

# **UNDERSTANDING PROPERTY INSURANCE, INSURABLE EVENTS AND THE INSURANCE CLAIM PROCESS**

A BASIC OVERVIEW FOR COMMUNITY ASSOCIATIONS

# PROPERTY INSURANCE

- Current Market Conditions
  - Coverage Applicable for Condo & HOA
  - Admitted vs. Excess & Surplus Lines
  - Appraisal requirements for Condos
  - General Property Form for Building and Contents
    - \*Equipment Breakdown
    - \*Ordinance or Law
    - \*DIC Insurance
    - \*Mold/Mildew
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# **FS 718.111.11 (J) AND THE “INSURABLE EVENT”**

- (j) Any portion of the condominium property that must be insured by the association against property loss pursuant to paragraph (f) which is damaged by an insurable event shall be reconstructed, repaired, or replaced as necessary by the association as a common expense. In the absence of an insurable event, the association or the unit owners shall be responsible for the reconstruction, repair, or replacement as determined by the maintenance provisions of the declaration or bylaws. All property insurance deductibles and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium**

# FS 718.111.11 (F)

- (f) Every property insurance policy issued or renewed on or after January 1, 2009, for the purpose of protecting the condominium must provide primary coverage for:
1. All portions of the condominium property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications.
  2. All alterations or additions made to the condominium property or association property pursuant to s. 718.113(2).
  3. The coverage must exclude all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit. Such property and any insurance thereupon is the responsibility of the unit owner.
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# COVERED PROPERTY

Covered Property, as used in this Coverage Part, means the type of property described in this section, A.1., and limited in A.2., Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

a. **Building, meaning the building or structure described in the Declarations**, including:

(1) Completed additions;

(2) Fixtures, including outdoor fixtures;

(3) Permanently installed:

(a) Machinery and

(b) Equipment;

(4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:

(a) Fire-extinguishing equipment;

(b) Outdoor furniture;

(c) Floor coverings; and

(d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;

(5) If not covered by other insurance:

(a) Additions under construction, alterations and repairs to the building or structure;

(b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

# PROPERTY NOT COVERED

## Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns;
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;
- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;

# PROPERTY NOT COVERED (CONT)

I. Retaining walls that are not part of a building;

m. **Underground pipes**, flues or drains;

n. Electronic data,

o. The cost to replace or restore the information on valuable papers and records

p. Vehicles or self-propelled machines (including aircraft or watercraft) that:

(1) Are licensed for use on public roads; or

(2) Are operated principally away from the described premises.

This paragraph does not apply to:

(a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;

(b) Vehicles or self-propelled machines, other than autos, you hold for sale;

(c) Rowboats or canoes out of water at the described premises; or

(d) Trailers, but only to the extent provided for in the Coverage Extension for Non-owned Detached Trailers;

q. The following property while outside of buildings:

(1) Grain, hay, straw or other crops;

(2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, trees, shrubs or plants (other than "stock" of trees, shrubs or plants), all except as provided in the Coverage Extensions.

# ADDITIONAL COVERAGES AND EXTENSIONS

## Debris Removal

- (1) ..., we will pay your expense to **remove debris of Covered Property caused by or resulting from a Covered Cause of Loss** that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (4) We will pay up to an **additional \$10,000 for debris removal** expense, for each location, in any one occurrence of physical loss or damage to Covered Property, ...

## Outdoor Property

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), **trees, shrubs and plants** (other than "stock" of trees, shrubs or plants), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is **\$1,000, but not more than \$250 for any one tree, shrub or plant**. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

**NOTE:** This does not include wind damage, vehicle damage or vandalism

# COVERED CAUSES OF LOSS/INSURABLE EVENT

## A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is:

1. Excluded in Section B., Exclusions; or
2. Limited in Section C., Limitations;

(**Insurable events include but are not limited to** Fire, Lightning, Explosion, Windstorm or Hail but **not including: Loss or damage to the interior of any building or structure**, or the property inside the building or structure, caused by rain, snow, sand or dust, whether driven by wind or not, **unless the building or structure first sustains wind or hail damage to its roof or walls through which the rain, snow, sand or dust enters.**, Smoke, Aircraft or Vehicles, Riot or Civil Commotion, Vandalism, Sprinkler Leakage, Catastrophic Ground Collapse, Volcanic Action)

# EXCLUSIONS

## B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. **Ordinance Or Law**

b. Earth Movement

c. Governmental Action

d. Nuclear Hazard

e. **Utility Services**

The failure of power, communication, water or other utility service supplied to the described premises, however caused, if the failure:

(1) Originates away from the described premises; or

(2) Originates at the described premises, but only if such failure involves equipment used to supply the utility service to the described premises from a source away from the described premises.

Failure of any utility service includes lack of sufficient capacity and reduction in supply.

Loss or damage caused by a surge of power is also excluded, if the surge would not have occurred but for an event causing a failure of power.

But if the failure or surge of power, or the failure of communication, water or other utility service, results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

Communication services include but are not limited to service relating to Internet access

# EXCLUSIONS (CONT)

f. War And Military Action

g. **Water**

(1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;

(2) Mudslide or mudflow;

(3) **Water that backs up or overflows from a sewer, drain or sump;** or

(4) Water under the ground surface pressing on, or flowing or seeping through:

(a) Foundations, walls, floors or paved surfaces;

(b) Basements, whether paved or not; or

(c) Doors, windows or other openings.

But if Water, as described in g.(1) through g.(4) above, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

h. **"Fungus", Wet Rot, Dry Rot And Bacteria**

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

# EXCLUSIONS (CONT)

2. We will not pay for loss or damage caused by or resulting from any of the following:

- a. Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with...
- b. Delay, loss of use or loss of market.
- c. Smoke, vapor or gas from agricultural smudging or industrial operations.
- d. (1) **Wear and tear;**  
(2) Rust or other corrosion, decay, **deterioration**, hidden or latent defect or any quality in property that causes it to damage or destroy itself;  
(3) Smog;  
(4) Settling, cracking, shrinking or expansion;  
(5) Nesting or infestation, or discharge or release of waste products or secretions, by **insects, birds, rodents or other animals.**
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.
- e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you
- f. **Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.**

# EXCLUSIONS (CONT)

- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing
  - h. Dishonest or criminal act by you, any of your partners, members, officers, managers, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose
  - i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property
  - j. Rain, snow, ice or sleet to personal property in the open.
  - k. Collapse,
  - l. Discharge, dispersal, seepage, migration, release or escape of  
"pollutants
3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.
- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.
  - b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
  - c. **Faulty, inadequate or defective:**
    - (1) Planning, zoning, development, surveying, siting;
    - (2) Design, specifications, **workmanship, repair, construction, renovation, remodeling**, grading, compaction;
    - (3) **Materials used in repair, construction, renovation or remodeling**; or
    - (4) **Maintenance**;
- of part or all of any property on or off the described premises.
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# FLOOD INSURANCE

- Review of General Flood Guidelines
- NFIP Rate and Program changes affecting Florida buyers

Florida is currently between a rock and a hard place—overwhelmed on both sides by considerable insurance rate increases from the National Flood Insurance Program (NFIP) and Citizens Insurance Property.

NFIP's rate hikes began back in April 2016, when premium increases on policy renewals were made. Currently, homeowners can expect their rates to increase on average between 9% and 20%. Properties in low-lying, high-risk flood zones are the ones most affected by the increases, but even homeowners who pay grandfathered low rates are being targeted by the increases as well.

The NFIP's rate increases could be traced back to the Biggert-Waters Flood Insurance Reform Act of 2012, which was implemented after the NFIP was left with \$23 billion in debt from handling claims related to Hurricane Katrina and Superstorm Sandy. Although the bill sought to restore the financial capacity of the NFIP, it came at the cost of putting homeowners at risk of losing their homes due to being unable to pay the increased premiums.

To mitigate the issue, the Homeowner Flood Insurance Affordability Act of 2014 was passed, effectively delaying the premium increases. The bill's victory, however, is short-lived, with pending rate increases looming.

Citizens Property Insurance is similarly looking to increase its premiums by an average of 6.8%. The insurer has complained of a recent string of expensive water damage claims filed by contractors who have abused the "assignment of benefits" arrangement to gouge the prices of their services.

- Excess Flood and Private Market Alternatives to NFIP



# THE CLAIMS PROCESS

- Review your policy
  - When to contact your company
  - What information you will need to provide your insurance company
  - What your insurance company should do
  - Payment process
  - Public adjusters
  - Assignment of Benefits (AOB)
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# DUTIES IN THE EVENT OF A CLAIM

## 3. Duties In The Event Of Loss Or Damage

a. You must see that the following are done in the event of loss or damage to Covered Property:

- (1) Notify the police if a law may have been broken.
  - (2) **Give us prompt notice of the loss or damage.** Include a description of the property involved.
  - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
  - (4) **Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property,** for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
  - (5) At our request, give us **complete inventories of the damaged and undamaged property.** Include quantities, costs, values and amount of loss claimed.
  - (6) As often as may be reasonably required, **permit us to inspect the property** proving the loss or damage and examine your books and records.  
Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
  - (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (8) **Cooperate with us** in the investigation or settlement of the claim.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

# POLICY RIGHTS

## . Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.



# TYPE OF INSURANCE ADJUSTERS

If the claimant contests the outcome of the claim or the settlement, adjusters work with attorneys and expert witnesses to defend the insurer's position. Some claims adjusters work as self-employed public adjusters. Often, they are hired by claimants who prefer not to rely on the insurance company's adjuster.

A **Private Adjuster (Public Adjuster)** is an individual who represents the policyholder to help facilitate a fair settlement between an insured and an insurance company. Private adjusters have to be knowledgeable about many different areas in the insurance industry.

An **independent adjuster** is an insurance claims adjuster who is not directly employed by an insurance company but whose services may be contracted by any party that requires an expert to adjust its insurance claims.

**CAT adjusters** are Catastrophe adjusters (CAT is short for Catastrophe) ◆ unlike staff adjusters who are employees of a single insurance company, Cat Adjusters are typically independent contractors who are able to work for a number of different insurance companies and/or independent adjusting firms and are called out when a catastrophic loss exceeds

# ASSIGNMENT OF BENEFITS (AOB)

Assignment of Benefits (AOB) abuse is a fast-growing fraud scheme that is hurting Florida's insurance consumers. While AOB is a long-established legal tool intended to allow vendors to receive prompt payment from insurers after doing emergency repair work in a home – without having to directly involve the homeowner – this process is being abused by a cottage industry of unscrupulous trial lawyers, water remediation firms and roofers. These bad actors are persuading homeowners to sign over the benefits of their insurance policies as a means for fraudulently inflating claims, filing thousands of lawsuits against insurers, and driving up attorney's fees.



# ASSIGNMENT OF BENEFITS (CONT)

## ASSIGNMENT OF BENEFITS

An alarming trend that can manipulate the legal concept of "assignment of benefit;" with homeowners caught in the middle.

### HOW IT WORKS

A consumer discovers water damage. He or she calls a plumber who then recommends calling a water mitigation company.

The water mitigation contractor comes out, and puts a contract in the consumer's hands and will not start work until the work authorization or contract is signed.

Within the contract, there is an "assignment of benefits" (words to the effect of 'I transfer and assign any and all insurance rights, benefits, and causes of action under my property insurance policy') which the consumer may not fully understand. The use of "assignment of benefits" is legal, but most consumers do not fully understand what it means. It is now the water mitigation contractor who has all the rights to the claim, including all insurance proceeds and payments, resulting in many homeowners losing control of the process.

Typically, the insurance company learns of this type of claim after work has been performed. In many cases the water mitigation company charges an amount inconsistent with the amount of work performed. If the insurance company challenges the expenses submitted by the contractor, the contractor could - again, legally - file a contractor's lien which might ultimately allow for foreclosure on the consumer's home.

Don't sign contracts you don't fully understand. A water mitigation company should only require your customers to sign a work authorization form. Any contract that states "assignment of benefits" is something that needs to be read carefully and be fully understood. It could have very negative consequences.

When in doubt always give your insurance agent or adjuster a call before signing any insurance documents.