Jim's Perspective…

Property Insurance Contract Appraisal Clause

The property coverage in commercial and personal lines insurance policies often contains an appraisal clause. The appraisal clause essentially provides an alternative dispute resolution process. This is a voluntary option that either the insurer or insured can invoke in the event of a disagreement about the actual amount of the loss sustained to covered property. Usually, this clause requires that the parties to the contract must agree to undertake an appraisal process. This agreement must be set forth in a written agreement signed by both parties. Once the written agreement is signed, each party picks an appraiser and the two appraisers then select an umpire. If the appraisers are unable to agree on an umpire, the matter can be submitted to a court which will select the umpire. Each appraiser will then determine the amount of the loss. Ultimately, if the two appraisers cannot agree on the amount of the loss, the umpire becomes involved, and a decision agreed to by any two of the three panel members involved in the appraisal will determine the amount of the loss. Each party is responsible for paying its own appraiser and splitting the cost of the umpire.

I have not seen the appraisal clause invoked very often in personal lines policies. On the commercial side, it seems to come up more often with business interruption claims. Also, insurers tend to pursue an appraisal of a claim because it can avoid the uncertainty of a jury trial, and the tendency of jurors to view insurers unfavorably. Now, I'm not suggesting that a jury trial is a bad thing. Actually, I wouldn't want to live in a society that was unable to feel a little empathy for the individual who is in court trying to get a claim paid by an insurance company!

The appraisal clause has been a part of the General Conditions section of property coverage for many years. However, it is not used as much anymore since many claim disputes today are resolved by mediation which, as you know, also avoids going to a court of law. I remember the appraisal clause being used in some farm property damage claims.

Potential Benefits of an Appraisal.

- It can be finished much quicker than by proceeding in a court of law.
- Less expensive than going to court.
- It usually is less adversarial as compared to litigation. The appraisers are usually experts familiar with the property damage issues. For example, if the loss involves a business interruption claim, each appraiser most likely will be a forensic accountant. The appraisers usually will not need to be educated about the monetary issues surrounding the claim which would not be the case if the matter was resolved in court.

Potential Drawbacks of an Appraisal.

- If there is a dispute over interpretation of policy language. Generally, under most state insurance laws, if any of the applicable policy language is determined to be ambiguous, the ambiguity will be resolved in favor of the insured. Appraisers probably won't know about this legal rule for resolving ambiguous insurance policy contract language. Also, the appraisers may think it is not part of their responsibility to apply legal rules to the contract dispute.

- Once an award is signed by the appraisers and umpire, the matter is resolved. There is no right to appeal the appraisal decision.
- Experienced appraisers willing to work for policyholders are less common than those who work for insurance companies. Sometimes, it won't be easy for the policyholder to find a competent appraiser.
- It is best to invoke the appraisal clause only when the dispute is simply a question involving the dollar amount of the loss.

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