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Protecting Your Rights Under An Insurance Policy



Joshua Stein Contributor

Real Estate

I write about commercial real estate negotiations, deals and legal issues.



Insurance policies are sometimes full of surprises. GETTY IMAGES

Buildings sometimes burn down or suffer other damage, in whole or in part. When that happens, some insurance policy or another is often supposed to cover the loss. But that's only the beginning of the discussion.

Insurance policies universally require the insured party to report any loss or other claim promptly. Failure to do that can potentially vitiate or at least impair coverage. In other words, the policyholder can't sit around and assume that, because there's an insurance policy, the policyholder doesn't have to do anything.

To the contrary, the policy will often have very specific rules about when, how, and to whom the loss needs to be reported. Failure to comply with those rules can impair the policy coverage.

A [recent Florida case](#) provides an extreme example. There, Hurricane Irma damaged the property in ways that seemed minor. The policyholder casually fixed the damage. Later, when it looked like the hurricane had caused other, more serious, damage, the policyholder finally filed a claim with the insurance company 27 months after the hurricane.

The trial court noted that the insurance policy required the policy holder to give "prompt notice" of the loss, and concluded that no reasonable jury could find that 27 months qualified. So the court decided in favor of the insurance company. Although that decision is now under appeal, it's a good warning for any policyholder.

As a variation on the theme, sometimes one party has the benefit of another party's insurance policy. For example, a lease might require a tenant to maintain insurance for the landlord's benefit. If a loss occurs, the tenant should certainly file a claim quickly. But so should the landlord. Something might go wrong with the tenant's claim. The landlord's rights are often independent of the tenant's. The landlord shouldn't place itself at the mercy of the tenant's competence in handling claims.

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Policyholders often deal with their insurance brokers when a loss occurs. Although brokers can help with the process, the policyholder should make sure they comply with what the policy specifically requires. And the policy will probably require something more than having a nice pleasant conversation with the insurance broker to report the claim.

Going beyond the threshold issue of filing a claim, when a loss occurs the policyholder should go find the insurance policy and read it. Usually the policy will also have requirements about information to be provided to the insurance company, access and inspections, and similar procedural requirements. Failure to comply can, again, potentially vitiate coverage. And the policyholder should remember that once a claim occurs, some insurance companies initiate a cat and mouse game in which the goal is to deny the claim somehow. The policyholder should plan ahead for that, doing whatever is necessary to not give the insurance company any excuses.

For a claim of any meaningful size, the policyholder may find it pays to quickly hire a third party professional to help with the process – either a public adjuster or a lawyer who specializes in the area – rather than rely on the insurance broker, whose loyalties may be complex.



Joshua Stein

I help buyers, sellers, borrowers, lenders, tenants, property owners, and other commercial real estate market participants identify and achieve their business goals. To do that, I need to understand risk, security, numbers, value, financeability, flexibility, and exit strategy. Some legal issues matter a lot and many don't. It's important to know the difference. I write extensively on commercial real estate law and practice – over 300 articles and five books on leasing, lending, and other areas,

with some emphasis on ground leases. I occasionally serve as an arbitrator or expert witness in complex real estate disputes. That lets me see how transactions go wrong. Often, the problems could have been avoided by keeping it simple and following the money, but everyone got sidetracked. As a Forbes contributor, I try to tell stories that teach worthwhile lessons for real estate deals. **Read Less**

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