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A Storm is Brewing:
Navigating the Choppy Waters of Property
Insurance Claims


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Stages of an Insurance Claim



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graph LR; A[Policyholder Discovers Loss] --> B[Policyholder Reports Loss to Insurance Carrier]; B --> C[Insurance Company Processes and Pays Claim];
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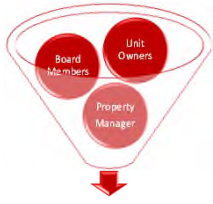
Stage 1: Discovery of Loss



Policyholder
Discovers Loss

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Stage 1: Discovery of Loss



Board
Members

Unit
Owners

Property
Manager

Discovery by Association

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Stage 1: Discovery of Loss

• Whose Claim Is It?

- Association's claim if the loss damaged property insured under its master policy.
- Unit Owner's claim if the loss damaged property insured under his or her HO-6 policy.
- Sometimes the Association and the Unit Owner both have claims.

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Stage 1: Discovery of Loss

• Involve Your Unit Owners.

- Unit Owners are “boots on the ground.”
- Communicate with Unit Owners after a potential loss event.
- Follow up on potential insurance claims reported by Unit Owners.



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Stage 1: Discovery of Loss

• Be Proactive!

- Associations might miss out on a potential insurance claim if it “has its head in the sand.”
- Conduct a property inspection as soon as possible after a potential loss event.

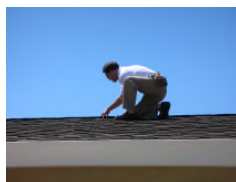


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Stage 1: Discovery of Loss

• Properly Document Potential Insurance Claims.

- Work with your own experts to document the claim.
 - Engineers
 - Meteorologists
 - Contractors
 - Suppliers
 - Public insurance adjusters



Insurance companies have their own experts. Associations should, too.

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Stage 1: Discovery of Loss

• **Properly Document Potential Insurance Claims, *continued*.**

- Document all areas of damage throughout the Association.
 - Photograph all areas of damage.
 - Prepare a diagram or site map showing the areas of damage
- Written report from expert regarding cause of loss.
 - Especially important if insurance carrier may contest coverage.
 - **BE CAREFUL.** The report must identify a covered cause of loss under the policy.

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Stage 1: Discovery of Loss

• **Properly Document Potential Insurance Claims, *continued*.**

- Get a repair estimate from a reputable contractor.
- Repair estimate should include all work necessary to restore property to pre-loss condition.
 - What repairs will the city require?
 - Are there any new building codes that will require the property to be upgraded?
 - Are comparable products available?

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Stage 2: Reporting the Loss



**Policyholder
Reports Loss to
Insurance Carrier**

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Stage 2: Reporting the Loss

- Two things to remember when reporting a loss to an insurance company:
 1. It's generally best to report a claim **in writing**; and
 2. The claim should be reported **as early as possible**.
- Failure to properly report a loss may result in the claim being delayed or denied.

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Stage 2: Reporting the Loss

- **Written Notice of Loss.**
 - Most insurance carriers allow Associations to report claims through their websites or through a claim hotline telephone number.
 - Minnesota law requires "immediate **written** notice ... of any loss" to their insurance companies. Minn. Stat. § 65A.01, subd. 3.
 - Less restrictive reporting requirements in policy provisions will likely control.

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Stage 2: Reporting the Loss

- **Why Associations Should Report Insurance Claims in Writing.**
 - Unlike web-based or telephone-based claim reporting, creates a physical "paper trail" of Association's communications with the insurance company.
 - Allows Association to frame the facts relevant to the insurance claim.
 - Complies with Minnesota law.
 - **RECOMMENDATION:** After reporting a claim through a web portal or claim hotline, follow up with a written letter.

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Stage 2: Reporting the Loss

• What to Include in a Written Notice of Claim:

- 1. The name of the policyholder;
- 2. Identify the insurance policy number;
- 3. The location or address of the loss; and
- 4. A general description of the loss.

• What NOT to Included in a Written Notice of Claim:

- 1. Opinions about how and when the loss occurred; and
- 2. Opinions about the value of the loss.

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Stage 2: Reporting the Loss

• Reporting a Claim "As Early As Possible."

- Minnesota law requires policyholders to give "**immediate**" notice of a loss to their insurance companies. Minn. Stat. § 65A.01, subd. 3.

- "Immediate" notice means "within a reasonable time after the loss." *Nathe Bros., Inc. v. Am. Nat. Fire Ins. Co.*, 615 N.W.2d 341, 347 (Minn. 2000); *Farrell v. Nebraska Indem. Co.*, 183 Minn. 65, 68, 235 N.W. 612, 613 (1931).

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Stage 3: Insurance Company Processes Claim



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Stage 3: Insurance Company Processes Claim

- The Association reported the claim to the insurance company in writing. Its work is done, right?

WRONG!

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Stage 3: Insurance Company Processes Claim

• **Policyholder's Duties to Insurance Company.**

1. Duty to Cooperate

- Proof of Loss;
- Examination Under Oath;
- Allow insurance company to inspect property; and
- Provide insurance company with requested information and documents.

2. Duty to Protect the Property from Further Damage

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Stage 3: Insurance Company Processes Claim

• **Duty to Cooperate: The Proof of Loss.**

- Proof of Loss is a policyholder's formal statement of loss to an insurance company regarding the cause and amount of a loss.
- Insurance companies generally request a Proof of Loss in connection with their investigation of the loss.



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Stage 3: Insurance Company Processes Claim

• Contents and Requirements of the Proof of Loss:

1. Proof of Loss must be in writing
2. Proof of Loss must be signed by the insured and notarized
3. Must state the value of the insured property
4. Must identify all other parties that have an interest in the property

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Stage 3: Insurance Company Processes Claim

• Contents and Requirements of the Proof of Loss, continued:

5. Must describe how and when the loss occurred.
6. Must be completed and returned within 60 days after requested by insurance company.
7. Must include supporting documentation.

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Stage 3: Insurance Company Processes Claim

- Failure to file a proof of loss within 60 day period does not automatically bar recovery. *Leamington Co. v. Nonprofits' Ins. Ass'n*, 615 N.W.2d 349, 354 (Minn. 2000); *Nathe Bros., Inc. v. Am. Nat. Fire Ins. Co.*, 615 N.W.2d 341, 347 (Minn. 2000).

- ... but it can. See *Schmitt v. Mut. Serv. Cas. Ins. Co.*, C4-95-748, 1995 WL 507623 (Minn. Ct. App. Aug. 29, 1995) (failure to timely file Proof of Loss form barred claim, even though insurance company had notice of loss and had conducted thorough investigation).



Yep. That's a head-scratcher.

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Stage 3: Insurance Company Processes Claim

• Don't Give the Insurance Company an Easy Out.

- The Proof of Loss should be completed within 60 days of the insurance company's request.
- If you need more time to complete the Proof of Loss, contact the insurance company and ask for additional time. Document the extension in writing.
- Consider working with an attorney on the Proof of Loss when there are complicated issues.

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Stage 3: Insurance Company Processes Claim

• Use the Proof of Loss to Your Advantage.

- Include your expert report with your Proof of Loss.
- Include your contractor's repair estimate with your Proof of Loss.

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Stage 3: Insurance Company Processes Claim

• Duty to Cooperate: Examinations Under Oath.

- Examination Under Oath (EUO) is a formal proceeding during which the policyholder is questioned while under oath by the insurance company's attorney.
- Insurance policy gives insurance company right to take EUO of Association upon request and as often as the insurance company may request.
 - Insurance company can only request an EUO from its policyholder.
 - Insurance company can request an EUO from the property manager if the management company is an additional named insured.

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Duty to Cooperate: Examinations Under Oath, continued.

- Testimony in an EUO has the same legal effect as testimony in a deposition or at trial, and may be used against the policyholder at a later civil or criminal proceeding.
- Policyholder has the right to be represented by an attorney at an EUO.
- Insurance company will take an EUO if it believes there are potential legal defenses to the claim.



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Stage 3: Insurance Company Processes Claim

The EUO Process.

1. Insurance company requests EUO.
2. Policyholder attends EUO and is placed under oath.
3. Insurance company's attorney asks policyholder questions.
4. Policyholder's answers are recorded verbatim by a court reporter.
5. An EUO may last several hours, and there is no set time limit.

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A policyholder may breach the duty to cooperate and void coverage by failing to submit to an EUO.

- *Azeem v. Colonial Assurance Co.*, 96 A.D.2d 123, 468 N.Y.S.2d 248 (A.D.1983): Insured breached cooperation clause by adjourning several scheduled EUOs without reasonable excuse.
- *Lentini Bros. Moving & Storage Co., Inc. v. New York Property Ins. Underwriting Ass'n*, 76 A.D.2d 759, 428 N.Y.S.2d 684 (A.D. 1980): Insured breached cooperation clause by failing to appear at a scheduled EUO without seeking an adjournment.
- *Boston Ins. Co. v. Mars*, 148 So.2d 718 (Miss. 1963): Insured breached cooperation clause by expressly refusing to submit to EUO.

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- ...but not necessarily.
- *Martin v. State Farm Fire & Cas. Co.*, 794 F. Supp. 2d 1017, 1022 (D. Minn. 2011): Fact question as to whether policyholders breached cooperation clause in policy when they appeared for EUO as requested, terminated EUO after invoking their right to counsel, and their counsel subsequently wrote the insurance company asking when it would like to reschedule the EUOs.
- *McCullough v. Travelers Cos.*, 424 N.W.2d 542 (Minn. 1988): Policyholder's failure to submit to EUO did not breach cooperation clause when insured did not expressly refuse to submit to EUO, sought a single postponement of the scheduled EUO due to unavailability of counsel, and expressed willingness to sit for an EUO shortly after commencing suit.

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Stage 3: Insurance Company Processes Claim

- **EUOs are Serious Business.**
- Insurance companies take EUOs to find reasons to deny claims.
- Policyholders are required to sit for EUOs upon request. Unprepared policyholders are more likely to testify poorly at their EUOs, and negatively impact their claims.
- Policyholders who are asked to sit for EUOs should strongly consider hiring an attorney to: (1) prepare them; and (2) represent their interests at the actual EUOs.

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Stage 3: Insurance Company Processes Claim

- **Property Inspections.**
- Insurance companies have the right to inspect the property.
- Facilitate, do not hinder!
- Monitoring the insurance company during its inspection is perfectly acceptable.

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Stage 3: Insurance Company Processes Claim

• **Information and Document Requests.**

- Insurance companies have the right to request information and documents from Policyholders regarding the claim.
- Facilitate, do not hinder!
- Contact an attorney if you think the request for information and documents is confusing or overly broad.

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Stage 3: Insurance Company Processes Claim

• **Other Considerations.**

- Repairs while the claim is pending and the risk of spoliation.
 - Notify insurance company in writing of intention to make repairs while claim is pending.
 - Give insurance company opportunity to inspect property before making repairs.
 - Document repairs and repair costs.
- Compare to duty to protect property from further damage.

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Stage 3: Insurance Company Processes Claim

• **Other Considerations.**

- "Actual Cash Value" vs. "Replacement Cost Value"
 - Actual Cash Value (ACV) = replacement cost minus normal depreciation.
 - Replacement Cost Value (RCV) = cost to actually repair property.
 - **NOTE:** Policyholder generally has 6 months from date of loss to make claim for RCV.



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Stage 3: Insurance Company Processes Claim

• Other Considerations.

- Duties and Responsibilities of Association Boards
 - Board of Directors has a duty to act in the best interest of the Association.
 - Board of Directors could arguably breach this duty by failing to act diligently with respect to insurance claims.

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Resolving Disputed Insurance Claims

• Two kinds of disputed insurance claims:

- Coverage disputes
- Valuation disputes

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Resolving Disputed Insurance Claims

• Preventing coverage disputes:

- Use an expert to establish that damage was due to a covered cause of loss.
- Early use of an expert to establish a covered loss will shift the burden to insurance company to prove that policy exclusion applies.

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Resolving Disputed Insurance Claims

• **Resolving valuation disputes: The Appraisal Clause.**

- When the policyholder and insurance company fail to agree on the amount of an insured loss, either can invoke the "appraisal clause" in the insurance policy and demand that the loss be resolved by "appraisal."
- "Appraisal clause" is an insurance policy provision that allows either the policyholder or the insurance company to demand an independent estimation of the value of an insurance claim.
- "Appraisal" is the independent estimation process for determining the value of an insurance claim.

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Resolving Disputed Insurance Claims

• Condominium and townhome policies in Minnesota are required by law to include an appraisal clause. See Minn. Stat. § 65A.01, subd. 3.

- The typical appraisal clause:

In case the insured and this company ... shall fail to agree as to the actual cash value or the amount of loss, then, **on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. ... The appraisers shall first select a competent and disinterested umpire ...**

[1] The appraisers shall then appraise the loss, stating separately actual value and loss to each item; and, **failing to agree, shall submit their differences, only, to the umpire. An award in writing ... of any two ... shall determine the amount of actual value and loss. Each appraiser shall be paid by the selecting party, or the party for whom selected, and the expense of the appraisal and umpire shall be paid by the parties equally.**

Minn. Stat. § 65A.01, subd. 3.

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Resolving Disputed Insurance Claims

• **The Appraisal Process in a Nutshell.**

1. Either party makes a written demand for appraisal and names its appraiser.
2. Responding party names its appraiser within 20 days.
3. The two appraisers select an umpire.
4. Appraisal hearing takes place.
5. The appraisal panel issues an award.



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Resolving Disputed Insurance Claims

• **Advantages and Disadvantages of Appraisal Process.**

- 1. **Advantage:** Appraisal is faster and cheaper than litigation.
- 2. **Advantage:** Appraisal award is binding on policyholder and insurance company.
- 3. **Advantage:** Policyholder might be able to recover interest on appraisal award.
- 4. **Disadvantage:** Appraisal panel can resolve valuation disputes, but cannot resolve coverage disputes.
- 5. **Disadvantage:** Parties have no discovery rights in appraisal.

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Resolving Disputed Insurance Claims

• **Considerations When Demanding Appraisal.**

- 1. Who Is Your Appraiser?
 - Is he or she "competent and disinterested?"
- 2. Who is the Umpire?
 - Is he or she "competent and disinterested?"
- 3. What evidence do you have, and how will you present it?

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Questions?

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