

SUMMER LAW UPDATE:

APPRAISAL IN RHODE ISLAND

The Speedy and Cost Effective Solution to Value-Centered Disputes

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WHEN TO USE APPRAISAL

- Appraisal resolves disputes regarding the extent of loss and amount of damage under a property insurance policy. Appraisal does *not* represent a viable solution to questions of liability such as the existence or extent of coverage. In technical terms, Appraisal therefore resolves questions of value, not coverage.
- For decades, Sloane and Walsh, LLP has successfully and efficiently assisted parties with commercial and residential Appraisals and Appraisals throughout New England. We have assisted parties at the initial Appraisal demand stage, as well as during pre-hearing investigations, hearings, and post-hearing proceedings. In addition, our attorneys have served as referees, umpires and appraisers on numerous occasions.

WHY PURSUE APPRAISAL?

- Appraisal affords an expedient, expeditious, and efficient solution to value based disputes that benefits both policyholders and insurance companies. Rather than expending unnecessary resources and enduring the countless delays associated with traditional litigation, Appraisal provides a fair, amicable, and equitable route to resolution.

“[I]n most jurisdictions, it is one of the only provisions that affords protection to the interests of the insured in equal measure to those afforded the insurer.” Jonathan J. Wilkofsky, *The Law and Procedure of Insurance Appraisal* 1, (2d. Ed. 2009).

IMPORTANT CONSIDERATIONS CONCERNING APPRAISAL

- ***Appraisal as Condition Precedent to Litigation:***

“[U]nless the insurer denies coverage for the claimed loss and if the dispute is limited to the amount or extent of the loss, the parties are *required* to submit to the appraisal process.” *Hahn v. Allstate Ins. Co.*, 2009-164-APPEAL, 2011 WL 1196896 (R.I. Mar. 31, 2011) (emphasis added).

- ***Waiver:***

The contractual right to Appraisal may be waived. The issue of waiver is fact specific and determined on a case by case basis. Generally, an insurer’s complete denial of

liability under the policy, without more, constitutes waiver of the Appraisal provision. See *Goodman v. Quaker City Fire & Marine Ins. Co.*, 241 F.2d 432, 435 (1st Cir. 1957) (holding that insurer’s letter denying any liability constituted a waiver of any right to require arbitration); *McCord v. Horace Mann Ins. Co.*, 390 F.3d 138, 143 (1st Cir. 2004) (*No* waiver where insurer “specifically disputed public adjuster’s amount of loss and called attention to Appraisal condition, and further asserted condition as affirmative defense to insured’s suit”); see generally *Rimmer v. Aachen & Munich Fire Ins. Co.*, 82 A. 1060, 1061 (R.I. 1912) (stating an insurer’s denial of liability amounts to waiver).

- ***Relation to Arbitration***

In Rhode Island, the appraisal procedure is considered Arbitration and governed by the Arbitration Act, R.I. Gen. Laws §10-3. *Waradzin v. Aetna Casualty and Surety Company*, 570 A.2d 649 (R.I. 1990).

Sloane and Walsh handles Appraisal and Appraisal proceedings throughout New England. Our attorneys are well versed in the substantive and procedural law concerning Appraisal proceedings. Our experience and expertise allows us to make valuable input throughout the process from the selection of appraisers to the enforcement or appeal of an award.



THE POLICY

Property insurance policies generally include Appraisal clauses that define the procedure for settling disagreements over the amount of loss.

For example, the Standard HO 03 homeowner's policy contains the following "Appraisal" provision:

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 the 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 the 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.

HO 00 03 10 00 Insurance Services (1999).

RHODE ISLAND'S STATUTORY LAW

R.I. Gen. Laws § 27-5-3 sets forth the procedure for Appraisal under a standard fire insurance policy. The statute provides, in relevant part, as follows:

In case the insured and this company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty (20) days of that demand.

The appraisers shall first select a competent and disinterested umpire; and failing for fifteen (15) days to agree upon the umpire, then, on request of the insured or this company, the umpire shall be selected by a judge of a court of record in the state in which the property covered is located.

The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire.

An award in writing, so itemized, of any two (2) when filed with this company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and the umpire shall be paid by the parties equally."



ADDITIONAL CONSIDERATIONS:

- Narrowing the scope of the issues in dispute can help lower costs.
- Always consider which referees are reliable, fair, and respected in the community.
- Most policies of insurance allow for an examination under oath which typically benefits both the insurer and insured.
- Appraisal awards are presumptively valid and reviewed "under an exceptionally deferential standard[.]" N. Providence Sch. Comm. v. N. Providence Fed'n of Teachers, Local 920, Am. Fed'n of Teachers, 945 A.2d 339, 344-47 (R.I. 2008). Moreover, "absent a manifest disregard of a contractual provision or a completely irrational result, the [arbitration] award will be upheld." Desjarlais v. USAA Ins. Co., 818 A.2d 645, 647 (R.I. 2003).

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