



# Maximizing Commercial Insurance Payments after Natural Disasters and other Catastrophes

Insurers fight hard to minimize payouts to policyholders after natural disasters and other catastrophes. Getting what you are owed requires careful planning, hard work, and patience. Here are some tips:

## 1) Protect and Preserve Assets

Emergency and temporary repairs should be documented and, if practical, reviewed with insurers in real time. Attempt to obtain insurer approvals before repair and replacement of property. Be aware of insurers' rights to salvage property. If insurers are silent or non-responsive, document their failures to respond. Insurers should not be allowed to second-guess your reasonable decisions after the fact.

## 2) Give Timely Notice and Reserve All Rights

Give timely notice to all insurers that could be called to pay. If a policy requires a Proof of Loss or other submissions within short periods of time, obtain written extensions. Generally, reserve all rights. Do not allow insurers to classify or characterize your claim before you have had a full opportunity to review the facts concerning the cause and extent of the damage to your property and business.

## 3) Assemble a Team

Assemble a team of all personnel involved in the claim and hold regular team calls or meetings. Consider whether you or your insurance counsel should hire your own adjuster, consultants, and accountants. Claim preparation costs are covered under many policies.





#### 4) Have Insurance Counsel Review Your Losses and Policy Language

Review your policies with counsel. Policies are filled with ambiguities and potential pitfalls, and case law may be instructive. Proceed carefully before taking positions on what your policy means and how it applies to your particular losses. Be especially wary of deductibles, sublimits, and exclusions.

#### 5) Account for Losses in Accordance with Policy Terms

Set up accounting codes or other processes to track invoices and costs by the categories identified in the relevant policies, such as emergency expenses, permanent repairs, claim preparation expenses, etc.

#### 6) Communicate Frequently with Insurers

Communicate frequently with insurers concerning your losses and coverage claims. Insurers are more likely to pay if they are kept involved. Regular communication also helps avoid disputes over the sufficiency of loss documentation and choices made in the course of the recovery process.

#### 7) Review other Agreements

Loss recoveries can be affected by many types of agreements—leases, property management agreements, franchise agreements, condominium association agreements, rental agreements with tenants, etc. Protect your rights under all agreements.

#### 8) Demand Money Early

Begin to negotiate for advances immediately. If you do not ask, the insurers will not pay.

#### 9) Document Communications and Expenses

Keep precise records of relevant communications, meetings, and exchanges of money and information. Continue to submit invoices, receipts, and evidence of expenses related to the claim. If insurers say that they have not received sufficient documentation, challenge them and negotiate aggressively.

#### 10) Review Causation

Coverages, sub-limits, and deductibles can be affected by determinations as to whether damage was caused by a particular covered "peril." The "efficient proximate cause" rule generally supports coverage for any repairs that would not have been made but for the event.

#### 11) Insist on Replacement Cost Value

Most policies value property on the basis of replacement cost value ("RCV"). The policies reimburse insureds when they have to replace something old with something new—an "upgrade" that naturally results from repairs following property-destroying catastrophes. Most policies also cover upgrades to comply with current building codes. Be wary of insurer pronouncements that the damaged property had "preexisting" defects or wear and tear.

#### 12) Use Experts for Business Interruption and Extra Expense Claims

To document complicated losses such as business interruption and extra expense claims, policyholders usually need to retain specialized forensic accountants. Insurers may try to attribute your business losses to general economic conditions or trends in your area of business. Utilize experts who can draw on market data to prove your contentions about lost profits.

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