

Dealing with a Property Insurance Claim

by Michael D. Baril

Got an insurance claim for property loss or damage? Consider retaining a public insurance adjuster to handle the claims process on your behalf. Typically paid based on a percentage of the settlement, public adjusters (as opposed to insurance company adjusters) work for the insured, handling all the paperwork and other steps involved in filing a claim. "They'll review the policy and make sure the policy holder gets what is due," "There may be instances where the public adjuster might find more damage or file for more than the insurance company adjuster may." What's more, public adjusters have skills and knowledge that you may not have in house. And because the circumstances surrounding the claim may be traumatic a public adjuster will be better equipped emotionally to tackle the claims process quickly. Even if you have not suffered a loss, you may want to establish a relationship with a public adjuster before you need one. This is especially true if you're in a high risk area. If the unthinkable happens, you'll know exactly whom to call first.

If your house is damaged or destroyed by the fire, windstorm, or flood as a result of the 2006 hurricane season and you have a fire, homeowners, flood insurance,

tenant's homeowners or condominium policy you will be dealing with an insurance adjuster. You should recognize that dealing with an insurance adjuster in a catastrophe is usually fairly easy because of the number of claims the adjuster is required to deal with in a short time. Insurers are in a very generous mood and seeking good publicity by taking care of victims of the catastrophe quickly and fairly.

To make the claims process go easily the insured person must understand that both the insured and the adjuster have duties when damage-caused by fire is discovered. The following list outlines the most important of these duties:

1. You should be sure there is no unnecessary delay in reporting the fact of the discovery of damage to your insurer as a claim.
2. You and the adjuster should establish that there is no unnecessary delay in responding to any fire, fire fighting, flood or water-related cause of loss where "mold" may result as a natural result of water, warmth, and existence of mold spores in all building.
3. You may be asked to sign a non-waiver agreement.
4. You may receive a reservation of rights letter advising you of your duties under the policy, the conditions that apply or might apply, and the exclusions that may apply to the facts of the loss.
5. You, as the insured, should readily, and without objection,

sign the non-waiver agreement or accept the reservation of rights as an expression of the status quo.

6. The adjuster should remind you, as part of the reservation of rights letter and explanation of the duties of the insured, to preserve and protect the damaged property and to mitigate the loss with due diligence and dispatch.

7. You can request from the adjuster the identity of respected, competent, and professional contractors experienced in fire reconstruction or the drying out of buildings and the prevention or restriction of further loss including mold growth.

8. You should follow up regularly with the adjuster to ensure that he or she is meeting contractual obligations since a catastrophe often makes communications difficult.

9. If you have failed to protect the property from further loss, the adjuster must remind you, in writing, of your failure and how that could effect your claim.

10. The adjuster should consider advance payments to avoid any unnecessary difficulties so that you and your family will have a place to live while your house is being rebuilt.

· You can expect an advance of \$10,000 to \$20,000 if your house is destroyed to carry you over.

· Even if your house was not damaged you are entitled to additional living expense payments if you were ordered out of your house by the state government,

federal government, Homeland Security, or the local fire department.

· Remember, Additional living expense coverage does not pay all of your post loss expenses, only those over and above your normal expenses.

Insurance claims require personal attention to detail by the insured. You and the adjuster must meet in person. If the claim is to be resolved expeditiously and fairly, both you and the adjuster should work to establish a personal relationship and to resolve, if coverage is available, the problems caused by the damage to the dwelling or business structure.

Once the rights, obligations, and duties of the insured and the insurer have been stated, and the initial investigation is complete, the insurer is obligated to conduct a prompt analysis of the policy wording and the law to determine whether coverage exists for the damage claimed. Once the investigation is complete and the decision made, it is the adjuster's obligation to advise you, promptly and in detail, of the decision of the insurer. If coverage is available, it is also the obligation of the adjuster to advise you of your duties and obligations to obtain complete indemnity from the insurer and to protect the property from further loss.

If you believe that your property was damaged or destroyed by a peril insured by your policy you should call or write the insurance agent, broker or insurer immediately (or as soon as practical) to report your claim. Follow up the phone call

with a fax, an email, and a letter. If the house was not destroyed but a great deal of fire fighting water or subsequent rain or flood water entered the property try to get a remediation team into the home or business within the first 48 hours to begin drying out the property. If you do not know one ask your insurer for a referral. This is crucial to preventing or containing mold growth and rot. If the agent, insurance company, independent adjuster, or restoration company delays the claim, follow up with a fax, an email, and a letter confirming their delay in responding.

Take detailed notes of every conversation, including the name, company, phone number, address, and job title of every insurance adjuster, representative, consultant, and contractor you deal with. Confirm all agreements in writing and insist that appointments and deadlines be honored. Keep a log of all notes and letters and ask for and keep business cards from everyone involved in your claim.

Immediately after the telephone call, write a letter to the broker or agent, with a copy to the insurer, providing the same information. The letter need not be formal it can be handwritten on any available paper. Make a photocopy.

The notice of loss should include the following information:

1. Your full name; the location of the property; the policy number; the effective dates of the policy; the date when damage first occurred; the type of property damage; the cause or

causes of the damage; how the adjuster can contact you; and that you need immediate contact from the adjuster.

By providing the information to the agent, the broker and/or the insurer you have fulfilled the first obligation under the policy: to provide immediate notice of loss to the insurer.

If the insurer is working effectively and has a catastrophe team of adjusters in place you should receive contact from an adjuster within 24 hours of the notice. The first call should arrange an appointment to inspect the property. You should arrange for inspection as soon as possible and have the entire property available for the inspection if possible. If emergency efforts are required you should so advise the adjuster so that he or she can help you take emergency measures to protect against further loss.

Your insurer should respond to typical catastrophe claims by written or verbal contact within 24 hours of your notice of the claim. The insurer should share information regarding emergency repairs, additional living expenses, temporary advance payments and prevention of further loss with you.

The insurer is obligated by statute, state administrative regulations, or by the terms of the policy to determine whether your claim is covered and provide an initial estimate of damage within 7 to 14 days after the insurer's first on-site visit. This first estimate is subject to change. Within the same timeframe, your insurer should attempt to provide you with a

written statement confirming or denying coverage. These time limits are usually waived in catastrophes and may be impossible to meet with regard to a “Hurricane Katrina” event and other massive catastrophes.

You should expect your insurer to return all phone calls within 24 hours. Initial contact may be with your insurance agent or broker or a claims office or the toll-free phone number included in the policy. Because of the volume of claims after a catastrophe like those in the 2005 hurricane season this time frame will probably not be feasible.

Your first contact with the adjuster is usually an informative meeting where you discuss the cause of the loss, the type of loss, when the loss was discovered, and make an initial effort to agree on a tentative scope of loss.

You should expect the adjuster to do the following:

1. Ask for a walk-through inspection of the entire dwelling or building. You should make every effort to point out each item of damage or suspected damage during the walk-through inspection. You, or your representative, should assist the adjuster in viewing both the damage and the source of the damage;
2. Ask you to submit to a recorded statement;
3. Ask you for the identities of each family member or vendor who can give the adjuster information about the loss;
4. Ask for the recorded statements of the persons identified;
5. Ask permission to allow experts retained by the insurer to

inspect the property and do minor destructive testing to establish the appropriate methods of reconstruction and repair; and

6. Ask permission to contact others who know information about the loss and to obtain from those people within your control a detailed recorded statement and documents relating to their knowledge of the loss and the extent of the loss.

An adjuster is a person professionally trained to assess the damage to your property. He or she will probably visit your home or business before you are asked to complete any forms. The more information you have about your damaged home or business and belongings, the sooner your claim will be settled. Your adjuster generally will come prepared to do a thorough and complete evaluation of the damage to your property. If the adjuster is unable to complete a thorough inspection due to time constraints or the extent of damage, he or she should prepare a **scope of the loss** report. This is a brief listing of the findings of damage determined at the initial inspection of the damage. The adjuster should ask you to agree to the scope of loss. Agreeing to a scope of loss is not presenting a claim. It is understood by the adjuster that the scope is incomplete and will be added to as new damage is discovered. It is usually supplemented with a second visit after the reports of experts are received to complete the inspection.

The “scope of loss” should include the following:

1. degree of damage;

2. a description of each location where damage was observed;
3. a description of the adjuster’s and your own best estimates of the type of damage observed;
4. a list of all personal property damaged or destroyed;
5. quality of the materials and workmanship; and
6. measurements needed to calculate quantities, including length, width, and height of rooms and the number of “openings” (windows and doors) in each room.
7. The scope of loss, usually referred to by claims people as the “scope,” differs from the finished estimate in two ways the scope does not necessarily list any prices, although prices can be used to describe quality
8. The scope does not list the calculated quantities; it includes just the raw counts and measurements needed to calculate quantities for the estimate.

Every policy requires that the insured protect the property from further loss. Therefore, you should turn off any water flow to broken appliances or pipes, arrange to have openings in roofs or walls covered to protect from rain damage, and seek help from the adjuster to further protect your property from losses of all types.

Take any necessary emergency measures to protect the building and personal property from any further damage. Do not throw anything away until permission of the insurance company is obtained in writing and you have documented its condition unless the damaged property presents a hazard to the health or safety of your family or others.

If the insurer delays or refuses to authorize measures to prevent further loss, confirm the insurer's delay in a fax, email, and a letter, and take whatever reasonable measures you can afford to protect the property. If your loss is covered, the insurance company should also cover the cost of any reasonable emergency measures you took to protect your property. It is not unusual for an insurer to deny coverage for damage resulting after the initial claim on the grounds that an insured failed to comply with the policy condition to protect the property from further damage.

If you were prudent and prepared, before the catastrophe, an inventory of your contents or took pictures of your contents, provide the adjuster with the inventory and photographs or videotape. Photograph, videotape, and inventory all damaged property after the loss. Make sure you record the date of the photos and videotape. It is important to document the source and the extent of damage whether by fire or water intrusion.

In most states, a material misrepresentation, concealment, or omission made in connection with the claim will give the insurer a valid reason to reject the entire claim. For example, claiming that an item was destroyed that really wasn't or substantially overstating the value of a damaged item is fraud. In most states insurance fraud is a felony that can place you in state prison if convicted. No catastrophe is so bad as to cause you to attempt to defraud your insurer to make up for uninsured losses.

You should never exaggerate, speculate, or guess about the loss or value of any particular piece of property. Make it clear to your insurer when recollection may not be accurate, when you are estimating value, and the basis for your estimate. For the value of items you are not sure about on a claim presentation, use the phrase "To Be Determined." If you do not have receipts to show the price of an item, information can be found in catalogs, statements from retail clerks, bank statements, credit card statements, or statements from family members or friends.

You have a contractual obligation to cooperate with the insurer in its investigation and handling of the claim. However, you never have an obligation to allow yourself to be abused. In most states the insured and the insurance company have a mutual obligation to act in good faith and deal fairly with each other to investigate and process the claim. This means that both should avoid taking any unreasonable position or doing or saying anything that would in any way frustrate each other's rights under the policy.

You may also be required to appear for an "Examination Under Oath" (EUO). The insurer may, but is not required to, hire an attorney to take the EUO to represent the insured. Since a lawyer is not required, however, the insurer will not pay for the attorney that is representing you. The EUO is a contractual obligation and there is usually no clause in the insurance policy promising to pay a lawyer to help the insured make

a claim against an insurer. You should not appear for an EUO until you understand all rights, the insurance coverage, and the full extent of the claim, or until counsel is retained. Do not refuse to appear at an EUO or the insurer may reject the claim because such refusal is a breach of a material condition of the policy. You may reasonably request a delay in appearance at an EUO to obtain the services of counsel or a public insurance adjuster.

Some insurers believe that, at some point, you will refuse to comply with their requests. If you refuse to comply with reasonable requests for a recorded statement, an EUO, a sworn proof of loss, or documents reasonably related to the insurer's investigation, you may give the insurer a valid excuse to deny the claim based on your breach of the duty to cooperate. If you believe that any requests made by the insurer are unreasonable, ask the insurer to explain the reason(s) for the requests in writing. Err on the side of caution and provide all documents that have some reasonable connection to the policy or loss. Before giving an insurer a reason to deny a claim because of your failure to cooperate, consult with a policyholder attorney, a public adjuster, or the state Department of Insurance before refusing a request that may, in retrospect, turn out to have been reasonable.

Some losses are paid on an **actual cash value (ACV)** basis, which in some states means either the fair market value of the property at the time of loss

unless the policy defines ACV differently. Many policies will define ACV as replacement cost less physical depreciation for age and wear and tear. Some losses are paid out on a **replacement cost value (RCV)**, where the insured is paid the difference between actual cash value and replacement cost value after the insured has actual sums necessary to complete the replacement. You may collect the ACV loss immediately and advise the insurer you intend to make claim for the difference between ACV and RCV when the structure is rebuilt. If your policy has a time-limit for rebuilding be sure to get a written extension of time since, after a catastrophe, the rebuilding process is often severely delayed.

There is no basis in the policy that allows withholding profit and overhead as a means of calculating ACV. In fact, ACV is defined either as the difference in the fair market value of the property before the loss and the fair market value of the property after the loss or the full cost of replacement using like kind and quality, less physical depreciation. You should insist that any amounts withheld from payment pending completion of the work, be documented in writing and justified by the adjuster objectively. Policyholder attorneys and some insurance regulators have successfully prevented insurers from withholding these amounts.

Never sign a release, waiver, indemnity, or “hold harmless” agreement without proper legal advice. If the insurer, adjuster, consultant, or contractor asks you to sign a release, waiver,

indemnity, or hold harmless agreement, ask them to explain why in writing. These kinds of agreements can be used to deprive an insured of rights and benefits and may obligate you to pay thousands of extra dollars for issues that arise. Consult a policyholder attorney to determine your rights before signing any such agreement.

Seek professional help, if needed. If you reach an impasse with the insurer, document the dispute fully in writing. Explain your position and why the insurance company’s position is unreasonable. If the dispute does not require legal advice, you may be able to resolve it by calling a Florida licensed public adjuster. If the dispute does require legal advice, contact a lawyer who is experienced and specializes in representing policyholders.

In most states the insurance company is required to tell you, in writing, that the claim is denied, and that the limitations clock is running. That is, if you disagree with the insurer’s conclusion to deny your claim you have a limited time to file suit. Make sure you understand all possible deadlines. Consult with a policyholder attorney as soon as possible. The time limitation can be as short as one year from the date the loss occurred and can be put on hold by actions of the insurer. If you wish to sue, it is best to contact counsel as soon as possible before the expiration of the time limit.

Almost all claims will be handled promptly and fairly. A person knowledgeable about

insurance claims can better deal with an insurance company. Don’t take advantage of your insurer and don’t let an insurer take advantage of you. You are entitled to indemnity. You and your insurer should work together to make you whole.

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Adapted from Barry Zalma’s book, “Insurance Claims: A Comprehensive Guide” and his book “Mold: A Comprehensive Claims Guide”

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