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GUIDE FOR HOMEOWNER INSURANCE CLAIMS ©

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When it comes to an insurance claim you have to realize that your objective and the insurance company's objective are not the same. That is: You would prefer they pay the claim and they would prefer not to pay the claim.

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I. The Basics of Homeowner Insurance

Generally a homeowner insurance policy covers three basic areas: 1) the home and related structures on the property and includes additional living expenses if you can not live in the home after a loss, 2) contents or household items and 3) personal liability of the homeowner. The latter liability coverage protects the homeowner from claims of negligence against the homeowner for injuries or damages he or she may have caused. Usually, a home owner policy does not cover damages caused by floods*, earthquakes or landslides. A homeowner policy may provide limited coverage for mold, jewelry, guns, electronics, collectibles and antiques. In addition, a wide variety of endorsements or riders may be added to a policy to provide additional coverage for a specified peril or loss. E.g., a jewelry endorsement may provide additional coverage up to a certain amount if the underlying coverage is not adequate.

* This exclusion is for floods caused by weather conditions such as severe or heavy rains but does not exclude water damage within the structure caused by water damage from a broken pipe or a hole in the roof caused by hail, etc.

Insurance Terminology. It is also important to understand the difference between “replacement cost” and “actual cash value.” Replacement cost means the covered or insured item, structure or content, is replaced with a like item of the same quality. Actual cash value means the covered item is replaced less its depreciated value. Another term to know and understand is “extended replacement cost.” This can apply to covered structures and pays up to a specified percentage (usually 20 - 25%) over the limit to repair and/or rebuild your home. This coverage protects the home owner against a sudden rise in construction costs which can often occur following a large scale natural disaster such as a hurricane. However, this coverage does not mean higher quality materials can be used than were originally used.

II. Be Prepared

The best way to insure a fair payment on a claim is to be prepared ahead of time. First review your homeowner policy to make sure you understand what is covered and the monetary limits of the coverage provided. For example if your policy only covers up to \$5,000 for a jewelry loss you need to know this to determine if an extra endorsement or rider is needed if the jewelry in your household exceeds that amount. Also, remember some household items such as jewelry or antiques appreciate in value and what may have been adequate coverage 10 years ago may no longer be adequate today. [Since 2000 gold prices have increased almost 4.5 times: \$400 per ounce in 2000 to over \$1800 per ounce in 2011.]

Prepare an inventory and keep purchase receipts for major household items. With today's easy access digital video/photograph formats such as smart phones, preparing an inventory of your household items and structures is very easy. Video or photograph the contents of each room in your house and the outside of the covered structures. Make sure you save the video or photographs in a secure location outside the home. Most insurance experts suggest doing this once a year. If you live on the Gulf Coast you may want to designate a day once a year in advance of Hurricane season to do this. Keep receipts for major household purchases in a secure place. Remember whether an item is covered for “replacement cost” or “actual cash value” it is still your burden in a claim to prove you owned the item in issue and its value.

III. To Claim or Not to Claim

While it may seem frustrating to have a “covered loss” and not submit a claim, most consumer and insurance advocates suggest not submitting “smaller” homeowner claims. J.D. Howard, executive director of Insurance Consumer Advocate Network, says, “[m]ore than two claims in a three-year period is a red flag for the underwriters, and some insurance companies will drop you like a hot potato.” He suggests not making a claim unless the cost of the repair or loss is three times the deductible. Remember insurance companies share claims information via various

claim history databases and not only may excessive claims generate a non-renewal from your current homeowner insurance company, it could make finding replacement coverage difficult since other companies will know about your claim history.

IV. Important Information About the Claims Process

[The following information is from our publication about insurance claims in general but is relevant to homeowner claims as well and should be reviewed when submitting a homeowner claim.]

A. Burden of Proof: The first and most important thing to remember about any insurance claim is that the person or business making the claim (the claimant) carries the burden of proof related to that claim. The person who is handling the claim on behalf of the insurance company (the adjuster) does not have to “disprove” the legitimacy of the claim. The adjuster’s job is simply to determine if the claimant has presented adequate proof of a covered loss with proper supporting documents or material to pay the benefits being claimed. It is important to understand and realize, the adjuster has an obligation to the insurance company to only pay benefits that are legally owed under the policy. The claim files of adjusters are periodically audited to make sure they are not paying more benefits than required by the terms of the policies and that claims are properly documented before making a payment. In some instances, insurance companies even pay bonuses to adjusters and/or agents based upon claim pay-outs, or more specifically, the lack thereof.

B. Adversarial Process: As nice and friendly as you think the insurance company will be to you in the claims process; understand, Alabama law defines the insurance claim process as an “adversarial proceeding.” This does not necessarily mean the insurance company is going to be mean and nasty to you during the claim process, rather it simply means you have to recognize that your objectives and the insurance company’s objectives are not the same when it comes to an insurance claim. That is: You would prefer they pay the claim and they would prefer not to pay the claim. Because the claim process is defined by law as an adversarial process, insurance companies are granted a certain amount of latitude in how they handle and adjust an insurance claim, even if it works to the detriment of the claimant. Specifically: 1) there is no obligation for an adjuster to “help” you better present your claim, 2) the adjuster does not have any obligation to tell you about critical time lines or time limitations related to your claim, 3) the adjuster does not have to tell you about other possible coverages available to you for the loss, and 4) the adjuster can not give you advice or suggestions on how to best coordinate multiple coverages related to a loss. Simply put, because it is an adversarial process, you can not expect the insurance company to tell you how to effectively and timely present your claim or provide you with any helpful information. Because this process is considered “adversarial” a claimant does not have a right to justifiably rely on anything an adjuster says about the terms and conditions of the policy and/or the merits of the claim! [See, *Apkan v. Farmers Insurance Exchange, Inc.* 961 So.2d 865 (Ala. Civ. App. 2007): *Insurance adjuster has no duty to help or assist claimant. In fact, adjuster’s duty is to protect the insurance company.* *Southern Bakeries Inc. v. Knipp*, 852 So. 2d 712 (Ala. 2002): *If a party owes no legal duty of disclosure to another, then material facts can be suppressed with out recourse for failure to disclose.*]

C. No Reliance on Agent’s Oral Representations: As difficult as this is for most of us to believe,

Alabama law has held that insurance customers do not have a right to justifiably rely on an oral representation made to them by the agent concerning the terms or conditions of the policy. This means if the agent tells you some event or loss will be a “covered loss” and the policy says it is not, the policy language will control and the loss may not be covered despite what the agent may have said. See *Foremost Insurance Company v. Parham*, 693 So.2d 409 (Ala.1997).

D. Clauses and Exclusions: Another legal reality that insurance customers have a hard time accepting is that Alabama law considers insurance policies to be “mutual contracts.” See *Wolfe v. ALFA*, 880 So. 2d 1163, 1169 (Ala Civ App 2003). What this means is our laws consider the customer and the insurance company to be “equals” in the negotiating process. Because of this legal concept (some call it a legal fairy tale) unfavorable and/or sometimes down right unconscionable clauses that work against the claimant are upheld on the basis that the customer got what he or she “bargained for” when “negotiating” for the purchase of the policy. Some of these type detrimental clauses include “commercial” arbitration clauses, forum and venue selection clauses, appeal protocol and procedure clauses, strict compliance clauses, cooperation clauses, indemnity clauses and many more often buried in the fine print of the policy. This also means well crafted exclusions for covered losses can be included, and upheld as valid, under the guise of a “negotiated” contract. One outrageous example of this is an exclusion for property damage losses currently found in some Alabama issued policies. It is an exclusion for “a loss to a covered property caused, or contributed to, by negligent construction.”

E. Notification of Claim: No matter what type of claim is being presented, it is always the responsibility of the insured individual and/or business and/or claimant to properly notify the insurance company of the claim or even the potential claim. All insurance policies have guidelines and procedures for notification of a claim and/or a “covered loss.” If these procedures are not followed, they can provide the insurance company with a legally recognized excuse to not pay the claim. Upon being notified of a claim or of a potential claim, many insurance companies will send out “claim forms” to the claimant. If the company does not provide “claim forms” it would be wise to verify the notice of claim in writing to verify that “timely notice” of the claim has been provided.

F. Statute of Limitations: Because a homeowner claim is a direct claim against your own insurance policy and because the insurance policy is a contract, Alabama law provides a six year statute of limitations to bring a legal claim (lawsuit) against the insurance company for failure to adequately pay a homeowner claim.

V. WHAT TO DO IF YOUR CLAIM IS DENIED OR THE BENEFITS OFFERED ARE TOO LOW

The National Association of Insurance Commissioners reports that over half of all complaints filed by insurance customers about the claim process involve 1) delays, 2) wrongful denials of benefits and, 3) unsatisfactory offers for the claim. By following the tips set forth above, you can help speed up the process by making sure you have provided all appropriate documentation and information. A recent report by the Alabama Department of Insurance following the April 2011 tornado outbreak, revealed that 31% of policyholders who filed a complaint against their insurance company did so

because they believed the benefits offered by the insurance company were too low.

A. Ask for Specifics. Don't be afraid to ask for clarification or more details about the decision of the adjuster regarding your claim. The reality is adjusters are often overworked and handling hundreds of other claims. This means they sometimes do not provide claimants with a meaningful explanation of their decision or the basis for their findings. If you disagree with the adjuster's decision or are uncertain as to his or her conclusion, do not be afraid to ask for a written explanation or the reasons for the decision. This request should either be done in writing or confirmed in writing.

B. Appeal or Reconsideration. Find out if the company has an appeal process related to its decision about your claim. **IMPORTANT NOTE:** If there is an appeal process provided, please make sure you know and understand the requirements of the appeal process. In extreme situations, failure to properly follow the appeal process can result in severe limitations in the claimant's right to seek further recourse through the Courts.

C. Seek Outside Help. Consider consulting with and/or hiring an insurance claims specialist. These are sometimes known as "Independent Adjusters" but can also include lawyers and law firms who specialize in claim presentation and prosecution for individuals or businesses. Remember most insurance claims involve legal issues and legally complex definitions. Adjusters working with the insurance company have access to vast resources, including large legal firms to help them analyze the issues related to a claim. The fact is the larger the amount of the claim, the more a claimant will benefit from have an insurance claims specialist helping with the claim. Many of these specialists offer free consultations and some attorneys in this area of the law work on a contingency fee, a percentage of the recovered benefits.

VI. CONCLUSION

Presenting a homeowner insurance claim can be stressful, time consuming and a burden on your resources. However, the better the claimant understands the claim process and what to do to make the process go smoother, the less chance there will be of undue or prolonged delays. Also, the better the claimant can document the various aspects of the claim, the better chance there will be that the claim will be paid in full and in a timely manner.

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