



December Update for Insurance Claims

December 18, 2013

*This has important information if you are owed flood insurance
or homeowner insurance money from Superstorm Sandy.*

Flood insurance requires you to submit new “proof of loss” forms with backup for the value of your entire flood insurance claim (paid and still owed).

FEMA states that proof of loss must be received by your flood insurer itself by April 29, 2014 if it has identified your date of loss as Oct. 29, 2012 (or if your date of loss is Oct. 28, 2012, proof of loss must be received by April 28, 2014).

New proof of loss is required even if you worked with a building consultant or expert whose name you received from Touro, or any insurance adjuster, public adjuster, or contractor. **Do not assume that anyone has filed proof of loss for you.**

**BUT FLOOD INSURANCE DEADLINES MAY BE SOONER –
THEY MAY BE MONTHS, WEEKS, OR EVEN DAYS FROM NOW**

This is because FEMA also states that the date stated on the **FIRST “DENIAL”** of any aspect of your flood insurance claim starts a **ONE-YEAR DEADLINE** to file a lawsuit in the appropriate **Federal Court** on your whole claim. Deadlines will vary for everyone. Additionally, proof of loss is always required **BEFORE** filing a lawsuit.

As a result of FEMA’s interpretation of deadlines, you may need to submit proof of loss and then file a lawsuit within months, weeks, or even days to preserve your right to be paid flood insurance.

Legal representation may be necessary now. See this handout.

This handout has **critical information** about:
(1) these **flood insurance** deadlines, and
(2) separate **homeowner insurance** deadlines.

Chances are that you did everything right and were underpaid for reasons beyond your control.

As a small clinic, we unfortunately are unable to represent you. As a result, we cannot determine your deadlines or file proof of loss or a lawsuit on your behalf.

However we wish to be a public resource as much as possible. We continue to have walk-in clinics generally every week. See disasterlaw.wordpress.com.

If you are owed flood insurance money

1. Requesting your flood insurance claim file may help. Go to disasterlaw.wordpress.com for a form letter to request your claim file.
2. Act now to identify and comply with deadlines (see the box on the right, and the important information on the next page). FEMA appeals do not extend these deadlines.

Determining your deadlines requires careful review of all of your flood insurance correspondence. It may also require careful legal interpretation, and a strategy to comply with proof of loss and any lawsuit on time.

Legal representation may be required now.

This is for informational purposes only, given how urgent these deadlines may be. This is not a substitute for legal advice about your deadlines or retaining a lawyer.

FEMA issued a bulletin on Nov. 21, 2013 defining “denial,” but what FEMA/the flood insurers may argue constitutes a “denial” may still be unclear.

Subject to this uncertainty and for informational purpose only: Some possible “**DENIALS**” – Look for the **DATE STATED** on the **FIRST** of these:

- **1st notice stating you have 60 days to appeal or 1 year to sue.** (FEMA/the flood insurers have considered this to be a “denial.”)
- **1st notice deciding any aspect of your claim.** (For example, a letter saying that all **OR** part of your claim/loss will or will not be granted, denied, paid, allowed, rejected, covered, disallowed, disclaimed, closed, deemed final; reference to settlement of your claim; etc.)
- **1st flood insurance check for an insufficient amount.** We **don’t** believe initial “assistance”/ “advance” checks are a “denial,” but we remain unsure if FEMA/the flood insurers will argue that certain other checks valuing your loss are “denials.”
- **Any decision on any prior proof of loss** forms that were signed by you (the policyholder).

The next page and the links on our website have additional critical information about flood insurance requirements, and **separate homeowner insurance deadlines**

PRESERVING YOUR RIGHTS

Generally, preserving your rights requires (1) identifying any “denial,” (2) filing signed and complete proof of loss forms with adequate backup, received by the **flood insurer** itself on time at the appropriate address, which may require working with expert/s, (3) properly filing a lawsuit at the right time in the correct **Federal Court** if needed.

Legal representation may be required now. Your lawyer should discuss an individual strategy and pros/cons. For instance, lawsuits stop FEMA appeals and alter the process for negotiating. And they may require legal professional judgment in order to address your facts and any uncertainties.

But as unfair as it is, a lawsuit may be needed to avoid issues with deadlines.

PROOF OF LOSS

- Proof of loss requires great care and is **always required on time, regardless of whether or not you have received a “denial.”**
- There are **2-3 proof of loss forms to be signed and filled out**, stating what you have been paid **combined with what is owed**.
- Proof of loss also requires **backup (for ex., to show the full value of your loss)**. See the documents at the link provided below. This **applies both** to structure and to contents.
- **Because of this, check any estimate/report anyone gives you to ensure it fully states what the insurer is responsible for**, including what you have been paid and what you are owed. We are aware of some experts and consultants who may be able to provide “line-itemized” estimates to send with proof of loss. None are affiliated with Touro. Reputable contractors should confirm these amounts.
- **Estimates/reports are often cumulative**, including what you have been paid **and** what you are owed. Do not mistake a contractor’s, consultant’s, or public adjuster’s “bottom line” number of your total claim as meaning that you should receive that amount in addition to what the flood insurer has already paid you.

MORE IMPORTANT INFO.

- **If you discover you might be late under FEMA’s 1-year deadline, still submit proof of loss** as soon as possible within FEMA’s proof of loss extension (see the cover page), and file suit as soon as possible after.

For example, **your attorney may argue** the 1-year deadline to file suit only starts from the flood insurer’s decision on a timely valid proof of loss received by the flood insurer within FEMA’s April 28/29, 2014 proof of loss extension. The issue would then be decided in Federal Court, and possibly on appeal (which may take time).
- **Go by the earliest DATE STATED on the 1st “denial,” NOT** the date you received it.
- Comply as soon as possible but absolutely before the **business day preceding the 1-year anniversary of the start date**.

Ex: For a denial dated Dec. 10, 2012, the 1-year deadline is effectively Dec. 9, 2013.
- **For HOMEOWNER insurance**, the NY State deadline to sue a wind/rain insurer is typically **two years** from the date of loss, but policies vary and earlier deadlines may apply for proof of loss and for requesting to be paid for “depreciation.” There is also a **NY State mediation program**. See the link below.
- **For NY Rising**, be wary of putting all your eggs in this basket and overlooking insurance deadlines. Submit proof of loss, and file any lawsuit, on time – especially if there is any uncertainty about any NY Rising award.

For more critical information, see
1. Insurance Checklist from Sept.
2. Cover Letter to the Checklist
3. Critical Update from Nov.

They are on our website, or call us for a copy. Visit our website for updates.

Disaster Relief Clinic
631-761-7198
disasterlaw.wordpress.com