

A Few Things You Should Know in Case of Windstorm Damage to Your Home or Building

Written By **Michael J. Parrish** (mjp@wardandsmith.com) and
Amy H. Wooten (ahwooten@wardandsmith.com)

May 25, 2022



North Carolinians know when Hurricane season begins and ends; we know what a 'spaghetti model' is; and we know who in our neighborhood has a generator!

But do we know enough about windstorm insurance policies and how to successfully manage an insurance claim?

This article provides some tips to consider in the unfortunate event of a windstorm insurance claim. This article does not discuss flood insurance claims. For some information on that topic, see <https://www.wardandsmith.com/articles/pitfalls-of-NFIP-flood-insurance-policies>.

Tip 1: Know your insurance coverage ahead of time.

Most of us only look at our insurance policy when it comes time to make a claim. But a bit of forethought can help ensure that you have appropriate insurance coverage for potential wind damage. Here are a few questions that you may wish to discuss with your insurance agent.

- *Do I have a "replacement value" or an "actual cash value" policy?* Replacement value policies will pay for the entire cost of repairing damage caused by a windstorm. Actual cash value policies pay less than that. Under both types of policies, the insurance company will assess the amount of "depreciation" applicable to the damaged building components. "Depreciation" increases the older the materials are. Under a "replacement value" policy, the insurance company will initially withhold the "depreciation" amount and then will disburse that amount as repairs are actually made by your contractor. That is, the company will disburse the "depreciation" amount under a "replacement value" policy once the owner has incurred the repair costs. Under an "actual cash value" policy, "depreciation" is withheld and will not be paid. Actual cash value policies are cheaper, and maybe an excellent fit for certain owners. But owners should understand that depreciation will cause an actual cash value policy to pay less on account of damage. The difference in these types of policies is particularly noticeable on older homes or structures, where "depreciation" can be a significant amount.
- *Do I have "ordinance and law" or "increased cost of construction" coverage? If so, how much do I have?* When homes or buildings are damaged, they often must be repaired in accordance with the most

current version of the Building Code. Sometimes this means a minor change, like an updated type of wiring. But sometimes this means an entirely new design. "Ordinance and law" or "increased cost of construction" is a pot of money within an insurance policy, in addition to the policy limit, which applies specifically to the cost of complying with current Building Codes. This additional coverage is particularly important on older homes and buildings where existing construction is likely out of compliance with modern Building Codes.

- *Do I have a "mold" sublimit? If so, what is the amount of the sublimit?* Windstorm damage often means water intrusion into homes and buildings. This could be due to a tree falling on a roof, a broken window from debris, or compromised shingles. Water intrusion may mean mold. Some windstorm policies have limits, such as \$5,000, on how much the insurer is required to pay to clean and remove mold. For significant damage, this limit may not be enough. Having a mold sublimit may mean that the home or building owner is on the hook for a portion of the damage.
- *Do I have "loss of use" or "business interruption" coverage?* For some unfortunate owners, damage to the home or building means that they must find somewhere else to live or operate their business while water damage is remediated or repair work is done. For homeowners, some policies provide an additional "loss of use" coverage amount, in addition to the policy limit, that pays for replacement housing while needed repairs are occurring. For business owners, some policies provide "business interruption" coverage that may pay for a replacement business location or for amounts of revenue that were lost due to work stoppages.

Tip 2: Engage a contractor who can effectively estimate your damage.

If your home or business has been damaged, the insurance company will send an adjuster to come and make an assessment of what has occurred and what (they assert) it will cost to correct the damage. It is difficult, if not impossible, for the average home or building owner to know whether the insurance company's adjuster has accounted for all of the work that must be done and whether the adjuster has fairly priced that work.

It is advisable for the owner to engage a qualified contractor to do the same thing the insurance company's adjuster is doing: assess the damage and provide an estimate of the cost. This estimate will assist the owner in determining whether the insurance company's adjuster has omitted necessary work, has overlooked new Building Code requirements that must be complied with or has shorted the market price to complete the required work.

Look for a contractor who you trust, who is responsive to you, and who is capable. Beyond those important traits, it is helpful to have a contractor who is familiar with, and who can utilize, the same software (often a program called Xactimate) that insurance adjusters use to create their estimates. Having a contractor who can create a Xactimate estimate helps you compare apples to apples against the insurance company's estimate, and allows you to pinpoint where your contractor has identified additional work or higher pricing than what the insurance adjuster's estimate reflects.

Tip 3: Public adjusters can be a key resource on significant claims.

A public adjuster is a licensed professional who performs the same type of assessment and estimation work that an insurance adjuster does. The key difference, though, is that the public adjuster works for the owner, and is the owner's advocate in connection with the adjusting process. Public adjusters can be incredibly helpful on claims that involve significant damage and where there is an initial disagreement between the owner and the insurance company over the amount to be paid or the necessary scope of work. In those cases, public adjusters create professional estimates and can highlight shortfalls or overlooked items not

accounted for in the insurance company adjuster's estimate.

Public adjusters charge for their work, typically at 10% of the amount of additional money the insurance company agrees to pay on the insurance claim from the time of their engagement. An owner should consider hiring a public adjuster if the amount in dispute justifies the expense of hiring that professional. As part of that consideration, an owner should carefully review the public adjuster's terms of engagement to understand the financial investment involved in bringing on a public adjuster to the owner's team.

Tip 4: When can an attorney be helpful on an insurance claim?

Insurance claims sometimes create disagreements between insurance companies and owners that cannot be easily resolved. Sometimes insurance claims languish for no good reason. Sometimes insurance companies quote hard-to-understand and boilerplate policy language as a justification for not paying all, or some part, of a claim. Here are a few examples of when an attorney may assist on an insurance claim:

- *The insurance company tells you that a meaningful portion of your claim is not covered under the policy.* An attorney can assist in reviewing the insurance company's position to vet whether the policy language supports its position and to advise the owner whether there are grounds to challenge its position. Those challenges might range from informal communication to litigation.
- *The insurance company refuses to pay a meaningful amount that you believe is due and owing on your claim due to a disagreement over the necessary scope of work or overpricing.* An attorney can advise the owner whether to retain a professional, such as a contractor or public adjuster, to evaluate the shortcomings in the insurance company's estimate. If the dispute cannot be resolved, the attorney can advise the owner whether a formal challenge, such as a lawsuit, is warranted.
- *The insurance company demands that you be questioned under oath about your claim and/or that you submit documents to them.* The insurance company has the right to examine an owner under oath about the facts and circumstances of the claim and to require an owner to provide relevant documents. But when this request is made, it is usually indicative of an underlying problem or concern by the insurance company. An attorney can help prepare the owner for the examination, advise on supplying the insurance company with documents pertinent to the claim, and help determine how best to navigate the underlying issue that may be at the root of the insurance company's requests.
- *The insurance company appears to be ignoring the claim.* Paying attention to the level of attention (or lack thereof) an owner is getting from an insurance company is crucial. Property claims, particularly sizeable ones, can take what understandably seems to an owner like an exorbitant amount of time. If enough time goes by without resolution of the insurance claim, the owner runs the risk that the legal window of time in which to file a lawsuit against the insurance company may expire. If an insurance claim drags without a response from the insurance company, an attorney can help by providing a more formal means of communication to the insurance company with the goal of moving the insurance claim forward while monitoring any applicable deadlines for the owner to file suit. If the inattention continues, an attorney can advise the owner of the available options.
- *The insurance company demands "appraisal."* Either the insurance company or the owner may invoke a process called "appraisal" to help resolve certain disagreements in the insurance claim. If the insurance company invokes the appraisal process, an attorney can help the owner navigate that process.

The attorneys at Ward and Smith have significant experience in assisting clients with all types of issues and disputes that arise during the course of a windstorm insurance claim. Ward and Smith has a dedicated group

of attorneys within its Natural Disaster + Recovery section who devote a significant portion of their law practice to these matters. Please contact us if we may be of assistance to you relating to an insurance claim.

--

© 2024 Ward and Smith, P.A. For further information regarding the issues described above, please contact Michael J. Parrish or Amy H. Wooten.

This article is not intended to give, and should not be relied upon for, legal advice in any particular circumstance or fact situation. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney.

We are your established legal network with offices in Asheville, Greenville, New Bern, Raleigh, and Wilmington, NC.