

AFTER THE APPRAISAL

Payment on the Award

- The standard policy loss payment provision provides for payment within sixty (60) days after the award.
 - **Minn. Stat. § 65A.01, subd. 3.**
- Many policies shorten the payment timeframe to five, ten, or thirty days.

Non-Payment of the Total Award

- An insurer will likely withhold the recoverable depreciation, and may attempt to exert some pressure on the policyholder in an attempt to limit the payment.
- After an appraisal, the insurance company may still deny coverage if an award includes things which are not covered by the policy.
 - **Quade v. Secura Ins., 814 N.W.2d 703 (Minn. 2012).**

Confirming, Modifying, and Vacating the Award

- The Court will use Arbitration Guidelines to Interpret Appraisal Disputes.
- Courts apply Minnesota's version of the Uniform Arbitration Act ("UAA") to interpret the scope and authority of judicial review of appraisal awards.
 - **QBE Ins. Corp v. Twin Homes of French Ridge Homeowners Ass'n, 778 N.W.2d 393, 398 (Minn. Ct. App. 2008).**

- 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.
 - **Minn. Stat. §§ 572B.01-31.**
- 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].

- **Minn. Stat. § 572B.05.**
- Any action to modify, confirm, or vacate an award must be initiated within ninety

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days after the moving party has received notice of the award.

- **Minn. Stat. §§ 572B.23–572B.24.**
- A party may also move to amend or correct an award. Minn. Stat. § 572B.20.
 - **See also Olean v. N. Branch Mut. Ins. Co., 1999 WL 301135 (Minn. Ct. App. May 11, 1999).**
- 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.
 - **Olean v. N. Branch Mut. Ins. Co., 1999 WL 301135 (Minn. Ct. App. May 11, 1999).**
- 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.
 - **Minn. Stat. § 572B.25(a);**
 - **Ehlert v. W. Nat. Mut. Ins. Co., 296 Minn. 195, 207 N.W.2d 334 (1973).**
- In addition to ruling on the award, the court may also award costs, attorney’s fees, and expenses.
 - **Minn. Stat. § 572B.25(a);**
 - **Ehlert v. W. Nat. Mut. Ins. Co., 296 Minn. 195, 207 N.W.2d 334 (1973).**

(1) *Confirming 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 572B.23.
 - **Minn. Stat. § 572B.22.**
- An award that is not challenged through the statutory provisions allowing a court to vacate, modify, or correct an award must be confirmed if ever presented to the court.
 - **Minn. Stat. § 572B.22.**
- 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.
 - **Minn. Stat. § 572B.23(d).**
- If the court modifies or corrects an award, it must then confirm that award.
 - **Minn. Stat. § 572B.24(b).**

(2) *Vacating an 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.
 - **Bahr v. Union Fire Ins. Co., 209 N.W. 479 at 490 (Minn. 1926)**

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- Clerical errors, such as the amount of stated value coverage, are not grounds for reversal.
 - **Bahr v. Union Fire Ins. Co., 209 N.W. 479 at 490 (Minn. 1926)**
 - [An] award will be vacated only upon proof of one or more of the statutory grounds, not because the court disagrees with the decision on the merits.
 - **Minn. Stat. § 572B.23;**
 - **Liberty Mut. Ins. Co. v. Sankey, 605 N.W.2d 411, (Minn. Ct. App. 2000)**
 - 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.
 - **McQuaid Mkt. House Co. v. Home Ins. Co., 180 N.W. 97 (Minn. 1920).**
 - 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.
 - **Minn. Stat. § 572B.23(a)(1)-(2).**
 - 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.
 - **Minn. Stat. § 572B.23(a)(3).**
 - Finally, an award must be vacated if the appraiser exceeds his or her powers, or if the notice to appraise was insufficient.
 - **Minn. Stat. § 572B.23(a)(4), (6).**
 - A motion to vacate must be filed within 90 days after the movant receives notice of the award.
 - **Minn. Stat. § 572B.23(b).**
 - 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.
 - **Minn. Stat. § 572B.23(b).**
 - If a court vacates an award, it may order a new appraisal.
 - **Minn. Stat. § 572B.23(c).**
 - If the award was vacated due to corruption, fraud, or undue influence, the new appraisal must be held before a new and different panel.
 - **Minn. Stat. § 572B.23(c).**
 - One decision applying this rule disregarded an insurance company's otherwise legitimate motion to vacate an award because the insurance company properly served and filed the motion, but failed to notice the hearing.
 - **Haekenkamp v. Allstate Ins. Co., 265 N.W.2d 821 (Minn. 1978).**
- (3) *Modifying or Correcting an Award*
- Within ninety days of receiving notice of an award, any party may move to modify or correct a mathematical or grammatical error, or on issues of form.
 - **Minn. Stat. § 572B.24(a)(1), (3).**

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- Awards may also be modified or corrected to nullify any decision on an issue that was not submitted for appraisal.
 - **Minn. Stat. § 572B.24(2).**
- An award may be modified to be clarified, finalized, or mathematically corrected.
 - **Minn. Stat. § 572B.20 (a)(1)-(3).**
- Motions to modify may be served upon the panel within twenty days after the movant receives notice of the award.
 - **Minn. Stat. § 572B.20 (b).**
- 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.
- [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.
 - **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.” . . . 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.
 - **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);**
 - **Christianson v. Norwich Union Fire Ins. Soc., 84 Minn. 526, 88 N.W. 16, 87 Am St. Rep. 379 (1901).**

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