



## **PROPERTY INSURANCE 101:**

# **THE INSURANCE CONTRACT: THE DUTY TO MITIGATE LOSS & DAMAGE:**

*The insurance policy is a contract. Payment of your claim by the insurance company is first conditioned upon your performance of certain contractual obligations.*

*When water, wind or fire damage occurs, the policyholder owes a contractual duty to their insurance company to, among other things, immediately protect both damaged, and undamaged property from further or continuing loss and damage. The insurance industry refers to these compulsory activities as “**loss mitigation measures**”.*

**Loss mitigation services are delivered by specialty vendors;** primarily by IICRC / ANSI certified technicians. This work should be executed quickly in order to:

1. stop further damage and;
- 2: trigger the insurance company’s duties to you, the policyholder.

The first step in this process is to select a qualified service provider and get their people on-site as soon as possible. The Project Designer(PD) and engineer(PE) will assess the damage and then develop a scope of the work that:

1. meets the very specific needs of the property damage and;
2. complies with the terms of insurance policy language.

**Policyholders who fail to mitigate additional loss and damage become financially responsible for any damage that was unnecessarily created by their neglect.** To place this into context: If water isn’t stopped, removed and dried-out immediately, tens of thousands of dollars worth of additional or secondary damage can occur within a matter of hours, or even minutes. In some cases, a failure to mitigate by the policyholder may become cause for a claim by the insurance company of *breach-of-contract* followed by a *denial* of coverage in part or, in whole.

**Because of this policy provision and the obvious urgency to the work, most qualified damage mitigation vendors (restoration companies) do not require payment directly from the homeowner/policyholder** and instead, rely on the insurance adjuster to review the vendor’s work activities, invoices and then pay the vendor directly. Likewise, since ***time-is-of-the-essence***, insurance companies tend to pay reasonable loss mitigation fees promptly. Always rely on the insurance adjuster to vet the work and invoicing - it’s what they do. For this reason, you should never agree to pay a loss mitigation vendor out of pocket unless you do not have insurance.

**Even in cases where mitigation efforts were properly performed but ultimately failed to fulfill their intended purpose, the failed services are covered by insurers.** Rather than risk the unwitting creation of a business culture where emergency service providers, in fear of not being paid, may err on the side of being overly-cautious, insurance companies typically pay reasonable mitigation expenses without much complaint. Conversely, any work determined

by the insurance company to be unnecessary or unjustified, could become a loss to the service provider. For this reason, the intelligent service provider will not want to perform unnecessary work for which the insurance company may refuse payment. In any event, mitigation professionals document the damage and their work activities through still photography, video, site-data mapping and detailed narratives.

### **Loss mitigation expense does not reduce the policy limits of Homeowner's or Business insurance.**

A list of your duties to your insurance company may be found in your policy jacket under:

#### **Section 1. - Conditions: "Your Duties After/Following a Loss".**

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*Henry Kraft serves as Vice-President of an insurance loss mitigation vendor in Rochester, New York. Mr. Kraft is a former General Adjuster and Senior Claims Manager. He is passionate about consumer education on matters of first-party property insurance law and claim settlement practices. He began his career as a PC staff adjuster, became an independent large-loss adjuster certified by numerous insurers, NFIP and General Average underwriters. He has handled residential, commercial and industrial losses, business interruption claims and natural disasters as a Senior Cat Manager. He has served as a CAAS consultant to the estimating software industry including: Boeckh Tompson, RS Means, Marshall & Swift, Xactware, Simultaneous Solutions.*

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### **Your Duties:**

**"SECTION I"** of your **Homeowner's Policy** addresses damages caused to your home or personal property.

#### **SECTION I – CONDITIONS**

##### **2. Your Duties After a Loss.**

**In case of a loss to covered property, you must see that the following are done:**

- a. Give notice to us or our agent;**
- b. Notify the police in case of loss by theft;**
- c. Protect the property from further damage. If repairs to the property are required, you must promptly:**
  - (1) Make all reasonable and necessary repairs to protect the property; and**
  - (2) Keep an accurate record of repair and mitigation expenses;**
    - d. Prepare an inventory of damaged personal property showing the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;**
    - e. As often as we reasonably require:**

- (1) Show the damaged property;
  - (2) Provide us with records and documents we request and permit us to make copies; and
- (3) Submit to examination under oath, while not in the presence of any other insured," and sign the same;
- f. Send to us, within 60 days your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:
  - (1) The time and cause of loss;
  - (2) The interest of the "insured" and all others in the property involved and all liens on the property;
  - (3) Other insurance which may cover the loss;
  - (4) Changes in title or occupancy of the property during the term of the policy;
  - (5) Specifications of damaged buildings and detailed repair estimates;
  - (6) The inventory of damaged personal property described in 2.d. Above;
  - (7) Receipts for additional living expenses incurred and records that support the fair rental value loss.

ISO, Insurance Services Organization's HOMEOWNERS 3 - SPECIAL FORM