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# **RISKY BUSINESS**

## How To Protect Yourself In The Appraisal Process

By

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Printed in the United States of America.

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## ***RISKY BUSINESS—HOW TO PROTECT YOURSELF IN THE APPRAISAL PROCESS?***

The appraisal process is a dispute resolution process found in most property insurance policies. It is designed to resolve one and only one question. That question is: "What is the amount of the loss?"

### *Appraisal Procedure*

The appraisal process begins with a written demand by either the insurer or insured requesting appraisal. Next, each side selects an appraiser that is required to be independent and competent. Thereafter, the appraisers typically select an umpire to resolve any disputes between their respective determinations. After selecting an umpire, the appraisers inspect the loss and prepare their estimates stating the actual cash value for each item. If the appraisers fail to agree, they submit their differences to the umpire. At this point, the umpire is empowered to make a final determination. In most policies, the final determination is required to be itemized and agreed to by any two of the three members the appraisal panel. The award is then filed with the insurance company and becomes binding upon the insured and the insurer.

Historically, the insurance companies lobbied state regulators to include the appraisal process in all property insurance policies. Carriers believed that the appraisal process would expedite the claims resolution process and reduce their overall claims resolution costs by avoid litigation to resolve the simple question: "What is the amount of the loss?" For that reason, the court opinions typically recognize that the appraisal process was inserted into property insurance policies for the insurer's benefit.

In practice, there are great risks to the insured in selecting or agreeing to appraisal. In most cases, as a lawyer for the insured, I strongly advise against the use of the appraisal process. However, there are advantages and disadvantages to the process. In this article, I will try to assess the risks and provide you with tips to level the playing field in the appraisal process.

### *Advantages And Disadvantages*

The advantages of the appraisal process are: (1) the avoidance of litigation; (2) the speed of resolution; (3) lower cost; and (4) the expertise of a sophisticated decision maker. In the narrow situation of fairly determining the amount of the loss, the appraisal process can be employed to achieve these results. However, in practice, your results may vary. The disadvantages of the appraisal process are: (1) its limited use, i.e. the amount of loss only; (2) unpredictable outcomes; and (3) its binding nature with only a limited ability to correct errors.

In my opinion, the success of the appraisal process depends mainly upon the sophistication of the people involved in the process and establishing agreed upon procedures with the insurance company prior to agreeing to the process. Appraisers and umpires come in all shapes and sizes from engineers, contractors, adjusters to attorneys. They are required to be independent and competent. The appraisers and umpire should be impartial and not under the control of the appointing party. They are not to be simply advocates for the person responsible for appointing them. In this regard, the courts have found that a contractor appointed over 1800 times as an appraiser for insurance companies was not independent. Similarly it has been judged that where an appraiser derived more than 25% of his income from work performed for an insurance company he lacked the necessary independence. Appraisers and umpires must also be competent. They must be someone who understands insurance issues and has first hand knowledge of construction and replacement costs or can secure this information from reputable sources. Usually this entails an enormous amount of research to accurately determine: the cost of thoroughly repairing a structure to its pre-claim condition with like kind and quality materials, the cost of complete debris removal costs in the case of fire or major contamination, the cost to repair and replace contents with like kind and quality and in some cases, the cost of additional living expenses the home becomes untenable.

*"The appraisal process is a dispute resolution process found in most property insurance policies. It is designed to resolve one and only one question. That question is: "What is the amount of the loss?"*

*“Since an appraisal award is final and binding, in order to overturn the award, the law requires you to prove that the award was rendered without authority, not made in substantial compliance with the policy, including the appointment of disinterested and competent appraisers and umpires or was the result of fraud, accident or mistake.”*

Aside from being independent and competent, the appraisers and umpire must be knowledgeable about the appraisal process and its proper function to resolve valuation questions only. In this regard, I have found that an appraiser’s experience in the appraisal process is not always a good indicator of quality. Since an appraisal award is final and binding, in order to overturn the award, the law requires you to prove that the award was rendered without authority, not made in substantial compliance with the policy, including the appointment of disinterested and competent appraisers and umpires or was the result of fraud, accident or mistake. In most cases, if you win this battle you will have to do so at the court of appeals level because trial courts seem to give the same amount of deference to the award as the give a jury’s verdict.

### *Helpful Appraisal Tips*

Accordingly, for your success in the appraisal process and to best cover your back end if the process goes south, it is paramount to establish ground rules at that outset to govern the appraisal process.

I recommend the following:

1. Do not agree to submit issues involving coverage, causation or liability to appraisal.
2. Obtain a written memorandum of appraisal setting forth the basis for the appraisal as well as procedures governing the process including requirements for governing notice of the time and place of all inspections and hearings, evidentiary considerations such as the swearing of witnesses, the standards to be applied to determine value, and deadlines rendering the appraisal award.
3. Confirm the independence and competency of the appraisers and umpire by requiring that any previous relationship between or among the appraisers, the umpire and the parties be disclosed prior to selection.
4. Require the appraisers and the umpire to execute an oath that they will carry out their duties fairly and impartially and in accordance with their duties.
5. Require that all hearings be transcribed or recorded.
6. Ensure that the record reflects any disagreement between the appraisers so the umpire’s involvement is warranted.
7. Require that the appraisal award be itemized and signed by two members of the appraisal panel.
8. If your appraiser disagrees with the award, instruct him not to sign it.

The foregoing tips will not guarantee a successful outcome, but will help minimize your risk that the appraisal process will veer dangerously off course. Ideally, you should hire a skilled insurance lawyer to help you craft the memorandum of appraisal and implement these suggestions.

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## ABOUT THE AUTHOR

### *J. BRANTLEY DURRETT, III*

J. Brantley Durrett, III is an attorney that has been representing policyholders in insurance disputes against insurance companies and other wrongdoers since 1989.

His experience is concentrated in complex civil litigation matters with a particular emphasis in representing policyholders in insurance litigation. He has represented homeowners, apartment owners and business owners against their insurance carriers when their contractual and other rights have been abused by unscrupulous insurance adjusters and other scoundrels. He also has significant appellate experience including appeals before the Texas Courts of Appeal and the United States Court of Appeal for the Fifth Circuit. In an appellate capacity, Mr. Durrett has handled insurance cases of first impression in Texas and won reversals of lower court mistakes.

Mr. Durrett has been licensed in Texas since 1989. He has obtained millions of dollars in settlements for his clients. He is a member of numerous professional organizations, including the State Bar of Texas (Sections: Litigation, Insurance, and Commercial and Consumer Law) and the American Association for Justice (Sections: Motor Vehicle Liability, Insurance, Medical Malpractice, Commercial Litigation and Expert Witnesses).

Recently, Mr. Durrett restructured his practice to accept only a limited number of serious cases each year. As a result, he can provide a greater level of personal service for his clients without the distraction of maintaining a heavy case load.

If you think you have wronged by your insurance carrier or its adjusters, contact Mr. Durrett for a FREE, no obligation consultation.

#### **Durrett Law Firm**

The **Durrett Law Firm** is dedicated to protecting your interests and handling your case with personal attention, aggressive advocacy, professionalism, and compassion.

We have been successfully representing policyholders against their insurance carriers in Texas for almost 20 years. We understand that sustaining a insured loss can be financially and emotionally devastating. We strive to balance this concern with the unique and rigorous demands of the legal system. We understand that the selection of an attorney is an important decision, and which may have far reaching consequences.



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