

An Excerpt from...

Insurance Claims: A Comprehensive Guide

By Barry Zalma

Property

Insurance policies are contracts. An insurer and an insured agree that the insurer will provide indemnity to the insured as a result of a contingent or unknown event that causes loss to the insured. The language of insurance contracts comes in multiple formats with an almost infinite variety of terms and conditions. It is recognized that an insurance contract can be written to contain nearly any terms that the parties to it choose. In *State Farm Fire & Cas. Co. v. Slade*, 747 So. 2d 293, 313 (Ala. 1999), the court stated that “insurance companies and their insureds are free to agree to any terms in a contract so long as they do not offend some rule of law or contravene public policy.” In almost identical language, the Wisconsin Supreme Court said that “parties are at liberty to enter into insurance contracts which specify the coverage afforded as long as the contract terms do not contravene state law or public policy.”

Property insurance does not insure property. It insures people who have an interest in real or personal property and who face the risk of losing that property to unknown or contingent perils. Most property insurance policies insure against the risk of loss by perils like fire, lightning, windstorm, hail, earthquake, or flood. The risk of loss is spread among the customers of the insurer so that the cost of insurance is affordable. It is “first party” insurance against risks faced by property in which the insured (the first party to the contract of insurance) has an interest and by the loss of which the insured would be damaged. First party property insurance is a contract of personal indemnity. It does not follow title to the land.

The Contract of Personal Indemnity

The insurance claims adjuster (the adjuster) must always ascertain that the owner of the property is the person insured and that the person insured has an interest in the

property. Failure to do so could result in the insurer paying the wrong person. Proceeds of a policy upon the interest of an insured are not subject to the claims of others who have an interest in the property.

For example, Mrs. Jones is allowed to live rent free in a home owned by her children. Mrs. Jones purchases, in her name alone, a policy of homeowners insurance, insuring her against the risks of loss to the structure and its contents. If a fire destroys the house, Mrs. Jones can recover because her interest in the house is an “insurable interest.” This means she has an interest in the property sufficient that she will suffer a loss if the property is lost or damaged. Mrs. Jones’s children, the owners of the home, also have an insurable interest in the home, but are not insured under Mrs. Jones’s policy and may not recover any proceeds from it.

In California, as in most states, “[i]n common parlance, we speak of a house as being insured, but, strictly speaking, it is not the house but the interest of the owner therein that is insured, and, whether that interest is founded upon a legal title, an equitable title, a lien, or such other lawful interest therein as will produce a direct and certain pecuniary loss to the insured by its destruction, he has an insurable interest therein.”^[3]

Only a person who is both an insured and who has an insurable interest may obtain indemnity from a policy of first party property insurance. In *Russell v. Williams*, 58 Cal. 2d 487, 374 P.2d 827, 24 Cal. Rptr. 859 (Cal. 10/04/1962), the California Supreme Court stated the rule:

It is a principle of long standing that a policy of fire insurance does not insure the property covered thereby, but is a personal contract indemnifying the insured against loss resulting from the destruction of or damage to his interest in that property.

As a contract of personal indemnity, the policy only insures the person named in the policy against certain risks of loss of property in which that person has an interest. A person who has an interest in the property but is not named as an insured cannot recover under the policy. Similarly, a person named on a policy who has no interest cannot recover.

Liability

Like property insurance, liability insurance is protection provided to the insured against the risks of loss faced in everyday living. Unlike the risks taken by property insurers, the

risks of loss taken by liability insurers are those that are the result of acts or omissions of the person insured that will cause him or her to be sued or pay damages to third persons. Liability insurance is purchased to help protect against the risk of financial ruin from accidents or contingent or unknown events. An accident is an event that is neither expected nor intended by the person to whom it happens.

Liability insurance is known as third party insurance. The first party is the insured; the second party is the insurer; and the third party is the person making a claim against an insured. Third party insurance is insurance against risks faced by the individual insured for damages he or she may be required to pay as a result of an accident caused by his or her act or omission to act.

The California Insurance Code defines liability insurance as follows:

Liability insurance includes:

(a) Insurance against loss resulting from liability for injury, fatal or nonfatal, suffered by any natural person, or resulting from liability for damage to property, or property interests of others but does not include worker's compensation, common carrier liability, boiler and machinery, or team and vehicle insurance.

* * *

(c) Insurance covering injuries sustained by an insured resulting from a tort committed by a third party against which such third party is not himself covered by liability insurance;

(d) Insurance coverage against the legal liability of the insured, and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional services by any person who holds a certificate or license. (California Insurance Code § 108)

This legislation is a rather detailed summary of years of common law defining the purpose and types of liability insurance that have evolved since the 13th century.

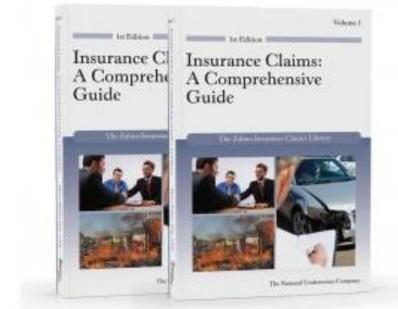
Successfully Handle Insurance Claims from Start to Finish

Insurance Claims: A Comprehensive Guide

By Barry Zalma

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Insurance contracts and clauses are specific in nature—but the manner in which insurance claims are pursued and resolved can be remarkably different. Mistakes in handling a claim can undermine the outcome—and ultimate value—of the claim itself.

Insurance Claims: A Comprehensive Guide is the one resource that enables insurance professionals, producers, underwriters, attorneys, risk managers, and business owners to successfully handle insurance claims from start to finish—employing proven, practical techniques and best practices every step of the way.

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