

Ida Recovery Webinar: Beginning the Road to Recovery

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Beginning the Road to Recovery From Hurricane Damage

- Catastrophic flooding and other hurricane-related damage can force a company out of business or a family out of its home.
- Securing available insurance proceeds / FEMA assistance is crucial, but it can be a complex process.



Potentially Applicable Insurance

- Homeowners Insurance
- Renters Insurance
- NFIP Flood Insurance
- Business Owners Policy (BOP)
- All-Risk Commercial Property

Homeowners and Renters Insurance

- Standard homeowners and renters insurance policies exclude “flood”
 - May cover other types of water damage
 - May cover other damage caused indirectly by flood (e.g., increased fire risk)
- Wind damage and damage from wind-driven rain may be covered
- Home renters or businesses that lease space may be able to obtain indirect coverage through landlord’s commercial property policy

Flood Insurance

- Homeowners and businesses in FEMA flood zones typically required to carry NFIP flood insurance
- Covers structural damage, damage to contents, valuables, etc.
 - Low limits (max. \$500k)
 - Does not cover business interruption
 - Does not cover temporary relocation costs
 - May not cover other perils that accompany flooding
- Many victims of Ida do not have flood insurance
- FEMA's new "Risk Rating 2.0" program
 - May increase availability of flood insurance
 - Premiums likely to go up

BOP and Commercial Property Insurance

- Flood coverage may be included, usually must be purchased for additional premium
- Typically applies excess of NFIP coverage and/or deductible
- Usually covers business interruption and extra expense (including relocation expenses)

Risk Management Pointers

- Know what coverage you have and where your policies are located before a loss occurs
- Does your insurance program adequately protect you and/or your business? Review your policy limits, exclusions and policy periods

6 Tips to Maximize Recovery

1. Obtain and Review Your Insurance Policies *Before* the Storm
2. Assess All Possible Coverages
3. Place All Insurers on Notice and Identify Deadlines
4. Document and Mitigate Your Losses
5. Engage Experts
6. Access Government Funds (FEMA)

Obtain and Review Your Insurance Policies

- Thoroughly review all of the insurance policies that you have to determine what coverages may apply:
 - Property, auto, boiler & machinery, liability
- When reviewing your insurance policies, note and calendar deadlines, including:
 - Notice
 - Proof of loss requirements
 - Suit against insurance company

Place All Insurers on Notice

- Lack of notice will = **NO COVERAGE**
- Late notice can = **NO COVERAGE**
- At initial stage, notice need not be too detailed
- Communications with broker may not be protected

Document and Mitigate Your Losses

- Insured must comply with the policy, including mitigation of damages and cooperation with carrier's loss investigation
- What Should You Do?
 - Inform insurance company of mitigation efforts before they are undertaken
 - Document your loss

Engage Experts

- Professional claim consultants, forensic accountants
- Professional fees and other mitigation expenses are frequently covered under property policies, subject to sublimits
 - Public adjuster and attorneys' fees are usually not covered
- Insurance coverage lawyer
 - Protect privileged nature of communications
 - Insurance company adjuster works for insurance company, so you might need an advocate of your own

Access Government Funds (FEMA)

1. Understand basics of when FEMA grants are available
2. Review FEMA Requirements for obtaining funds



FEMA

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My Claim Was Denied? What Now?

- Don't take no for an answer.
- Don't assume the insurance carrier's denial is correct.
- Insurance carriers' business models assume that most policyholders will NOT contest claim denials.

Action Plan If Your Insurance Carrier Denies Your Claim

- If not already done, demand a complete copy of the insurance policy from your insurance carrier.
- Carefully review the policy and compare it to the disclaimer letter.
- If at all possible, have experienced insurance coverage counsel review the policy and the disclaimer.

Contest the Carrier's Coverage Denial

- Write a detailed letter, preferably with counsel's assistance, to the carrier contesting the denial of coverage.
- Point out any holes or inconsistencies in the carrier's analysis.
- Point out any omissions of or mischaracterizations of important policy language in the carrier's disclaimer letter.

Contest the Carrier's Coverage Denial

- Demand the carrier visit your property (if it has not).
- Demand the carrier conduct a meaningful and comprehensive investigation of your claim.
- Demand an in person meeting with the insurance carrier's adjuster who wrote the disclaimer letter.
- Offer to supply additional information concerning the claim.

What if my Carrier Still Refuses to Pay After I Contest its Disclaimer?

- Two basic options.
- **OPTION ONE: LITIGATION**
 - A. Expensive
 - B. Time-Consuming
 - C. Even if you win, it is unlikely that you will recover your attorneys' fees in New York.

What if my Carrier Still Refuses to Pay After I Contest its Disclaimer?

- OPTION 2: Complaint to the New York Department of Financial Services.
 - A. Free – costs you nothing.
 - B. The New York Department of Financial Services will investigate your claim.
 - C. Insurers are often afraid of these and will refer these out of their claims until into their legal departments – **especially if the complaint alleges a patterns of market conduct and asks for a market conduct investigation.**
 - Result: often if their claim handler did make a clear mistake, their legal departments will force them to settle and pay the claim to end the investigation.

How to File a Complaint with the New York Department of Financial Services

- Visit the website of the Department of Financial Services - <https://dfs.ny.gov/complaint>
- Click on link entitled “DFS Portal” under the “Consumer Complaint Header” at the top of the page.
- Fill out the online complaint form.
- For added attention, notify your New York State Assemblymember and State Senator about your complaint and ask them to follow up with the Department of Financial Services about your complaint and send a copy of your complaint to the adjuster who signed the disclaimer letter.

The Basis for Most Complaints to the Department of Financial Services – the Unfair Claim Settlement Practices Act

- The New York Unfair Claim Settlement Practices Act (Section 2601 of the Insurance Law) prohibits insurers doing business in New York from engaging in unfair claim settlement practices such as:
 - 1. knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;
 - 2. failing to acknowledge with reasonable promptness pertinent communications as to claims arising under its policies;
 - 3. failing to adopt and implement reasonable standards for the prompt investigation of claims arising under its policies;

The Basis for Most Complaints to the Department of Financial Services – the Unfair Claim Settlement Practices Act

- The New York Unfair Claim Settlement Practice Act prohibits insurers from:
- 4. not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear After receiving a properly executed proof of loss, the insurer shall advise the claimant of acceptance or denial of the claim **within thirty working days**; or
- 5. compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them.

Penalties against Insurers for Violating the Unfair Claim Settlement Practices Act

- \$500 per violation (Insurance Law Sections 2601(c) and 109(b) and (c)(1))
- This can add up to huge numbers if the insurer has engaged in a market-wide pattern of bad conduct against policyholders.
- Only enforceable by the State, which can bring a civil lawsuit against the carrier. (Insurance Law Section 109(d).

Potential Sources of Government Assistance – New York City

New York City Comptroller

- Homeowners and tenants without flood insurance can file a claim for property loss or water damage
- Requirements
 - Claim must be filed within 90 days of occurrence
 - Ida declared a disaster on September 5, so file by December 5, 2021
- To file a claim online, download and complete the “Property Damage or Loss Claim Form” or “Water Damage Claim Form”
 - Website: <https://comptroller.nyc.gov/services/for-the-public/claims/e-filing/>
- File a claim in person at the Office of the New York City Comptroller

Potential Sources of Government Assistance – New York State

- Undocumented New Yorkers - Access Resources through Non-Profits
 - Managed by the **New York State Office of New Americans (ONA)**
 - \$27 million from New York State being distributed through not-for-profits
- Eligibility Requirements
 - Not eligible to receive storm recovery assistance through FEMA Individual Assistance Program
 - Covered counties: Bronx, Kings (Brooklyn), Queens, Richmond (Staten Island)
 - Must apply by **November 26**
- Participating organizations:
 - Bronx: Catholic Charities Community Services, 402 East 152nd Street, Bronx, NY 10455
 - Brooklyn: Chinese American Planning Council, 4101 8th Ave, Bklyn, NY 11232
 - Queens: MinKwon, 133-29 41st Avenue, Suite 202, Flushing, NY 11355
 - Queens: Make the Road, 92-10 Roosevelt Ave, Jackson Heights, NY 11372
 - Staten Island: Make the Road, 161 Port Richmond Ave, Staten Island, NY 10302
- Call the ONA hotline at 1-800-566-7636. 9:00 a.m. to 8:00 p.m., Monday through Friday. (Help is available in over 200 languages.)

Potential Sources of Government Assistance – Federal Aid

Federal Emergency Management Agency (FEMA)

- Various types of assistance for homeowners and renters:
 - Home repair
 - Cleaning and sanitizing
 - Renters assistance
- Individual and Households Program
<https://www.fema.gov/assistance/individual/program#apply>
 - Financial and direct services providing temporary housing, temporary rental assistance, and funds to support the repair of your primary residence)
 - Covers necessary expenses or serious needs
 - Aid is limited to 18 months after the date of the disaster declaration
 - Businesses and residential landlords may be referred to the Small Business Administration for disaster loan assistance

Potential Sources of Government Assistance – Federal Aid (cont'd)

FEMA Individual/Household Eligibility

- A member of the household must be a US citizen, non-citizen national, or qualified alien
 - Qualified alien may be a green-card holder or asylee, refugee, or alien whose deportation status is being withheld
- Your losses are not covered by insurance **OR** you filed an insurance claim but your benefits are not enough to cover your losses **OR** your property damage was not covered by insurance or other sources
- You must occupy the home as your primary residence
- Take photos of damage and document damage or lost items
- Include any insurance settlement documents
- Deadline to apply: Sunday, December 5
- FEMA decision can be appealed

Potential Sources of Government Assistance – Federal Aid (cont'd)

FEMA assistance for renters

- Temporary rental assistance, cost of essential utilities, and other disaster-caused expenses
- Eligibility Requirements:
 - Un-insured or losses not fully covered by insurance
 - Disaster-damaged property was your primary residence before receiving FEMA assistance
 - Must provide proof of occupancy (with a lease, rent receipts, utility bills, etc.)
 - Apply by November 5

Potential Sources of Government Assistance – Federal Aid (cont'd)

Small Business Administration (SBA)

- Low-interest loans up to \$2 million are available for businesses
- For damage to real estate, loans up to \$200,000 are available for homeowners
- For damage to personal property, loans up to \$40,000 are available for homeowners and renters
- Deadlines
 - Damage to physical property: November 4, 2021
 - Economic injury applications: June 6, 2022

Questions?



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