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INSURANCE PRACTICE UPDATE

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SUPERSTORM SANDY: WHAT PROPERTY OWNERS NEED TO KNOW

FLOOD INSURANCE VS. HOMEOWNERS INSURANCE

Common questions in storm-related losses are often which policy, homeowners or flood, applies to the damage and to what extent.

Flood insurance does not automatically cover the contents of your property, whereas a standard homeowners policy covers both your building and its contents automatically. Instead, contents coverage must be purchased separately under a flood insurance policy. Failure to make arrangements for contents coverage under the flood insurance policy can lead to a gap in coverage since damage to contents caused by a flood will not be covered under the homeowners policy.

Also, flood insurance policies do not offer certain features available in homeowners policies with respect to total losses. For example, a homeowners policy can be a "valued policy," which means that in the event of a total loss, the policy will be a set, agreed upon in advance amount, regardless of the actual value of the property at the time of the loss. This feature is not available in a flood insurance policy—which will pay either the actual value of the property (i.e., the value after depreciation is taken into account) or the cost to repair or replace, whichever is less (and subject to the limit of insurance). Homeowners policies can be purchased with a "guaranteed replacement cost" feature, which provides that the insurance company will pay the cost to repair or replace the property, even if that cost exceeds the limit of liability provided under the policy.

By contrast, homeowners insurance typically covers damages caused by *any* one of multiple causes. In fact, homeowners' policies typically state that they cover damage caused by any risk of direct physical loss unless the policy says that cause of loss is excluded or limited. Homeowners insurance and flood insurance are intended to work in a coordinated fashion, and thus flood is one of the causes of loss excluded under homeowners insurance policies

HURRICANE DEDUCTIBLES

"Hurricane" deductibles are a common feature in many homeowners insurance policies. These deductibles typically range from one percent of a home's insured value to five percent. So, for example, under a policy with a five percent deductible on a home insured for $300,000, the homeowner would have to pay for the first $15,000 of damage.

Fortunately for homeowners, because Sandy was no longer a hurricane by the time it caused damage to many parts of the East Coast, some state insurance departments have determined that the hurricane deductible is not applicable to damage caused by Sandy. This is the case in New York, New Jersey, Maryland, Connecticut, Delaware, Pennsylvania, Rhode Island and the District of Columbia.

PUBLIC ADJUSTERS

If working with a public adjuster, remember they must be licensed by the state. You can determine whether a person or business is a licensed public adjuster on states' insurance department websites. Also, a public adjuster's compensation must be set forth in a writing signed by the insured. A public adjuster has no right to recover fees for "extras" not set forth in a written agreement.

This year, Pennsylvania substantially revised its laws regarding public adjusters, in particular with regard to contracts. Public adjuster contracts must now notify insureds that they have a right to rescind the agreement within three days of signing, and also notify the insured that he/she has a right to see a copy of any estimate or report of loss the public adjuster sends to the insurer. The public adjuster must also notify the insured if it has any financial interest with any other party involved in the claim, such as construction firms or appraisal firms that the public adjuster might employ or recommend to the insured as part of presenting the claim. Similarly, in Pennsylvania a public adjuster cannot enter into a contract with the insured for the repair, replacement, restoration, renovation or demolition of damaged property prior to payment from the insurance company.

In New Jersey, any monies received by the public adjuster on behalf of an insured must be held in an interest bearing trust account with the interest belonging to the insured.

USEFUL LINKS

Federal Emergency Management Agency: **http://www.fema.gov/**

New York State Department of Financial Services:
http://www.dfs.ny.gov/

Pennsylvania Insurance Department:
http://www.ins.state.pa.us/portal/server.pt/community/insurance_department/4679

New Jersey Department of Banking & Insurance:
http://www.state.nj.us/dobi/index.html

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