

Providing Legal Assistance in the Aftermath of Disaster 2015

INSURANCE ISSUES

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Overview of Today's Presentation

1. Helping client get, review and understand policy documents
2. Types of insurance policies you may encounter
3. Helping clients with notice of loss and communication with insurer
4. Expectations and relations between adjusters & policyholders
5. Helping a policyholder document and scope damage
6. Helping a policyholder execute a proof of loss
7. Problems that may arise during loss adjustment
8. Helping negotiate claim settlements
9. Cash advances and limitations on your role

Helping client get, review and understand policy documents

- Paper trail should start right away with a request for a complete and current copy of all in-force policies, endorsements, etc.
- CA regulations and laws require insurers to provide w/in 30 days but client needs sooner
- Insurer should provide voluntarily
- Insurer may require client to execute written authorization for your involvement

Types of Insurance Policies You May Encounter

- Homeowners (+ variants)
- Renters
- Landlord
- Business Owner
- CGL
- Excess
- Flood, EQ, Forced/Lender Placed, Condo Owners

Locating Policy Coverage Provisions

- Insurance Policy Contents
 - Forms
 - Declarations Pages
 - Forms Schedule
 - Endorsements
- Coverage Provisions
 - Insuring Agreement
 - Exclusions
 - Conditions
 - Definitions

Helping clients with notice of loss and communication w/insurer

- Check the policy's instructions to determine whether the notice must be via:
 - Phone,
 - Telephone, or
 - Internet.
- Remember to speak with the insurance broker to confirm the insurer notice requirements

Expectations and relations between adjusters & policyholders

- Claim diary and paper trail are **essential**
- Client and attorney demeanor: polite and professional but pro-active and firm
- Client and attorney should be cooperative and timely in responding to insurer's reasonable requests for information
- Client should not feel pressured to agree to insurer assessments of damage and settlement offers without independent verifications of accuracy

Helping a policyholder document and scope damage

- If the insurer asks policyholder to sign a proof of loss (POL) form before the loss has been fully evaluated/scoped and estimated, policyholder can write “undetermined” under *Amount of Loss*.
- CAVEAT: National Flood Insurance Program policy requirements do not allow this on a flood claim.
- If policyholder needs an extension, it should be granted. CDI can help if insurer refuses.

Helping a policyholder submit their claim and proof of loss

Types of Loss

- Property Loss
- Miscellaneous
 - Demolition
 - Code upgrades
 - Rent
 - Business interruption

Documentation & Information

- Photographs
- Reports
- Receipts
- Lists
- Valuations

Sources of claim prep/documentation help:

- The Claim Guidance Library at www.uphelp.org
- Insurance Staff/"Independent" and Public Adjusters
- Inventory valuation experts
- Independent construction, engineering, mold and related experts
- Wedding registries/big box stores/the Internet, photos, friends and neighbors
- Google Earth
- Government agency records, e.g. property tax assessments, permit applications

Submitting the *Proof of Loss*

- The *Proof of Loss* form documents the facts and amount of loss
- The *Proof of Loss* is done under oath, so check all the information and documentation prior to submission
 - Provide copies of backup (invoices, receipts, photos, etc.)
 - Keep a backup copy
 - Ask the insurer to specify its particular uploading procedures

Helping a business client post-disaster

- See “Getting (Back to) Business Interruption Insurance” at www.uphelp.org/pubs
 - Secure outside help early on in the submission process.
 - Help client reconstruct and track all costs
 - Lost inventory/lost profits/business interruption
 - Business continuity coverage to resume operations

Problems that may arise during a post-disaster claim

- **Delays/No decision**
 - VERY common
 - Insurer may legitimately need more info or adjuster may be overwhelmed
 - Insured should ask insurer to clarify what else is needed
- **Disagreements over scope/extent/limits/coverage**
- **Denial of claim or coverage**

Cash is king but may be in short supply...

- Cash advances
- Getting a lender to release their interest in insurance \$
- ACV versus RCV
- Helping a policyholder collect full RCV

Helping negotiate claim settlements

- Address and Resolve Disputed Costs
- Help policyholder secure independent evaluations
- Address and Resolve Disputed Valuations
- Address and Resolve Coverage Disputes

Dispute resolution options

- Informal meetings at loss site can be very effective
- Going up the chain of command at the insurance company
- CDI Request for Assistance/Consumer Hotline
- CDI sponsored mediation program
- Appraisal, Mediation, Litigation

Limitations on your role:

- Pro bono – no fee taken on any advances/benefits
- Limited pro bono – must be crystal clear
- Contingency versus hourly
- Contingency and client pays for experts and costs
- Contingency and lawyer pays for experts and costs

Miscellaneous other considerations:

- Public adjuster fee contracts, liens
- Co-owners of property
- Mistakes in description of the insured property or issuance of policy
- Underinsurance
- Recorded statements, EUOs

Selected items from “Insurance Resources for CA” at www.uphelp.org

- FAQs About Home Insurance Claims in California
- A Guide to Your Insurance Legal Rights in California
- Top Ten Insurance Claim Tips
- Sample Letter Requesting Copy of Policy
- Simplified Guide to Your Declarations Page
- ALE/Loss of Use: What expenses can you claim on your homeowner's policy?
- Earthquake Claim Tips for Homeowners and Businesses

Applicable CA laws and regulations:

- CA Insurance Code sections 790.03, 2060, 2071, 2051.5, 10102

See also: sample disclosure form

- C.C.R. Section 2695 et seq. (Fair Claims Settlement Practices)
- CA Insurance Code 10089.70(b) Mediation program

See also: CDI Bulletin re: statutes enacted after 2003 wildfires

Questions and Answers