may also award costs, attorney's fees, and expenses.<sup>64</sup>

## V. Conclusion

The statutory appraisal process in Minnesota is an effective way to resolve disputes between insureds and insurers regarding the causation, scope, and cost of property insurance claims. Courts favor appraisal and will grant deference to appraisal decisions unless there has been a clear mistake. Although appraisal does require each party to incur the additional cost of hiring a panel, it is substantially less costly than litigation.

Appraisal has been used as a dispute resolution tool for the past several decades, legal issues surrounding appraisal are still being litigated.

Roeder Smith Jadin, PLLC regularly handles appraisals and insurance claim disputes and remains at the forefront of this still-developing area of law.

**Contact us with any insurance appraisal related question.**

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<sup>62</sup> Olean v. N. Branch Mut. Ins. Co., 1999 WL 301135 (Minn. Ct. App. May 11, 1999).

<sup>63</sup> Minn. Stat. § 572B.25(a); *see also* Ehlert v. W. Nat. Mut. Ins. Co., 296 Minn. 195, 207 N.W.2d 334 (Minn. 1973).

<sup>64</sup> Minn. Stat. § 572B.25(b)-(c).