

OPERATION GUIDE

DATE	GENERAL CLASSIFICATION	SUBJECT	NUMBER
06-26-02	Claim Practices Fire	Appraisal	75-09

I. **PURPOSE**

This Operation Guide is intended to assist the zones in submitting claims to appraisal.

II. **GENERAL PRINCIPLES**

Appraisal is a policy condition which provides that when there is a dispute as to the amount of a first-party loss, either party may demand an appraisal to determine the amount of the loss. Appraisal is a method of resolving disputes without the expense and time of litigation. The appraiser does not decide coverage or policy interpretations, but only evaluates the amount of loss.

Compliance with the appraisal condition is a condition precedent to bringing a suit on the policy. An appraisal should be demanded and not requested. The demand must be written in plain language and made within a reasonable period.

Appraisal leaves the value determination to experts and not to a jury. Appraisal also addresses the issue of good faith claim settlement, often mandated by law in some states. A few states, however, do not allow appraisal or put restrictions on appraisal. You should be thoroughly aware of any such restrictions or limitations in your jurisdiction.

Be aware of situations where we could be estopped from demanding compliance with the appraisal condition. Estoppel may occur:

- Where there has been a denial of coverage.
- Where the insurer elects to repair or replace.
- In a total loss situation in a state with a valued policy statute.
- Where there is an untimely demand for the appraisal.

The appraisers should evaluate the loss independently. Only the appraiser's differences are submitted to the umpire.

A mortgagee is usually not bound by appraisal demand unless notice is given and the mortgagee agrees. A loss payee usually has the same rights as the insured, and thus will be bound by an appraisal demand.

Therefore, appraisal should not be used to resolve questions such as:

1. What caused the loss;
2. Whether exclusions apply;

3. Whether an accidental direct physical loss has occurred,
4. Whether policy conditions have been met, or
5. Scope of loss (extent of loss)

III. APPRAISAL GUIDELINES

A. When is Appraisal Used?

1. After other means of reaching agreement on the amount of loss have failed.
2. At the demand of either party
3. The Company may advise the insured that appraisal exists as a means of establishing the amount of loss, and provide the insured the opportunity to demand appraisal.

B. What is the Value of Appraisal?

1. Resolves disagreements concerning the amount of loss
2. May avoid litigation.
3. The award is usually binding upon both parties.

C. Is Appraisal a Requirement?

1. Absent a demand by the insurer or insured, appraisal is not a policy requirement.
2. Appraisal does not preclude litigation.

D. How is Appraisal Conducted?

1. Insured's Understanding

When unable to reach agreement as to the amount of loss, the Company may notify the insured as to how appraisal is conducted, the expenses involved, and the binding effect of the award. The insured may be reminded of his or her right to request appraisal even though the Company may not wish to invoke the appraisal provision

2. All Policy Provisions Must Be Met

For an appraisal award to be upheld by the court, it is important that

strict compliance with the policy is maintained

3. File Documentation

- a. Phone conversations should be noted and confirmed.
- b. Instructions should be confirmed by letter
- c. Appraisal demands should be clear and in writing
- d. The appraiser should be instructed to document activities and findings.

4. Timeliness

- a. Appraisal may be demanded as soon as a substantial disagreement occurs, and other avenues of agreement have been explored.
- b. There should be a strict adherence to time limits for selection of appraisers (20 days) and umpire (15 days).
- c. Failure to meet policy provision time limits could void the appraisal.
- d. A failure to follow up on a timely basis once appraisal has been demanded may estop us to demand compliance.

5. Coverage Questions

Coverage questions should normally be resolved before appraisal. However, when investigation of policy defense(s) is unavoidably delayed, it may be advisable to establish the amount of loss by appraisal. There must be a clear understanding that the policy defense(s) is not waived and the Company will not pay the appraisal amount unless the policy defense(s) is resolved in favor of the insured.

6. Disagreement

- a. There must be a distinct disagreement between the insurer and insured concerning the amount of loss.
- b. The file should reflect the specific items where there is a disagreement on the amount of loss and each party's evaluation of the amount of loss. Any agreed amount of loss should be promptly paid.
- c. Areas of disagreement should be stated in writing.

7. Selection of Appraiser
 - a. Must be qualified based on the appraisal provision of the involved policy contract.
 - b. The burden of proving an appraiser is not qualified is on the party making the allegation.
 - c. The Company's appraiser should be someone whose testimony would be considered "expert" in a court of law
 - d. An appraiser is someone who can state with accuracy the amount of loss in question.
 - e. A party who has acted in the course of the adjustment process to inspect, evaluate, or negotiate the claim, or has previously expressed an opinion concerning the loss or has preconceived views is subject to challenge and disqualification.
8. The Demand
 - a. The Company may wish to make the appraisal demand after avenues of agreement have been explored unsuccessfully. If the Company does not wish to demand appraisal, the insured may be so informed and reminded that the insured has the right to request appraisal.
 - b. The demand must specify areas of disagreement. The demand should fully explain the obligations of the insured, the appraisers, the umpire, and the time limits within which action must be taken.
9. Appraisal Demand Letter (see Exhibit A)
 - a. The letter should clearly state that appraisal is demanded pursuant to the terms of the insurance contract.
 - b. When letters are received that do not clearly express the intent of the insured, we should ask for written clarification (for example, letters received requesting that an independent appraiser set the amount of loss).
10. Memorandum of Appraisal (see Exhibit B)
 - a. The Memorandum of Appraisal is a document that states:
 - 1) The alleged peril causing the loss in question,
 - 2) The location of the damaged property,

- 3) The language of the appraisal condition,
 - 4) That a disagreement has arisen between the Company and the insured concerning the amount of the loss,
 - 5) The identity of the appraisers selected by each party,
 - 6) Appraisal is to be conducted in accordance with the terms of the insurance contract, and
 - 7) The Company has not, by agreeing to appraisal, waived any of its rights in the insurance contract
- b. The Memorandum of Appraisal is not a condition or requirement of the contract, and cannot be required of the insureds. Its value is in documenting, in writing, the items stated above. It establishes a meeting of the minds
- c. In the course of appraisal, the Company should complete the Memorandum of Appraisal, with exception of entering the name of the insured's appraiser, and mail it to the insured with the request that the insured enter the name of their appraiser, review the document for accuracy, date and sign the document, and mail it to the insurer's appraiser.
- d. The Memorandum of Appraisal also includes the Declaration of Appraisers. This document is executed by the appraisers and umpire. It serves the following purposes:
- 1) The appraisers acknowledge their appointment.
 - 2) The appraisers swear to act impartially, and swear that they are not in any way related to either party, or interested in a particular outcome.
 - 3) The appraisers acknowledge, in writing, the identity of the umpire.
 - 4) The umpire acknowledges his or her appointment and swears to act impartially, and is not related to either party or interested in a particular outcome.
 - 5) The appraisers and umpire have a document on which to record in writing the amount of loss in question.
 - 6) The insurer's appraiser should meet with the insured's appraiser to date, sign, and notarize the agreement. The appraisers should also sign the agreement indicating

their choice of umpire.

11. Selection of the Umpire
 - a. The first duty of the appraisers.
 - b. Selection should be made before the loss is appraised.
 - c. Selection is the responsibility of the appraisers and should not be at the direction or control of the insured or Company.
 - d. Selection may be made by a judge of a court of record if the appraisers fail to agree within 15 days.
 - e. The umpire should be directed to decide only the differences of the appraisers. The umpire does not reappraise the loss.
12. The Award (see example)
 - a. The insured should be advised in writing that we will consider the award binding.
 - b. The insured should be advised in writing that the award will establish the Company's obligation subject to policy coverages and limits of liability.
 - c. The amount of loss in question should be stated by the appraisers or umpire.
 - d. The award must be in writing.
 - e. The award must be endorsed by both appraisers, or by the umpire and one appraiser
13. Validity of the Award
 - a. Appraisal awards are generally held by the courts as binding with respect to the amount of loss.
 - b. Appraisal awards may be set aside by the courts when (1) the parties did not have the opportunity for a full and fair hearing, or (2) the hearing was not conducted.

Exhibit A. Appraisal Demand Letter

The following is an example of an Appraisal Demand letter to the insured. This letter should be reviewed and only the applicable clauses should be inserted. Please make certain that any demand letter

include only the appropriate language of the policy. There are some minor variations between commercial and personal lines appraisal language.

DEMAND FOR AN APPRAISAL

Policyholder
108 Good Street
Somewhere, U.S.A.

Certified Mail
Return Receipt Requested

RE CLAIM #
POLICY # _____
D.O.L.

Dear Policyholder:

We regret that we are unable to agree with you as to the amount of loss claimed by you under the above numbered policy and claim number. Pursuant to Section I - Conditions in your policy we direct your attention to the Appraisal Condition. Appraisal is a means of resolving a disagreement as to the amount of a loss.

"Appraisal. If you and we fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, disinterested appraiser. Each shall notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the residence premises is located to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss. Each appraiser shall be paid by the party selecting the appraiser. Other expenses of the appraisal and the compensation of the umpire shall be paid equally by you and us."

State Farm (actual company name) hereby demands an appraisal and has selected _____ (name) _____, _____ (address) _____ as a competent, disinterested appraiser. Also, pursuant to said terms of this policy, you are required to select a competent, disinterested appraiser and are required to notify us of such selection within twenty (20) days of receipt of this letter. Please carefully read the above appraisal condition.

The qualifications of the appraisers are that they be competent and disinterested. The appraisers should be competent with respect to identification of the damage and disinterested insofar as the appraisers are unbiased and free of control to arrive at their own evaluation of the loss.

After the appraisers are selected and identified, their first duty is to select a competent and impartial umpire to whom they agree to submit their differences in the event that the appraisers are unable to agree on the amount of the loss. You may suggest to your appraiser potential candidates for umpire and we may also suggest potential umpires to the appraiser we select. They may consider the potential umpires you and we suggest, but it is their obligation to make the selection.

If after 15 days the appraisers are unsuccessful in agreeing to an umpire, you or we may ask a judge to select an umpire. Occasionally, more than 15 days are required before an agreement is reached. It is usually only after the appraisers have exhausted all possibilities of an agreement that we will consider seeking the assistance of the court. In that instance, we would ask that you work with us in seeking a judge's assistance in appointing an umpire.

After selection of the umpire, we ask that the appraisers sign an Appraisal Award document acknowledging the identity of the umpire. The purpose is to avoid any later misunderstanding as to the umpire selected.

With the umpire selected, the next step is for the appraisers to meet, inspect the damaged property, and attempt to reach an agreement on the amount of the loss. Prior to or at the time of their meeting, you may present to the appraisers any evidence you deem important to their decision. You should look to your appraiser to advise you of the time the appraisers are to meet, the opportunity to present evidence, and the progress of the appraisal.

If the appraisers are unable to agree on the amount of the loss, they are to submit their differences to the umpire. The umpire is to review the findings of each appraiser and may inspect the damaged property.

The amount of the loss, decided by the appraisers and umpire, will establish the amount of our obligation to you, subject to policy coverages and limits of liability.

State Farm will provide payment to the appraiser we select. You shall provide payment for the services of the appraiser you select. Other expenses of the appraisal and compensation of the umpire shall be paid equally by you and State Farm.

This appraisal relates solely to the determination of the amount of the loss. This letter is not intended and shall not be taken to be a waiver of any of the provisions or conditions of the above named policy nor of any of your obligations thereunder, nor of any defense now or hereafter available to State Farm (actual company name).

Yours very truly,

State Farm (actual company name)

By: _____

Exhibit B. Memorandum of Appraisal

While a Memorandum of Appraisal is not required by the policy, it has value in documenting, in writing, the scope of the appraisal and establishes a meeting of the minds between the insurer and the insured. The following is an example.

MEMORANDUM OF APPRAISAL

It is hereby agreed, by and between (Policyholder), insured(s) under policy number

_____, and the State Farm (actual company name)

The insured(s) claims to have sustained a loss by _____ occurring on the _____ day of _____, to or upon the following described property:

(Describe the exact property to be appraised)

A disagreement has arisen between the parties, as to the amount of such loss of the described property

The above named policy issued by State Farm (actual company name) to the insured(s) provides that. (The language in the policy at issue should be quoted.)

"Appraisal. If you and we fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, disinterested appraiser. Each shall notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the residence premises is located to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss. Each appraiser shall be paid by the party selecting the appraiser. Other expenses of the appraisal and the compensation of the umpire shall be paid equally by you and us."

In conformity to the terms and conditions of the above named policy _____ (by Company) and _____ (by Insured) have been selected and are hereby appointed appraisers to appraise, in accordance with the terms and conditions of said policy, the amount of such loss of said described property.

It is further agreed that this appraisal relates solely to the determination of the amount of such loss of said described property. By entering into this agreement State Farm (actual company name) and the insured (insureds) have not waived any of the provisions or conditions of the above named policy, nor of any of their responsibilities, obligations or rights thereunder, nor of any defenses now or hereafter available to either party.

Dated this ___ day of _____.

State Farm (actual company name)

By. _____

Insureds _____

DECLARATION OF APPRAISER

We, the undersigned, do solemnly swear that we will act in accordance with the foregoing appointment, and that we will make a true, just, and conscientious award of the same, according to the best of our knowledge, skill, and judgment. We are not related to any of the parties to this declaration, either as creditors or otherwise, and are not interested in said property or the insurance thereon.

Appraisers

Subscribed and sworn to me this ____ day of _____

Notary Public

SELECTION OF UMPIRE

We, the undersigned, hereby select and appoint _____ to act as umpire to settle matters of difference that shall arise between us, if any, by reason of and in compliance with the foregoing memorandum and appointment.

Appraisers

QUALIFICATION OF UMPIRE

I, the undersigned, hereby accept the appointment of umpire, as provided in the foregoing memorandum, and solemnly swear that I will act with strict impartiality in all matters of difference that shall be submitted to me in connection with this appointment, and I will make a true, just, and conscientious award according to the best of my knowledge, skill, and judgment. I am not related to any of the parties to this memorandum, not interested as a creditor or otherwise in said described property or the insurance thereon.

Umpire

Subscribed and sworn to before me this ____ day of _____

Notary Public

My commission expires _____

Item No	Description	AWARD
		Amount of Loss
1	_____	_____
2	_____	_____
3	_____	_____
4	_____	_____
5	_____	_____
6	_____	_____
7	_____	_____
8	_____	_____
9	_____	_____
10	_____	_____
TOTAL		_____

We, the undersigned, certify that we have performed the duties required, and have appraised and determined and do hereby award the following:

Amount of Loss: \$ _____

Witness our hands this ____ day of _____.

Appraiser

Appraiser

Umpire

A minimum of two signatures required.

Top of Page

For internal use only.

Nothing contained in this site shall be disclosed outside State Farm® unless proper authorization is obtained.