



2018 Annual Conference
March 14-16, 2018
Houston, TX

Appraisal Strategies for Property Insurance Claims

I. The Appraisal Landscape

An appraisal conducted pursuant to the provisions of a policy of property insurance, if conducted correctly, is designed to resolve a dispute between the parties relating to the value of a loss. In most cases, either party to an insurance contract has a right to invoke the appraisal process.

a. General overview of policy requirements & case law interpreting same

Most appraisal provisions contained in a standard fire-insurance policy read as follows:

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 demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, then, on request of the insured or this Company, an umpire shall be selected by a judge or court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately the 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, or 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 and the expenses of appraisal and umpire shall be paid by the parties equally.

See N.Y. Ins. Law § 3404. As is clear from the above-cited New York statutory language, there are several requirements that govern every property-insurance appraisal. They are: (1) the demand for appraisal must be made in writing; (2) the parties must select competent and disinterested appraisers within 20 days of the appraisal demand; (3) the appraisers are

responsible for selecting a competent and disinterested umpire; (4) if, after 15 days, the appraisers fail to agree on an umpire, the umpire shall be selected by a judge or court of record in the state where the insured property is located; (5) the appraisers shall appraise the loss, stating separately the actual cash value and loss to each item; (6) if the appraisers fail to agree, they shall submit their differences, only, to the umpire; (7) the written award(s) of the appraisers or umpire shall determine the amount of the loss; (8) each appraiser shall be paid by the party selecting him; and (9) the expenses of the appraisal and umpire shall be paid equally among the parties. Each of these requirements more fully is discussed in detail, below.

b. Review of recent legislative enactments that change landscape, use, and implementation of property appraisals

Within the last few years, New York is one jurisdiction that recently amended its Insurance Law to expand property appraisals to not only a determination on the value of the loss, but also to consider scope-of-loss issues. Pursuant to New York Insurance Law § 3408, subsection (c), which recently was amended as of November 21, 2014, the extent and amount of a property loss now are subject to appraisal. The newly-amended statute provides as follows (emphasis added):

§ 3408. Fire insurance; appraisal of loss; procedure for selection of umpire on failure to agree

* * *

(c) In the event of a covered loss, whenever an insured or insurer fails to proceed with an appraisal upon demand of the other, either party may apply to the court in the manner provided in subsection (a) of this section for an order directing the other to comply with such demand. **An appraisal shall determine the actual cash value, the replacement cost, the extent of the loss or damage and the amount of the loss or damage** which shall be determined as specified in the policy and shall proceed pursuant to the terms of the applicable appraisal clause of the insurance policy and not as an arbitration. Notwithstanding the provisions of this subsection, an appraisal shall not determine whether the policy actually provides coverage for any portion of the claimed loss or damage.

In passing this new amendment, the New York State Assembly explained that it intended to encourage use of the appraisal process as a more efficient means to resolve valuation disputes:

One manner of resolving disputes under certain insurance policies is the appraisal process, which is similar to arbitration. When an insured requests an appraisal, and the insurer refuses, the insured can seek a Court Order requiring the insured to participate in the appraisal process. Unfortunately, the Courts have taken a limited view as to what issues are subject to appraisal. This bill would clarify that the amount of the loss is a proper subject of arbitration. This change will result in substantial savings in litigation costs to both sides of a dispute.

See New York State Assembly Memorandum in Support of Legislation, Bill Number A9346A, available at http://assembly.state.ny.us/leg/?default_fld=&bn=A09346&term=2013&Summary=Y&Actions=Y&Memo=Y&Text=Y.

c. Discussion of legal consequences of enacted law changes and impact on appraisals

One effect of the recent legislative change in New York is that disputes related to the extent and amount of the damage to insured property may be factual questions that fall within the scope of the policy's appraisal clause. See *Quick Response Commercial Div. v. Cincinnati Ins. Co.*, 2015 WL 5306093 at *3 (N.D.N.Y. 2015); see also *Zarour v. Pacific Indem. Co.*, 2015 WL 4385758 at *3 (holding that the issue of damage causation was subject to appraisal because it is "essentially a factual question ... to be resolved by making factual judgments about events in the world, not legal analysis of the meaning of the insurance contract.").

While the law on these recent amendments to New York's appraisal law is not yet settled, there clearly is a movement among public adjusters and counsel representing insureds to push property disputes toward the appraisal process sooner, rather than later, in the hope that the appraisal process will lead to higher indemnity dollars being paid by the insurer. An added effect is that public adjusters are taking the position that the appraisers and umpire have the ability to make coverage assessments on what is and is not damaged from a loss giving rise to the claim. This expansive view of the recent enactments to New York law on appraisal may have the effect of placing clear coverage disputes, such as whether a property sustained direct physical loss, out of the hands of the insurer and into the hands of third-parties to the insurance contract. Insurers must be vigilant to insist that clear disputes on insurance coverage are not subject to the appraisal process. See *Zarour v. Pacific Indem. Co.*, 113 F.Supp.3d 711, 715 (S.D.N.Y. 2015), citing *Duane Reade, Inc. v. St. Paul Fire & Marine Ins. Co.*, 411 F.3d 384, 389 (2d Cir. 2005).

Also, in some jurisdictions, courts are using the appraisal process as a way to remove breach-of-contract cases from their dockets. Notwithstanding the fact that appraisal may be inappropriate given the existence of insurance coverage issues in a dispute, some courts are expanding the use of the appraisal process simply because it removes a case from a court's docket, regardless of whether the issues in the claim are ripe for appraisal or not.

II. The Appraisal Process Defined

A. General overview of how the process should occur

1. Written Demands

As set forth above, the New York standard fire insurance policy requires that a demand for appraisal be made in writing. See above, *supra*, at p. 1. New York law is clear that neither party is required to submit to an appraisal unless and until the other party issues a written demand for appraisal. See *Duane Reade, Inc. v. St. Paul Fire and Marine Ins. Co.*, 411 F.3d 384, 391 (2d Cir. 2005). However, once one of the parties submits an appraisal demand in

writing, both parties contractually are bound to proceed in good faith with the appraisal process before either sues. *See Saterson v. Planet Ins. Co.*, 1994 WL 689084 at *4 (S.D.N.Y. 1994).

On the insurer side, a written demand for appraisal always should include the following information: (1) a reference to the applicable appraisal provision contained in the subject policy; (2) a description of the subject matter of the appraisal; (3) the identity of the insurer's nominated appraiser; and (4) a reservation of all of the insurer's rights and defenses with respect to the subject claim. For example, a written demand for appraisal sent by an insurer to an insured should look something like this:

Pursuant to the terms and conditions of your contract of insurance found at [citation to applicable appraisal provision], [insurer] hereby demands appraisal of the above-referenced loss. This demand for appraisal is with respect to the actual cash value and replacement cost of your dwelling claim, only. Further, [insurer] hereby nominates [appraiser] as its appraiser relative to this claim.

Please be advised that [insurer] reserves all of its rights and defenses with respect to your claim and it will not waive its rights or defenses under any circumstances.

Once an appraisal demand is received, the recipient has 20 days (or any other time period set forth in the subject policy) to provide the demanding party with the identity of its selected appraiser. Failure to respond to a demand for appraisal within a reasonable time may constitute a material breach of the policy. *See Saxena v. New York Property Ins. Underwriting Ass'n*, 232 A.D.2d 622, 623 (2d Dep't 1996), *citing Chainless Cycle Mfg. Co. v. Security Ins. Co.*, 169 N.Y. 304 (1901).

2. Selection of competent and disinterested appraisers.

As set forth above, the New York standard fire insurance policy requires that the parties select a "competent and disinterested appraiser." *See above, supra*, at p. 1. Further, New York case law is clear that "the appraisers should be disinterested, not only without pecuniary interest, but impartial, fair, openminded and substantially indifferent in thought and feeling between the parties and without partisanship and bias either way." *Coon v. Nat'l Fire Ins. Co.*, 126 Misc. 75, 78 (Sup. Ct. Jefferson Co. 1925). While a party is represented by the appraiser whom he/she has selected, and who is there for the purpose of protecting his/her interest, such representation is in a restricted sense only, and such appraiser should at the same time be disinterested or, in other words, fair and unprejudiced. *See Mizrahi v. National Ben Franklin Fire Ins. Co.*, 37 N.Y.S.2d 698, 700 (City Court of New York, Kings County 1942). The standard required of an arbitrator who acts in a quasi-judicial capacity, and should possess the judicial qualifications of fairness to both parties, so that he may render a faithful, honest, and disinterested opinion is applicable to an appraiser appointed under the provisions of an insurance policy. *Id.*

In vetting an appraiser nominated by an insured, an insurer should be on the look out for red flags indicating that the appraiser is not “competent and disinterested.” Red flags indicating that an appraiser may not be competent and is not disinterested include, but are not limited to, the following:

- the appraiser already has been in contact with the insured and was involved in handling the presentation of the insured’s claim to the insurer;
- the appraiser, or his/her company, prepared the insured’s initial damage estimate;
- the appraiser is not licensed as an insurance adjuster or property appraiser in the state where the loss occurred;
- the appraiser’s website, or literature, demonstrates that he/she is partisan and biased towards policyholders (i.e., the appraiser exclusively works on the insured/public adjuster’s side);
- the appraiser is a member of a public adjusters’ association;
- the appraiser never has conducted an appraisal before; and
- the appraiser has an existing business relationship with an insured or a public adjuster working on the insured’s behalf.

3. Selection of an umpire

As set forth above, the New York standard fire insurance policy charges the parties’ nominated appraisers with selecting a competent and disinterested umpire. *See above, supra*, at p. 1. If the appraisers, after 15 days, fail to agree upon an umpire, then the umpire will be selected by a judge or court of record in the state where the insured property is located. *Id.* An umpire is held to the same “competent and disinterested” standard as the parties’ nominated appraisers. *Id.* An umpire should be someone who can resolve differences, and may not necessarily be an insurance adjuster, but is someone who specializes in an area involved in the claim (for example, a roofing expert may be a better umpire for a claim involving an assessment of damage to a roof).

4. Appraisal of Loss

As set forth above, the New York standard fire insurance policy provides that the appraisers shall appraise the loss, stating separately the actual cash value and loss to each item. *See above, supra*, at p. 1. Further, if the appraisers fail to agree, the appraisers shall submit their differences, only, to the umpire. *Id.* An award in writing, itemizing the actual cash value and loss to each item, when filed with the insurance company shall determine the amount of actual cash value and loss. *Id.* New York courts have held that, where an appraisal award is not itemized, and does not show actual cash value and loss or damage to each individual item subject to the appraisal, but contains only a gross amount of loss, such an award is invalid and the award, and all actions based thereon, are a nullity. *See Mizrahi v. National Ben Franklin Fire Ins. Co.*, 37 N.Y.S.2d 698, 702-703 (City Court of New York, Kings County 1942).

5. Memorializing the agreement

Once an appraisal is completed, the award clearly should be written and signed by two of the three appraisers/umpire who are in agreement on the amount of the loss. There is no specified form necessary in New York, and an insurer's reliance on a specific form is discouraged as some forms currently in use are designed to lead the appraisers to a higher outcome, which may not necessarily be warranted based on the facts and circumstances of the loss.

B. Nature of appraisal as a special proceeding, not an arbitration

Where, as in the New York standard fire insurance policy, an appraisal provision does not provide for arbitration, the appraisal is not subject to the statutes governing arbitration, generally. Rather, a special proceeding may be commenced to specifically enforce an agreement that a question of valuation or appraisal be determined by a person named or to be selected – here, the umpire selected by the parties' appraisers. See 23 Carmody-Wait 2d § 141:5. While, generally, the court may enforce such an agreement as if it were an arbitration agreement, CPLR § 7601 specifically provides that this procedure shall not apply to any agreement contained in the New York standard fire insurance policy. See CPLR § 7601. Moreover, New York case law is clear that a dissatisfied party who participated in the selection of an independent appraiser has no greater right to challenge the appraiser's valuation than he or she would have to attach an award rendered by an arbitrator, and that an appraisal determination should be upheld in the absence of fraud, bias, or bad faith. See *Penn Central Corp. v. Consolidated Rail Corp.*, 56 N.Y.2d 120, 130 (1982); see also *Liberty Fabrics, Inc. v. Corporate Properties Associates 5*, 223 A.D.2d 457 (1st Dep't 1996).

C. Use of Forms

As referenced in point A.5. above, it is important that insurers and their appraisers be mindful that many public adjusters use appraisal forms that are designed to have the appraisers consider factors that only lead to a higher determination on the value of a claim. For example, in a total-loss situation, an appraisal form that specifically requests the appraisers to determine the actual cash value and replacement cost value of a loss specifically is designed to force the appraisers to consider only one valuation factor (Replacement cost less depreciation) in lieu of having the appraisers perform a broad evidence analysis of the value of the subject dwelling damage. Forms that limit the use of other broad-evidence factors are designed to steer the outcome of the appraisal by limiting the appraisers' evaluation to certain factors that may not necessarily be the correct or best valuation factors to consider.

III. Protecting the Integrity of the Appraisal Process

A. Avoiding manipulation of process by public adjusters

1. Failure to use competent and disinterested appraisers and umpire

Often times, insureds and their public adjusters will attempt to manipulate the appraisal process by nominating appraisers who are not sufficiently competent or disinterested in the subject matter of the appraisal. When this occurs, it is important for the insurer to clearly and promptly reject the insured's nomination with a written notice setting forth (1) the grounds for the rejection; (2) the insurer's willingness to proceed with the appraisal process once the insured nominates a truly impartial and competent appraiser; and (3) the policy provisions and case law supporting the insurer's determination. While the applicable policy language and case law is set forth above, the substance of an insurer's written notice rejecting an insured's nomination should look something like this:

Here, [appraiser] clearly is not an impartial or competent appraiser. Specifically, [appraiser] was in contact with you and already was involved in handling the presentation of your claim to [insurer] by way of his preparation of a repair estimate for [insurer's] consideration. As you well know, the appraisal process is designed to be impartial and solely between the appraisers and the umpire; therefore, you should not be involved in that process, and your nominated appraiser should not be someone who already participated in the claim adjustment process. [Appraiser's] involvement with you in the handling of this claim demonstrates partiality in your favor. For this reason, he is not qualified to serve as an appraiser in this matter as he is not impartial.

In light of the foregoing, while [insurer] remains more than willing to engage in a good-faith appraisal of this claim, it will not allow you to distort the appraisal process by nominating an appraiser who clearly is biased towards you, and who already was involved on your behalf in addressing this claim prior to your appraisal demand. Once you nominate a truly impartial and competent appraiser, [insurer] will engage in the appraisal process in connection with this claim.

2. Manufacturing forms that are not mandatory or binding

See Points II.A.5 and II.B. above.

3. Augmenting what should and should not be appraised

Often times, insureds and public adjusters will attempt to use the appraisal process as an opportunity to litigate legal issues, such as the scope of coverage provided by the subject insurance policy. As set forth above, while the extent and amount of a loss are subject to the appraisal process, appraisers and umpires are not qualified to decide or interpret legal issues such as the applicability of insurance policy exclusions or other policy provisions that impact the scope of insurance coverage provided under the policy. *See above, supra, at p. 3.*

If an insured attempts to use the appraisal process as an opportunity to litigate issues of insurance coverage, it is important for the insurer clearly and promptly to reject the insured's demand for appraisal with a written notice setting forth the grounds for rejection, including the applicable policy provisions and case law. In this case, the substance of an insurer's written notice rejecting an insured's demand for appraisal should look something like this:

Please be advised that your request for appraisal hereby is rejected by [insurer] because, as further detailed below, issues of insurance coverage exist with respect to this claim that preclude the use of the appraisal process. In New York, the appraisal process is available only when there is no dispute as to liability or coverage and the only dispute is as to value. [insert applicable case law]. Further, several courts have held that appraisal cannot be compelled where there is a disagreement over insurance coverage. [insert applicable case law].

This aforesaid precedent applies to the present claim because there is an ongoing dispute over insurance coverage with respect to your claim. For example, insurer's investigation of your claim has revealed that certain portions of the claimed damages did not sustain a direct physical loss as a result of the incident giving rise to this claim. Accordingly, there is an issue of insurance coverage in this matter as these damages would not be subject to coverage under the insurance contract as they did not sustain a direct physical loss as a result of the incident giving rise to your claim. Due to the existence of an insurance coverage dispute in this claim, use of appraisal is inappropriate and [insurer] declines to proceed with an appraisal in this case.

B. Treat the appraisal like an arbitration

To grab control of the appraisal process, insurers should insist that the appraisers inspect the loss scene, exchange estimates of damage, and submit reports or position statements that outline an insurer's position on any limits to the scope of damage it prepared after the loss occurred. Many times, appraisals get hijacked by public adjusters who seek to expand the scope of the loss in an effort to increase the value of the claim. If the process by which the appraisal is to be conducted is articulated from the start, an insurer can enjoy the benefits of certainty while also providing it with the ability to submit legal arguments in support of their position and valuation of the loss for the appraisal panel's consideration.

C. Insist on a methodical, detailed process that articulates insurer's well-supported position

While the process in which the appraisal is to be conducted should be set forth to all parties at the outset of an appraisal, insurers should make certain that the process that is agreed to is one that truly helps to resolve the valuation issues in a claim. For example, if an insurer's valuation on a total loss involves a determination using the broad-evidence rule, it should insist on a process where the appraisers utilize the broad-evidence rule to determine the amount of the loss, and not a simple replacement-cost-less-depreciation calculation. If the

insured's appraiser refuses to participate in that process, then the insurer should insist on an umpire that has experience with the broad-evidence rule and also carves out the ability to submit to the umpire a detailed explanation on the broad-evidence rule, as well as the calculations giving rise to the insurer's valuation.

IV. Defenses to Demands for Appraisal

A. Issues of Insurance Coverage

As set forth above, the appraisal process is limited to factual disputes and cannot decide purely legal issues such as the scope of coverage provided by an insurance policy. *See Zarour v. Pacific Indem. Co.*, 113 F.Supp.3d 711, 715 (S.D.N.Y. 2015), *citing Duane Reade, Inc. v. St. Paul Fire & Marine Ins. Co.*, 411 F.3d 384, 389 (2d Cir. 2005). It is well-established under New York law that the appraisal process is available only when there is no dispute as to liability or coverage and the only dispute is as to value. *See* N.Y. Ins. Law § 3408 (stating that "an appraisal shall not determine whether the policy actually provides coverage for any portion of the claimed loss or damage"); *Kawa v. Nationwide Mut. Fire Ins. Co.*, 174 Misc.2d 407, 664 N.Y.S.2d 430 (Sup. Ct., Erie Co. 1997). Further, several courts have held that appraisal cannot be compelled where there is a disagreement over insurance coverage. *See Pilkenton v New York Cent. Mut. Fire Ins. Co.*, 112 A.D.3d 1327, 976 N.Y.S.2d 911 (4th Dep't 2013) (insurance coverage dispute precludes the use of the appraisal process); *Indian Chef Inc. v. Fire and Cas. Ins. Co. of Conn.*, 2003 U.S. Dist. LEXIS 2199 (S.D.N.Y. 2003) (holding that appraisers cannot address coverage or liability disputes).

B. Compromised Loss Scenes

A demand for appraisal also may be rejected where the loss scene has been compromised and altered prior to the insured's demand. New York law is clear that a party demanding appraisal waives its right to appraisal under the policy by waiting to demand appraisal until the property is either sold, compromised, or altered to the point that nothing remains for the appraisers to inspect. *See Chainless Cycle Mfg. Co. v. Security Ins. Co.*, 169 N.Y. 304, 311 (1901) (party demanding appraisal waived its right to same by waiting to demand appraisal until after property had been sold; *Indian Chef Inc. v. Fire and Cas. Ins. Co. of Conn.*, 2003 U.S. Dist. LEXIS 2199, at *6 (S.D.N.Y. 2003) ("Where a delay in demanding an appraisal has resulted in the removal, destruction, or repair of the damaged property, an appraisal is no longer practical.")).

C. Untimeliness of Appraisal demand

There is no specific time limit for demanding appraisal provided under New York Insurance Law § 3404. However, New York courts have held that the right to appraisal is not indefinite as to time, but must be exercised within a reasonable period, depending upon the facts of the particular case. *See Zarour v. Pacific Indem. Co.*, 113 F.Supp.3d 711, 716 (S.D.N.Y. 2015), *citing Chainless Cycle Mfg. Co. v. Security Ins. Co.*, 169 N.Y. 304, 310 (1901). In determining the timeliness of an appraisal demand, courts consider three factors: (1) whether the appraisal would "result in prejudice to the insured party"; (2) "whether the parties engaged in good-faith negotiations over valuation of the loss prior to the appraisal demand"; and

(3) “whether an appraisal is desirable or necessary under the circumstances.” See *Zarour v. Pacific Indem. Co.*, 113 F.Supp.3d 711, 716 (S.D.N.Y. 2015), citing *Amerex Group, Inc. v. Lexington Ins. Co.*, 678 F.3d 193, 201 (2d Cir. 2012). A party may demand appraisal even after litigation is commenced. *Id.*

D. Failure to secure competent umpire and appraiser

This defense is discussed above, *supra*, at pp. 4-5.

E. Failure to secure disinterested umpire and appraiser

This defense is discussed above, *supra*, at pp. 4-5.

F. Unripe claims for replacement cost should not be appraised

New York law is clear that an insurer has no obligation to engage in an appraisal concerning replacement cost unless and until the insured actually rebuilds the insured property. See *Woodworth v. Erie Ins. Co.*, 2011 WL 98494 (W.D.N.Y. 2011).

V. Insurers Can Protect Themselves

A. Retain arsenal of experts, appraisers, and umpires familiar with process

If possible, an insurer, in conjunction with its legal counsel, should maintain a stable of experts, appraisers, and umpires familiar with the appraisal process as it relates to property insurance claims. In doing so, the insurer will ensure that its appraisal representatives have a thorough knowledge of the process and requirements under the Insurance Law, and will not be bullied or coerced by the insureds’ representatives.

B. Educate experts, appraisers, and umpires on relevant issues (broad-evidence rule, public adjusters’ manipulation of appraisal process, etc.)

In addition to maintaining a stable of experts, appraisers, and umpires familiar with the appraisal process, an insurer also should ensure that its experts, appraisers, and umpires are educated regarding the most up-to-date laws and regulations relative to property-insurance appraisals. For example, the insurer’s appraisal representatives should be well-versed in all of the above-discussed policy provisions, statutes, and case law, and also should be well aware of common tactics used by insureds and public adjusters in order to defend against same.

C. Document insurance coverage issues not subject to appraisal

If possible, an insurer should issue a denial letter prior to rejecting a demand for appraisal on the grounds that there is a dispute regarding the existence of insurance coverage for the insured’s loss. By issuing a denial letter prior to rejecting the appraisal demand, the insurer will have taken a clear position with respect to which items of damage are not subject to the appraisal process, and will leave less room for the insured to challenge the rejection. At the

very least, if issuing a denial letter prior to rejecting the appraisal demand is not possible, the insurer should document the issues of insurance coverage not subject to appraisal so that it may refer back to those issues if the rejection is challenged by the insured.

D. Thoroughly investigate insured's nominated appraisers and umpires to ensure competency and disinterestedness

As discussed above, insureds and public adjusters often attempt to manipulate the appraisal process by nominating appraisers who are not sufficiently competent or disinterested in the subject matter of the appraisal. *See above, supra*, at p. 6. In order to prevent same, insurers should be sure to thoroughly investigate the insured's nominated appraisers and umpires to ensure that they are sufficiently competent and disinterested. Some easily-accessible and useful sources for vetting insured's nominated appraisers are:

- public records databases, such as Westlaw's PeopleMap and Company Investigator;
- appraisal company websites;
- websites for public adjusters' associations;
- social media searches using platforms such as Twitter, Facebook, and LinkedIn;
- general internet searches for the appraiser and his/her company;
- state insurance and/or appraisal license databases available on state-run websites, such as that maintained by the New York Department of Financial Services; and
- the insurer's claim file, which almost always contains copies of the insured's initial damage estimate.

E. Provide helpful tips to prepare insurer for appraisal.

Some useful advice for insurers:

- Do not accept partisan appraisers;
- Select a good appraiser yourself. Consider:
 - Licensed real estate appraiser;
 - Insist on familiarity with the Broad Evidence Rule;
- Insist on a qualified umpire;
- For appraisal to work, it truly has to be a fair and impartial process;
- Don't "go with the flow";
- Be prepared; and
- Document everything that happens to prepare the best defense possible.