

LEGAL ALERT

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LESSONS LEARNED FROM HURRICANE IAN CAN MAXIMIZE IDALIA INSURANCE RECOVERY EFFORTS

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The communities of Southwest Florida suffered a catastrophic blow in September of 2022 when Hurricane Ian decimated so much in its path. Now Hurricane Idalia brings yet another set of challenges to Southwest Floridians, who are still struggling to rebuild and collect insurance proceeds from Hurricane Ian. According to the Office of Insurance regulation (OIR), as of June 28, 2023 claims database, 739,771 insurance claims have been reported. Almost half of those claims remain open, leaving homeowners and policyholders fighting for funds still owed to them.

Policyholders who pursue coverage promptly and diligently were more likely to maximize their insurance coverage for hurricane and flood related losses. As community members react to Idalia, lessons from Ian and previous storms have led to these tips for policyholders to navigate the insurance claims process:

1. Collect and review all insurance policies issued for the property and/or business

When pursuing insurance for hurricane, flood, and other catastrophic losses, it is important to keep in mind insurance may be available under several different type of insurance policies:

- Residential Property: provides coverage for “physical loss or damage caused by a covered cause of loss.”
- Commercial Property: referred to by various names (“All-risk”, “Inland Marine”, Multi-Peril”), covers physical damage to or loss of use of business premises or other property in the policyholder’s care, custody or control.
- Ordinance and Law: covers increased costs associated with complying with local building codes to rebuild and return the property to its pre-loss condition.
- Business Interruption: protects businesses against lost income sustained as a result of disruptions to their operations. It also usually requires “physical loss or damage” to the policyholder’s property.

- Contingent Business Interruption: provides coverage for lost revenue resulting from disruptions or shutdowns to the business's suppliers or customers. These policies usually require that the underlying cause of damage to the supplier or customer be the same type of coverage issued for the policyholder's property.
- Extra Expense (and Contingent Extra-Expense): protects against increased operating costs incurred to continue operations until the policyholder's property is returned to its pre-loss condition.
- Service Interruption: covers property damage and lost business income caused by a disruption in utility services (electric, gas, water) at the policyholder's premises.
- Ingress/Egress Coverage: covers business income losses when access to/from a policyholder's premises is restricted by physical damage to the area (e.g. flooding, debris, downed power lines, road closures).

2. Policyholders must timely comply with all post-loss conditions set forth in the policy

Failure to meet the deadlines can result in delay of an insurance payout, or worse – forfeiture of coverage. Insurance companies require prompt notice of any claims. If you live in Hurricane Idalia's path, closely inspect your home for damage. If in doubt, file a claim with your insurance company so it can inspect the premises.

While notice requirements vary by policy, common duties after loss include:

- Prompt notice of claim;
- Protecting the property from further loss and damage (e.g., tarp roof, water dry-out, and remediation, etc.);
- Cooperating with insurance adjusters to schedule inspections;
- Providing documents and records to your insurance company upon request;
- Submitting a Sworn Statement in Proof of Loss (a notarized document which sets forth the insured's total loss and damage sustained by Hurricane Idalia. This document is often due within either 60 days of the loss or within 60 days of the insurance company's request). If necessary, deadlines to submit a Sworn Statement in Proof of Loss can be extended by written agreement.

3. Policyholders must quantify their total loss and damage because until the homeowner or business owner has determined the amount of their loss, how can they ensure that they have been "made whole" by their insurance company?

While policyholders are required to estimate their known loss and damage as part of their Sworn Statement in Proof of Loss, the process is more labor intensive than one might think. For residential property claims, this may include obtaining estimates from general contractors, mitigation companies, engineers and other construction experts. Business owners may also need to hire a forensic accountant to assist with any lost income claims. Additional damages you may be able to recover include:

- Structural or foundation damage due to wind or wind-driven rain;
- Interior damage;

- Medical expenses;
- Living expenses; and
- Lost wages.

It is also important to read every document you sign. Many people rush to hire public adjusters, water mitigation companies, roofers, contractors, and landscapers without reviewing or even receiving the entire contract. Don't rush to sign any document without fully understanding its terms and always seek legal advice if you have questions.

4. It is important to follow up with adjusters and document the claims adjustment process by maintaining a written record of all communication with your insurance company, including all telephone conferences and in-person inspections or meetings

Navigating the claims process can be challenging. Some insurance companies might undervalue your damage or delay payments due to the number of claims they receive after a hurricane. This documentation is often useful in any subsequent litigation. If necessary, don't be afraid to challenge an adverse coverage decision. If you are not satisfied with a claim payout, you can appeal the coverage determination, request mediation through the Department of Financial Services, or litigate the claim.

Additionally, if you still have a claim open from Hurricane Ian, you may also need to supplement your Hurricane Ian claim with any additional damage that was made worse due to Hurricane Idalia. This is especially true if, for example, you were not able to fix your roof after Hurricane Ian because the insurance company has not yet paid you to complete the repair and you now have interior damage to your home due to the condition of the roof.

If you have any questions regarding the claims process or your rights and responsibilities as a policyholder, we can advise you on the merit of your claim and guide you through the claims process.

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