

WHAT IS AN INSURANCE APPRAISAL

- When an insurance claim is filed, it triggers the insurance company's obligation to investigate the loss and determine the amount of loss.
- An appraisal is only necessary when there is a disagreement between the policyholder and the insurance company as to the value, scope, or causation of damage. **Minn. Stat. §§ 65A.01, subd. 3 and 65A.26** require a mandatory appraisal option in any property insurance policy that covers hail or fire in Minnesota.

Overview of the Appraisal Process

a) *Invoking the Appraisal Clause*

- Appraisal begins when one party makes a written demand to the other and names their own appraiser.
- A proper demand is not made by filing a breach of contract lawsuit (or declaratory judgment action) in which "further relief as the court deem[s] just and equitable" is pled. But is proper as a request for relief in addition to a proper written demand.
 - **Johnson v. Mut. Serv. Cas. Ins. Co., 732 N.W.2d 340 (Minn. Ct. App. 2007).**

b) *Establishing the Panel*

- 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.

- The pendency of negotiations for a compromise does not excuse a party from compliance with a demand that arbitration proceedings go forward, as required by the terms of a fire insurance policy.
 - **Powers Dry-Goods Co. v. Imperial Fire Ins. Co. of London, 51 N.W. 123 (Minn. 1892).**
- In the event the insurance company denies coverage, an insured may still demand and is entitled to an appraisal. 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.
 - **See Itasca Paper Co. v. Niagra Fire Ins. Co., 220 N.W. 425 (Minn. 1928); Orient Ins. Co. v. Skellett Co., 28 F.2d 968 (8th Cir. 1928).**

c) *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. 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

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dispute, which ultimately leads to a smoother resolution process.

d) *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.
- 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.
 - **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., 88 N.W. 16 (Minn. 1901).**
- Based upon its inspection and the evidence presented, the Panel will render an Appraisal Award which becomes valid upon the signature of any 2 of the 3 Panel members.
 - **Minn. Stat. § 65A.01, subd. 3.**

e) *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, scope 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.

Authority

- The purpose of appraisal is to provide a plain, speedy, inexpensive and just determination of the amount of the loss.
 - **Kavli v. Eagle Star Ins. Co., 288 N.W. 723, 725 (Minn. 1939).**
- Minnesota Chapter 65A contains the provision for the appraisal process.
 - **Minn. Stat. §§ 65A.01, subd. 3, 65A.26.**
- 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.
 - **Minn. Stat. § 65A.12.**

Causation

- In Quade v. Secura, the Minnesota Supreme Court held that a panel's duty to determine a covered peril 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."
- The question of what caused a loss can therefore be decided by an Appraisal Panel.
 - **Quade v. Secura Ins., 814 N.W.2d 703, 706-07 (Minn. 2012).**

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Scope of Damage

- Appraisals are also useful to determine the scope of the loss. The scope of loss includes the amount of damage present and the necessary repairs to fix it.
 - See Itasca Paper Co., 220 N.W. 425

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 property. Total losses may not be appraised.
 - Auto-Owners Ins. Co. v. Second Chance Invs., LLC, 827 N.W.2d 766 (Minn. 2013).

Building Codes

- If the parties dispute whether the building code requires additional repairs, that dispute may also be resolved by an appraisal panel.

Splitting the hair between coverage issues and damage

- The Appraisal Panel may determine factual issues but may not determine legal issues.
 - See, e.g., Quade v. Secura Ins., 814 N.W.2d 703 (Minn. 2012);

Material Matching

- A Panel can consider whether a proposed replacement constitutes a “reasonable match” to existing materials.
- The court concluded that the factual determination as to the reasonability 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.

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

Deadlines

- The failure to act within the deadline is sometimes considered a waiver of the right to demand an appraisal.
 - See Boston Ins. Co. v. A.H. Jacobson Co., 33 N.W.2d 602 (Minn. 1948).
- A party has twenty (20) days after receiving a demand to appoint a competent and disinterested appraiser.
 - **Minn. Stat. § 65A.01, subd. 3.**
- Once appointed, the appraisers have fifteen (15) days to select an umpire.
 - **Minn. Stat. § 65A.01, subd. 3.**
- If the appraisers cannot agree upon an umpire, the court may appoint one by request of either party.
 - **Minn. Stat. § 65A.01, subd. 3.**
- 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.
 - Johnson v. Mut. Serv. Cas. Ins. Co., 732 N.W.2d 340 (Minn. Ct. App. 2007).

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Waiver of Appraisal

- Under Minnesota Law, a party may voluntarily waive their legal right to appraisal.
 - *See Minn. Stat. § 65A.12*
- A party who fails to appoint an appraiser within twenty (20) days of being properly demanded may be deemed by the demanding party to have waived their right to appraisal.
 - *See Minn. Stat. § 65A.12*
- Minnesota courts have also construed an insurance company's unqualified coverage denial as a waiver of its appraisal rights.
 - *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)*

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.
 - *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.*
- [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]

- The Panel, "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.
- 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.
 - *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., 88 N.W. 16 (Minn. 1901).*
- Even though the courts have widely held coverage questions to be within the purview of the judiciary, a panel may use coverage analysis for the purposes of analyzing a loss. Such a determination is neither final nor conclusive, and an insurance company may still seek judicial determination notwithstanding.
 - *Quade v. Secura Ins., 814 N.W.2d 703 (Minn. 2012).*

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