



INSURANCE CLAIMS FOR DAMAGE TO BUILDINGS

THE LIFECYCLE OF A PROPERTY DAMAGE CLAIM

- The property damage occurs.
- The insured submits the claim to the insurer.
- The insured chooses and retains a public adjuster.

The role of the public adjuster: to determine all applicable coverages under the insurance policy, prepare estimates, and advocate with the insurer over the amount of loss.

The public adjuster is paid by contingency fee, typically ten percent of the amount recovered.

- The insurer may raise defenses to coverage. If so, the insured should hire an attorney immediately. The public adjuster is not an attorney and cannot argue with the insurer about coverage issues.
- If there is no dispute over coverage, there will usually be back and forth between the public adjuster and the insurer about the amount of loss.
- If the public adjuster/insured and the insurer cannot agree over the amount of loss, the case goes to a reference proceeding.
- A reference proceeding is similar to an arbitration, with three referees who decide the amount of loss based on evidence submitted by both sides.

THE INSURED SHOULD CONSULT WITH AN ATTORNEY:

- At any time, to answer questions about the process and whether the claim seems to be proceeding on track.
- If the public adjuster advises the insured to consult with an attorney.
- If the insurer raises defenses to coverage.
- If the public adjuster and the insurer are unable to agree on the amount of loss.
- If the insurer has demanded a reference proceeding or the public adjuster advises the insured that a reference proceeding is necessary.
- If the loss occurred 18 months ago and the claim remains open.

Important: The statute of limitations on property damage claims in Massachusetts is generally two years, but if you wait until close to two years to hire an attorney you can lose crucial rights.

HOW A PUBLIC ADJUSTER AND ATTORNEY WORK TOGETHER:

- If the insurer raises defenses to coverage, the attorney will take the lead.
- If the public adjuster and insurer are in the negotiating phase, the public adjuster will take the lead. The attorney will be available to answer questions from both the insured and the public adjuster, and to provide advice, usually behind the scenes.
- If the public adjuster and insurer are unable to agree on the amount of loss, the public adjuster and attorney will work closely together. The attorney will draft formal “demand letters” to the insurer, prepare the case for a reference proceeding, and represent the insured at the reference proceeding. The public adjuster will support claims about the amount of loss, will prepare or help prepare exhibits, and will be an expert witness at the reference proceeding.

TYPES OF COVERAGE IN MOST POLICIES

- Building damage
- Other structures
- Personal property
- Loss of use / additional living expenses (residential) / business interruption (lost profits) (commercial)
- Code upgrades
- Mold
- Additional coverages such as landscaping, etc.

Special issues in condominium buildings:

- The *master policy* is issued to the condominium trust and provides coverage for common elements of the building (for example, the roof and common areas).
- The *unit-owners policy* (often called the HO-6 policy) provides coverage for the interior of a unit.
- Different master policies and unit-owners' policies have different definitions of common elements.
- In condominiums, a unit-owners' personal property and loss of use is typically covered by their unit-owner's policy, not by the master policy.
- Insurance proceeds from the master policy are disbursed to the condominium trust.

VOCABULARY

- **Actual cash value (ACV):**
The value of an item on the date of loss.
This is paid immediately.
- **Replacement cost value (RCV):** The cost to replace an item.
- **Depreciation:**
The difference between ACV and RCV,
This is paid upon completion of the work or when the item is replaced.
- **Code upgrades:**
The cost to bring a building in line with current state and local building code requirements. This is paid upon completion.

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Let me Introduce Myself!

I have been an attorney in Massachusetts since 1994. I practice in general litigation and focus on insurance coverage and bad faith issues. I am available to assist claimants and insureds who have a dispute over property, homeowners, general liability, motor vehicle, and other insurance policies.

*You can learn more about me on my website:
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