

BUSINESS DISASTER SURVIVAL KIT

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- **How to Survive the Insurance Claims Process and Maximize your Recovery when your Property is Damaged**
- **How to Minimize the Time it Takes to Resolve your Claim and Get Paid!**
- **How to Prevent Disruption in your Business Operations after a Loss Occurs**



DISASTER READINESS PLAN

I. INTRODUCTION

Your insurance policy exists to give you (and your business) piece of mind in the face of a disaster or worst-case scenarios. Once you purchase your insurance policy (property damage, business loss, liability, etc.), you can focus your time and capital on business operations and growth. Because the claims process is not always smooth sailing, we recommend having plan in place for several reasons. Having a plan in place can help mitigate the pain of navigating the claims process when you find yourself in the midst of a disaster that could cripple your business operations and affect your ability to produce income and stay afloat. Having a plan will help your business get back on its feet quicker and minimize the time it takes to complete the claims process and ultimately, get paid. Having a plan in place will make it harder for the insurance company to tell you “No” assuming your property sustained damage from a covered event.

The first step is to put your business in “Disaster Readiness” mode. You need to put some procedures and processes in place so that when disaster does strike, you are locked and loaded, and the insurance company will have no choice to but to take your claim seriously.

A. How to Get in “Disaster Readiness” Mode

1. Emergency Drills

You should plan for events that are the most likely to occur based on your specific situation; your location, your business type, your customers, weather patterns, industry trends. *(Side note: That’s why it’s important to attend industry events and town halls to keep track of what is trending in your industry.)* Your team should have an emergency plan to be prepared for such situations. Emergency drills for scenarios such as storms, earthquakes, floods, robberies, fires, and other common or anticipated events will help your staff be prepared for those events. Designate someone to be the “point person” for creating and executing these types of drills and planning.

2. Install Surveillance Cameras

An insurance claim can be made easier if pictures and video of the event are available. By installing digital cameras, and appointing someone to maintain the equipment and footage, a business owner can help manage the risk of an insurance claim. In addition to providing valuable information about the damage to your property for insurance claims, cameras also help manage risk to the business by providing information should someone file a lawsuit against the business where video documentation can be used to dispute or support certain facts.

3. Incident Reports

A business owner can also mitigate risk by implementing an incident reporting system. A report of incidents that occur on the premises will help a business provide the proper

documentation in the event of an insurance claim or lawsuit. By requiring staff to write a written report of incidents that take place, and file that report in an organized storage system, the business has an easily accessible record of events. Combine that record with information kept from video and photos, and you will have an invaluable trove of information for managing insurance claims or lawsuits.

II. HOW TO FILE & MAXIMIZE RECOVERY FROM A COMMERCIAL INSURANCE PROPERTY DAMAGE CLAIM

We hope you this never happens to you, but it is very likely you will be faced with disaster or severe property damage at some point. In the event that your business is struck with some form of disaster and you are forced to initiate the claims filing process, there are a few steps to take increase chances of recovery, minimize time and efforts devoted to dealing with the claim, speed up claim resolution, and reduce the probability that your insurance company may deny or underpay your claim.

A. First Steps

In the event of a catastrophic event or any property damage event, where the business-owner must make an insurance claim, stay calm and follow this checklist:

1. Contact the Police

The first phone call you make after (or during, if necessary) a catastrophic event is the police. There may be times where this seems unnecessary; however, there are many times people underestimate the value of a police report when filing an insurance claim. In addition to a police report, emergency medical and/or firefighting services may be needed. A business-owner should post important emergency service numbers in prominent areas, so that they may be easily referenced by the employee staff. And someone on the staff should be designated as the “point person” to take control of activating your disaster plan when an event triggers it.

2. Mitigate Damages

You must take reasonable steps to protect the insured property from further damage or theft. Basically, you need to make sure that you do what you can to keep things from getting worse. First, cover any holes in the roof or windows with boards or plastic. These steps may not be a permanent repair, but will help your property from getting damaged further. If you see water coming into the building, put buckets down and call a roofer to patch the roof temporarily or have someone tarp the roof. Just keep all receipts. Document everything you see that needs temporary repairs or mitigation efforts (photos/video, etc.) The insurance company will need to see damages to approve replacement of certain items (especially a roof).

You should also try to salvage whatever furniture or equipment you can. If you cannot remove it from the premises, then make sure they are covered and protected.

3. Contact the Insurance Agent and File the Claim

Your insurance policy should have directions on who to contact to file a claim. You can post a copy of that page in the office of your “point person”. Because most insurance policies have a requirement that you file your claim in a “reasonably prompt” manner, the second phone call made should be to your insurance agent or designated insurance carrier representative to file the claim. If you are unsure how to file a claim, contact your agent. The agent will either take down all the necessary information, or will direct you to the proper representative to make the claim with. Once the claim is made, it will be assigned to an adjuster. Feel free to follow up until an adjuster is assigned to your claim and contacts you. Once you speak to a representative about your claim, ask for definite deadlines and timetables for the completion of the next step in your claim process. An adjuster should schedule an appointment to come inspect your property, relatively soon. The adjuster will likely request evidence of your loss, and will request to inspect the damaged areas of your property. The adjuster will likely ask you several questions about the event that triggered the loss so it will be helpful if you try to keep a diary, log, photos, video of anything that shows what happened and what damages were caused by the event (storm, fire, etc.). The “point person” should know that this needs to be done as soon as the event starts causing damage to the property assuming the situation is safe. The insured should make available to the adjuster copies of all video footage, photos, logs, diaries, and reports in their possession. Remember, original records should be kept by the business.

4. Contact Professionals (Contractor, Lawyer, and Accountant)

While the claims process is ongoing, it would be wise for the business owner to contact his/her own contractor in order to begin to determine the potential cost to repair/replace property. You should try to get at least three separate repair estimates for the repair of your property. These estimates will be valuable and give cover to the insurance adjuster in determining the value of the claim and ultimately may lead to approval of your numbers.

If you do not agree with what the adjuster’s recommendation or decision to repair or replace your property or if your claim is denied you may want to consult with a Lawyer to determine if the adjuster or insurance company handled your claim properly. Sometimes there is ambiguity in trying to translate insurance policy language into English and this can lead to decisions by the insurance company where claims can be denied because of an insurance representative’s interpretation of the policy language. A Lawyer can utilize his team of experts to help with interpreting insurance policy language to see if coverage should have been granted to help cover a property owner’s claim. Sometimes there are disputes on whether the claim should be covered and sometimes there are disputes on what the actual cost is to put the property back into pre-storm condition. A Lawyer’s expertise will be needed in either of these situations if you find yourself in disagreement with the decision made by your insurance carrier/adjuster.

GOOD NEWS: The good thing is most states have laws where insurance companies are responsible for your attorney’s fees if there are covered damages that went unpaid and so there is no financial risk to hiring legal counsel to represent you in a dispute with your insurance company.

If there is a potential Loss of Income claim at issue where you will be claiming lost profits/income due to the event you will want to engage an Accountant or Lawyer to help you start preparing documents that will be needed to help you prove your Loss of Income claim. The requirements in your policy to recover lost income are traditionally very tedious and laborious and you will likely need assistance from experts to recover these types of damages.

5. Track Down or Create this Information

The following documents/information will help you present a robust insurance claim (one that is more likely to get paid and minimize delays). Before and after you have called the insurance company to file a claim, gather the following information:

- Video footage and photos of incident or damage
- Incident reports taken by staff
- Police reports
- A list of all damaged property
- A list of lost documents, along with their corresponding value (eg., bills of sale, cash, checks, charge account records)
- Operational expense bills to document the business' regular expenses
- Manuals and Warranties of purchased equipment
- Invoices for Prices Paid for Damaged Property/Items
- Receipts for any temporary repairs
- Estimates from Contractors to Repair or Replace Damaged Property

Before entering the premises to retrieve or document these items, make sure to take proper safety precautions, especially if the structure is unsafe. Additionally, do not throw anything away until it is shown to the police or insurance adjuster. We suggest making copies of everything.

6. Settlement with your Insurance Company

It is your responsibility to follow up with the insurance company on your claim. In a large loss type of event they may be stretched thin and the squeaky wheel gets the grease. Document all contacts with the insurance company in your log or diary. If you attempt to contact the insurance representative that is handling your claim and are unsuccessful, document the attempt and the outcome.

It is the adjuster's job to recommend how much value/money the insurance company will pay for the claim. As the person who purchased the insurance policy, the business owner can also hire his/her own professional(s) to compare with the insurance adjuster's assessments/values. Once the adjuster has provided their report, and calculated the value of property lost or damaged, it is time for the insured and adjuster to determine if an agreement can be made regarding the payment for those losses.

While we don't want the claims process to be delayed, understand the claims process can be time consuming. And it is very important not to rush through the process because some

damages are only revealed after weeks or months after the date of loss. Rushing the adjuster through the claims process may cause him/her to overlook damage that is not immediately apparent.

If you are presented with a Proof of Loss document in order to receive payment, it may be a good time to request assistance from an attorney or damage expert to ensure that the losses documented in the Proof of Loss are appropriate and inclusive of everything that needs to be done. If the insurance company pressures you into signing a Proof of Loss to obtain insurance proceeds, and you sense that there may be issues that the adjuster has not yet considered, you may note on the Proof of Loss that there are “disputed damages” which still may need to be resolved at a later time. If you don’t agree with the damages on the Proof of Loss and the insurance company won’t let you add language stating these are only for the “undisputed amount” of the claim then it’s time to seek assistance of a Lawyer.

Once you do receive a check for damages to your property it is absolutely IMPERATIVE that you use those funds to make the repairs included in your insurance company’s estimate. If you don’t and the property is damaged again from a covered event, your insurance company will not be obligated to pay you again for the same damages if no repairs were made. If you submit a claim for damages to a roof and you have been previously paid for that roof from prior storm damage, and you never made the repairs, then you are presenting a fraudulent claim. If depreciation has been withheld, you will be able to recover the depreciation once you incur the full cost of repairs assuming you have a Replacement Cost Value (RCV) policy. If you have an Actual Cost Value (ACV) policy then you will not be entitled to recover your depreciation.

III. DISPUTING A COMMERCIAL PROPERTY INSURANCE CLAIM

Going through the claims process can be very tedious and stressful, and can result in sleepless nights for a business owner. When an insurance company denies a commercial property insurance claim, that denial can be devastating to the business. The very reason you purchased and paid for that insurance was for protection and peace of mind when disaster strikes and your business is put at risk.

Insurance claim settlements can take many twists and turns with outcomes that help or hurt the business owner. First, the insurance company can be denied entirely. Commercial insurance claims can be denied if the insurance company determines that the cause of the loss was a cause that has been “excluded” from the policy or if they decide there are no covered damages or no damages at all. Exclusions include non-covered events, intentional acts, or pre-existing damage, to name a few. Second, the insurance company can offer to settle the claim for much lower than you expected. It can be disastrous for the business if it does not receive enough money to cover its loss and to repair the damage to its property.

There are steps we recommend in disputing a denied or underpaid commercial property insurance claim:

1. Reach out to the Adjuster (and maybe Agent)

First, sit down or ask for a meeting or call with the agent and adjuster to have them explain the claims process. Ask specific questions and get specific answers as to why they denied your claim. Be sure to ask the insurance adjuster exactly where the policy says it does not have to pay for the damage to your property, or why the amount they did pay is justified. Ask them if there is anything else they need from you to reconsider their decision. You can also request a re-inspection of your property by a different adjuster to get a second opinion.

2. Review the Policy

The next step is to carefully read the insurance policy. One of the most important parts of understanding how your adjuster computed the amount to pay for damage to your property is reading and understanding your policy. It is difficult to dispute a decision made by the insurance company until you understand your insurance policy. Additionally, having a good understanding of your insurance policy during the claims process will help you have a better understanding of what kind of policy you'd like to get when it is time for renew. Once it is time to renew, be sure to have a discussion with your agent about the claims process and how changes in the policy can avoid some of the problems you had.

3. Create a File & Document Everything

Make sure you keep a timeline of everything that has occurred since the date of the loss/event. When you reported the claim; when they inspected; when they made a decision; and all correspondence/communications in between. All contact you have with the insurance company should be documented. Keep a claims journal to document all of the times you attempted to contact the insurance company, all of the times you were able to reach the insurance company, and all of the times the insurance company contacted you. Many insurance companies use an online claims reporting system. This makes it easier for you track down all correspondence. The more documentation you are able to keep, the more it will benefit the business. It will show that you were actively engaged in the settlement of your claim, and that you met your responsibility under the policy contract.

We previously discussed the importance of getting repair estimates for the repair to damage to your property. Having those reports would assist the adjuster (and give him cover) in determining a claim value and getting to a settlement value quicker. Whether your claim is denied or in the process of getting adjusted, you should make sure that the adjuster has these estimates, and request a copy of the adjuster's report.

4. Litigation and Appraisal

If at the end of the claims process, you were not able to get what you believe is necessary to repair your property, then it is time to seek the assistance of a lawyer. Some of the options available to you are litigation, where a lawsuit is filed, and appraisal.

A. Litigation

Most states permit property owners to hire lawyers on a contingency basis to represent them in an insurance dispute. This means the lawyers only get paid if there is a recovery and the lawyer is responsible for all case expenses incurred during the dispute. And most states have laws where insurance companies are responsible for your attorney's fees if there are covered damages that went unpaid and so there is no financial risk to hiring legal counsel to represent you in a dispute with your insurance company. Sometimes claims can be resolved without even filing a lawsuit once an attorney is involved. But make sure your lawyer has the ability to take your case all the way to the courthouse if necessary. In litigation, you may end up giving a deposition and attending mediation to resolve your claim but more than 95% of these cases end up resolving without going to trial. Your lawyer is only as good as his experts so make sure to ask him about his team and what their success rate has been. Ask for references.

B. Appraisal

Most insurance policies state that any party, either the insured or insurance company, can invoke appraisal during the claims process if they are unsuccessful in coming to an agreement as to the claim payment. When either party invokes the appraisal process, each side will appoint an appraiser, and each party will have to pay upfront for the cost of that appraiser without any idea what the outcome will be. The appraisers from both sides will then evaluate the damage to the property together, and attempt to come to an agreement as to the payment that should be made to settle the claim. Appraisal awards can come back at \$0 or close to the value of the property depending on the findings. If the parties' appraisers cannot come to an agreement then both sides will need to hire an umpire for additional fees and the umpire will determine the final award which is not negotiable between the parties. The insurance company has the ultimate say in whether they will pay the appraisal award. It is not mandatory. Sometimes cases that are in litigation end up in appraisal but the lawyers will pay those fees once you are represented.

CONCLUSION

A business-owner needs insurance, and they need to understand the insurance policy before entering into that policy. The financial well-being of your business rests may very well rely on the ability to read the fine-print, clauses, and exclusions of your policy. By reading the policy, you will have a good understanding of what is and what is not covered when it is time to make a claim. It is important to educate yourself so that you know what is in your policy before you need to file a claim. Contact your agent and have them sit down with you and explain the parts of your policy. Or you can hire a lawyer or have your risk department meet with the agent to review it for you if assistance is needed. It's worth the time investment.

It takes a lot of time, grit, and resources to run a business and manage commercial properties. A successful business takes operational planning and strategies for growth and risk management. Business owners use commercial insurance as a way to mitigate the risk of unexpected loss in the future. However, in today's world, the unexpected is becoming expected as technology and data allow us to anticipate trends and so you have the ability to plan for some events that are foreseeable based on your location and the type of business you operate. In any event, insurance is an absolute necessity and one of the most important investments a business can make.

We all know the claims process can be a brutal time consuming process; however, the goal is to get a claims decision that will guarantee your business will be able to recover from an event that damages your business property. Sometimes there are limitations in the policy that will prevent this from happening. And so sometimes the claim settlement is not enough to cover costs, either because of underpayment or denial. When this happens, you may need the expertise of legal counsel.

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