March 31, 2020

All U.S. State Insurance Commissioner, Superintendents and Directors of Insurance

RE: Pandemic Impact on Property Claims

Dear Commissioners, Superintendents and Directors:

As the president of the National Association of Public Insurance Adjusters, I am reaching out to you on behalf of the association members in response to President Donald Trump’s declaration March 1, 2020, that the Coronavirus COVID-19 viral outbreak in the United States is a national emergency. The National Association of Public Insurance Adjusters, or “NAPIA” is an association founded in 1951 to advance the cause of public adjusting in the United States and to foster a stringent code of ethics governing the profession. Approximately 650 member firms focus on commercial and complex claims of business as well as on some residential claims to assure expert representation and fair treatment in the claims process.

The COVID-19 pandemic has caused widespread and ongoing havoc throughout the United States, US Virgin Islands and Puerto Rico. Due to the catastrophic impacts of COVID-19 to the entire population and specifically insureds, insurance companies, adjusters, investigators and every vendor associated with representing the insured or insurance companies, NAPIA urgently requests your response be broadened to further protect property owners.

While a few states have included the property claims process in their COVID-19 responses, many have not. Today, we ask you to consider extending insurance claim deadlines for property insurance claims and to clarify with more specificity in bulletins that lack clarity as to their scope. The reason for the request stems largely from the combined logistical challenges presented in the claims process requiring physical examination of loss, possible illness of stakeholders and convalescence period all nearing the season for increased property claims due to weather-related events. Below are the issues that NAPIA believes would be helpful to states to move forward in broadening your pandemic response to include needed clarification on property claims:

1. **Sworn Statement in Proof of Loss**

   In most instances, property insurance policies include within their forms a requirement that the insured file a formal claim document called a “sworn statement in proof of loss” within 60 days of the date of loss or within 60 days of the request by an insurance company. An insured's failure to timely file a sworn statement in proof of loss can result in a claim denial for no other reason than their failure to file this document within the short time frame set forth. In order to comply with a proof of loss requirement, the policyholder must include with the proof of loss detailed inventories of lost personal property or business equipment, detailed estimates setting forth the cost to repair or replace the building and accounting records with calculations supporting the amount of income lost due to the damage the insured has incurred.

   Doing this under the current national state of emergency and concerns over the COVID-19 pandemic could prove to be extremely difficult or impossible. For a consumer to lose their right to their insurance proceeds as a result of being unable to timely submit the proof of loss and associated documents given the current public health crisis, would be unconscionable. There are precedents for giving extensions
of time. In situations of extreme challenges like hurricanes and floods, it is very common for states as well as NFIP to extend the deadlines for filing sworn statements in proof of loss.

2. Replacement Cost

In property insurance claims the settlement/payment is typically broken into two parts, that being the replacement cost value and actual cash value (or depreciated value). For example, if there is an agreement that $100,000.00 (at replacement cost new) worth of a homeowner’s contents were damaged, the insurance company would first issue the actual cash value (or depreciated value) payment, $70,000.00 for example. Then, after the insured completes replacement of those items and turns in receipts, they can collect the withheld depreciation, i.e. $30,000.00.

Many policies have short deadlines to complete physical replacement and will only pay the withheld depreciation if the items are purchased within 180 days of the actual cash value payment. If the insured cannot complete replacement in the required time frame, they lose their right to collect the withheld depreciation. In the example above, the amount could be $30,000.00. Completing the physical replacement of one’s assets acquired over a lifetime in the current environment we find ourselves in now, will be most difficult for numerous reasons. These time limits apply to the replacement of buildings as well. Imagine trying to coordinate the replacement or repair of your building with architects, engineers, contractors and municipal building inspectors during this national emergency, apart from the challenges of recovering from the virus.

3. Construction Restrictions

Recent state restrictions on non-essential services creates time sensitive issues for an insured suffering a property loss. Insurers typically require repairs to be completed within a reasonable period of time from the date the loss occurred. With construction being restricted, the contractual obligations regarding “Additional Living Expenses, Loss of Rents and Business Interruption” will all be impacted. Certain policies have a time restriction or dollar limit on these coverages and repairs not being done within that limit could cause the insured to be out of pocket on their insurance claim.

4. Examinations Under Oath

An Examination Under Oath is a statement that the insurance company may require an insured to provide. Typically, these occur in a lawyer’s office. The insured is given an oath to tell the truth and the questioning, in the presence of a court reporter, usually is done by an attorney retained by the insurance company. Almost always the insured is required to produce voluminous documents at the time of the exam under oath. Failure to appear at an exam under oath could be a basis for the insurance company to deny the claim. Given the present health crisis, it may not be feasible for an insured to be able to comply with the request for an exam under oath within the time constraints demanded by the insurance company. Action must be taken so that insureds do not lose their claims because of an inability to comply with the examination under oath request due to extraordinary adverse conditions brought on by a public health emergency. Direction from regulators on this point would be helpful.

5. Arbitrary Deadlines/General Cooperation

NAPIA applauds efforts of Commissioners in West Virginia and South Carolina to encourage cooperation by insurers in relaxing contractual requirements. However, we think these may not go far enough in clarity of scope because an insured has the duty to cooperate with the reasonable demands of the insurance company and their representatives. An insurance company may demand a policyholder to an action and place an arbitrary deadline for compliance. Such requests could include, document production, physical inspections on the insured property, separating damaged property from undamaged property, temporary repairs to prevent further damage or similar requests. Failure to comply with such requests may result in the claim being denied if the deadline is not met. A strict adherence to such arbitrary deadlines given the current public health crisis could result in an unjust basis to deny claims.
NAPIA requests insurance commissioners examine the property loss environment and formally delay any deadlines that would cause harm to insureds in the claims process.

6. **Claim Reporting Deadlines**

The insured has a reasonable amount of time to report damage incurred to their insurance company of record. The timely reporting of a loss is a condition of coverage under an insurance policy for property claims. Any limit of time requirement will be affected by a public health crisis of the magnitude of the COVID19 pandemic. Some departments of insurance have already extended time deadlines to fulfill an agent’s continuing education requirements. It is reasonable to offer the same extension to insureds suffering a catastrophic loss.

NAPIA appreciates both the hard work of the insurance industry and state insurance commissioners in responding to the challenging environment. To assist in protecting insureds who suffer property losses, we urge Departments of Insurance in each state to strongly consider issuing an order to protect policyholders as a temporary measure. Below is an example for your consideration:

“It is hereby ordered that any deadline, where the failure to comply could result in the forfeiture, limitation or waiver of any policyholder(s) rights or benefits under any policy of insurance shall be tolled from the date of the Governor’s declaration of a state of emergency until ninety (90) days after any state of emergency ends. Any state with construction restriction on repairs will be granted an additional limit, in excess of the insurance policy, from the date the Governor’s order was declared. No carrier shall require an insured to complete construction while a Governor has restriction on non-essential construction. Non-essential construction shall be defined as per the Governor’s order.”

NAPIA stands ready to assist in any way we can.

Sincerely,

**J.W. O’Connor**

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President

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