

APPRAISAL

Definition & Use in Insurance - To assist in the resolution of a claim.

Prepared by **STANLEY K. KAUFMAN**

July 31, 2005

Definition: Blacks Law Dictionary 8th Edition states:

Appraisal Clause: “ An insurance - policy provision allowing either the insurer or the insured to demand an independent estimation of a claimed loss. ---- ”

Appraiser : “An impartial person who estimates the value of something, such as real estate, jewelry, or rare books also termed valuer.”

Umpire: “An impartial person appointed to make an award or a final decision usu (usually) when a matter has been submitted to arbitrators who have failed to agree. • An arbitral submission may provide for the appointment of the umpire.”

Insurance Policy: “ 1. A contract of Insurance 2. A document detailing such a contract. - Often shorten to *policy*. - Also termed *policy of insurance*; *contract of insurance*.”

Contract: “1. An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law < a binding contract >---. 2. The writing that sets forth such an agreement < a contract is valid if valid under the law of the residence of the party wishing to enforce the contract > ---- 3. A promise or set of promises by a party to a transaction, enforceable or otherwise recognizable at law; the writing expressing that promise or set of promises < when the lessor learned that the rooms were to be used for the delivery of blasphemous lectures he declined to carry out his contract >. ---- 4. Broadly, any legal duty or set of duties not imposed by the law of tort; esp., a duty created by a decree or declaration of a court < an obligation of record , as a judgement, recognizance, or the like, is included within the term ‘contract’ > . 5. The body of law dealing with agreements and exchange < the general theory of contract > . 6. The terms of an agreement or any particular term < there was no express contract as of when the contract was payable > 7. Loosely, a sale of conveyance. — 8. Loosely, an enforceable agreement between two or more parties to do or not to do a thing or set of things; a compact < when they finally agreed , they had a contract > .”

Contract of Indemnity: “ A contract by which the promisor agrees to reimburse a promisee for some loss irrespective of a third persons liability. ”

Competent: Note *Competence* is a noun and *Competent* is an adjective.

Competence :1. A basic minimal ability to do something; qualification, esp. to testify < competence of a witness> 2. The capacity of an official body to do something < the courts

competence to enter a valid judgment > . 3. Authenticity < the documents were supported by a business - records affidavit, leaving their competence as evidence beyond doubt >.

Disinterested: Free from bias, prejudice or partiality; not having a pecuniary interest< a disinterested witness >.

Qualified: 1. Possessing the necessary qualifications; capable or competent < a qualified medical examiner > 2. Limited; restricted < qualified immunity >.

Insurance Code 2071 Appraisal states:

Appraisal

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 request of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of the request. Where the request is accepted, the appraisers shall first select a competent and disinterested umpire; and failing for 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. Appraisal proceedings are informal unless the insured and this company mutually agree otherwise. For purposes of this section, "informal" means that no formal discovery shall be conducted, including depositions, interrogatories, requests for admission, or other forms of formal civil discovery, no formal rules of evidence shall be applied, and no court reporter shall be used for the proceedings. 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 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 umpire shall be paid by the parties equally. In the event of a government-declared disaster, as defined in the Government Code, appraisal may be requested by either the insured or this company but shall not be compelled.

DESCRIPTION OF INSURANCE CODE “ APPRAISAL ”

- **In case the insured and this company shall fail to agree** as to the actual cash value or

the amount of loss.

It is important the insurer make an offer ¹, which is govern by the Fair Claims Practice Act 2695, unless the loss is under investigation an insurer must make a timely offer. It is also suggested the insured provide the Insurer with a claim ² and or a “Proof of Loss” ³ .

Should the insurer or the insured make a claim that is unacceptable to either they can demand Appraisal.

Note 1- as defined under Insurance regulations 2695.7

(h) Upon acceptance of the claim and, when necessary, upon receipt of a properly executed release, every insurer, except as specified in subsection 2695.7(h)(1) and (2) below, shall immediately, but in no event more than **thirty (30) calendar days later, tender payment of the amount of the claim which has been determined** and is not disputed by the insurer. In claims where multiple coverage is involved, payments which are not in dispute and where the payee is known shall be tendered immediately, but in no event in more than thirty (30) calendar days, if payment would terminate the insurer's known liability under that individual coverage, unless impairment of the insured's interests would result. This subsection shall not apply where the policy provides for a waiting period after acceptance of claim and before payment of benefits.

Note 2- as defined in Insurance Regulations 2695.7 b) Upon receiving proof of claim, every insurer, except as specified in subsection 2695.7(b)(4) below, shall immediately, but in no event more than forty **(40) calendar days later, accept or deny the claim, in whole or in part. The amounts accepted or denied shall be clearly documented in the claim file.**

Note 3 Proof of Loss; Insurance code 2071 under section titled Requirements in Case of loss describes the duties of the insured as well as the Proof of loss -- as:

Requirements in case loss occurs

The insured shall give written notice to this company of any loss without unnecessary delay, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within 60 days after the loss, unless the time is extended in writing

by this company, the insured shall render to this company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required and obtainable, verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

When loss payable (defined in Insurance code 2071)

The amount of loss for which this company may be liable shall be payable 60 days after proof of loss, as herein provided, is received by this company and ascertainment of the loss is made either by agreement between the insured and this company expressed in writing or by the filing with this company of an award as herein provided.

- “ **---on the written request** ” Since there are specific times specified in the Appraisal Clause, for the Insured or Insurer to name their chosen Appraiser and Umpire (Chosen by the Appraisers) . It is necessary that proof of service demanding Appraisal should be made by Certified Return receipt mailing and also by Fax (keep verification of the Fax and CRR) , this will establish the date the request was made.
- “ **---competent and disinterested** ” Please refer to Definitions above

- **A) Competent**

It is very important that one examine and verify the competency / qualification of the chosen Appraiser as well as the Umpire.

If he was an adjuster representing the insurance company or if he was a “ Public Adjuster” or in

the case of “Business Interruption his experience in the field of accounting. Generally speaking these types of individuals would generally be competent. In verifying the background of your Appraiser make sure there is an understanding of the terms and conditions of the insurance policy. Take the time to question the individual. Make sure that he has had training in the subject to be Appraised.

- **B) Disinterested.** This is another serious consideration to be made. The individual has to qualify as being unbiased. There are several case laws defining this and should make sure that the Appraiser and Umpire are not tied, in any manner with the individuals that hire the Appraiser. For example, if the Appraiser has represented the insured or insurer on numerous occasions, was this recent or was it many years ago. If it was recent, then the Appraiser / Umpire would be considered biased and not disinterested. If they are related or very close friends, etc., then the parties would be biased or not disinterested. The Appraiser and Umpire need to have “clean hands” when appointed. There are numerous case law on this subject. One is *Figi v New Hampshire* and the other is *Michael v Aetna Insurance company*. *Figi’s* primary function was to disqualify the Umpire for having financial dealings with one of the Appraisers. In *Michael* - An insurer appeals from an order vacating a fire insurance appraisal award because of alleged “corruption” in a party-selected appraiser pursuant to Code of Civil Procedure section 1286.2, subdivision (b).¹ Insurance Code section 2071 requires appraisers to be “disinterested.”
- Code of Civil Procedure 1282.4
CCP 1282.4. (a) A party to the arbitration has the right to be represented by an attorney at any proceeding or hearing in arbitration under this title. A waiver of this right may be revoked; but if a party revokes such waiver, the other party is entitled to a reasonable continuance for the purpose of procuring an attorney.

Note: Comment by writer:

California has established that the Appraisal Clause contain an Informal hearing format unless a request is made for a Formal hearing and both side agree.

Informal hearing as described in Insurance code 2071 and the Insurance Regulations 2695 states:

"informal" means that no formal discovery shall be conducted, including depositions, interrogatories, requests for admission, or other forms of formal civil discovery, no formal rules of evidence shall be applied, and no court reporter shall be used for the proceedings."

Also the following section of both Insurance Code and Regulations state:

"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"

A recent trend has been established by the insurers taking the position that based upon CCP 1282.4 They have a right to present their case to the panel while the panel listens as trier of facts. I do not believe the intent of Legislature or the Department of Insurance ever intended this to be the case. It is my contention that the insurer is interfering with Insurance Code 2071 by taking sections of CCP with total disregard to the Insurance Code. To support my argument see below:

CCP 1281. A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the **revocation of any contract.**

CCP 1281.1. For the purposes of this article, any request to arbitrate made pursuant to subdivision (a) of Section 1299.4 shall be considered as made pursuant to a written agreement to submit a controversy to arbitration.