

## **THINGS TO CONSIDER WHEN DEALING WITH RECOVERY FROM A FLOOD.**

I know that this is a very difficult time for everyone. I just wanted to share a few things to consider when addressing property damage. While I am not an expert in insurance law or claims, I am a licensed Texas attorney with nearly 18 years' experience, Board Certified in Commercial Real Estate by the Texas Board of Legal Specialization, and handle matters related to real estate and contractors. Hopefully, these general points will help you and others you know:

### *1. DOCUMENT, DOCUMENT, DOCUMENT EVERYTHING!!!!*

- When it is safe and you are permitted to get back into your property, make sure that you take pictures of EVERYTHING. Take close up pictures, far away pictures, and medium distance pictures. With today's devices, you are not charged per pixel or picture so make sure to take lots of them. Also, take video. Be slow with your panning around the property. Make comments when walking the property. Make sure to say the date and approximate time of when the video was taken, your name, and anyone else that is a witness. Use things for reference to show the height of the water level. GO SLOW! It is not a race to get through the property. Describe the damaged items as best you can.

### *2. CALL YOUR INSURANCE COMPANY AND FILE A CLAIM IMMEDIATELY.*

- I know that many people need time to grieve or process what has happened, but time is not on your side as far as insurance. No matter the type of insurance you have (property / vehicle / loss of business / etc.), contact your insurance company immediately, and start the claims process. Many insurance companies allow you to start the process online. If you can, I would suggest doing that as you will be able to print/PDF a copy of your claim submittal, confirmation number, status, etc. Remember, DOCUMENT, DOCUMENT, DOCUMENT EVERYTHING!!!!

- **Every single time** you speak to your insurance company, make sure to take down the phone number you called, the person you spoke with (name and employee number - basically as much as the person will tell you), the time you spoke with that person, what was said, and any status update you were provided.

- Ask for a fax number or email so that you can send a follow up fax or email EVERY SINGLE TIME YOU SPEAK WITH SOMEONE outlining the conversation you just had on the phone. Be detailed as possible in your written communications.

- You must be the one to document everything. DO NOT RELY on any insurance company to do it for you. Assume that every single time you talk to someone, they have no idea what has happened.

- Make sure to put your name, damaged property address, and policy number on every communication. Also, make sure to put your phone number and email (and if you have a semi-permanent place you are staying on each communication so that the company can get a hold of you.

### *3. CALL FEMA AND FILE A CLAIM IMMEDIATELY.*

- I know that many people need time to grieve or process what has happened, but time is not on your side as far as insurance. Call or get online and start the FEMA claim immediately. If you can, start the process online. I would suggest doing that as you will be able to print/PDF a copy of your claim submittal, confirmation number, status, etc. Remember, DOCUMENT, DOCUMENT, DOCUMENT EVERYTHING!!!!

- Every single time that you speak to FEMA make sure to take down the phone number you called, the person you spoke with (name and employee number - basically as much as the person will tell you), the time you spoke with the person, what was said, and any status update you were provided.
- Ask for a fax number or email so that you can send a follow up fax or email EVERY SINGLE TIME YOU SPEAK WITH SOMEONE outlining the conversation you just had on the phone.
- You must be the one to document everything. DO NOT RELY on FEMA to do it for you. Assume that every single time you talk to someone, they have no idea what has happened.
- Make sure to put your policy number, your phone number and email (and if you have a semi-permanent place you are staying on each communication so that the company can get a hold of you.
- The amount victims receive from FEMA will vary. The agency considers the amount of damage and the amount of insurance coverage each victim already has. The maximum amount that FEMA gives to individuals is a one-time grant up to \$33,000.

**\*The Application Process:**

- You can apply up for FEMA assistance by phone or online. [Details are here.](https://www.fema.gov/apply-assistance) (https://www.fema.gov/apply-assistance).
- Only one person per household should register. If more than one person in your household applies, it could delay the process.
- You will need your Social Security number, proof of residency (a utility bill will work) and a statement from your insurance company confirming that you are not covered for flood damages.
- FEMA does not check for applicant's citizenship status. If you do not have a Social Security number, but your child does, you can use your child's Social Security number. At least one person in your household must have a Social Security number.
- Victims have 60 days from the date of Hurricane Harvey to apply for FEMA assistance.

**\*What to expect:**

- When you apply online or by phone, you will receive a registration number.
- Within 7-10 days, you will receive a call from a FEMA inspector to schedule a time to come inspect your property. Do not wait for the inspector to begin cleaning up your home. Delaying the cleanup will allow mold to grow, causing more damage. Before you begin cleanup, take photos of everything you will need to repair.
- **Keep receipts for anything you buy for cleanup and repairs (drywall, lumber, paint, sump pumps, etc).**
- Also, during disasters like this one, the Small Business Administration provides low interest loans to homeowners, renters and small businesses. If you apply for FEMA, you will receive an SBA application.

**\* FEMA helps with three things:**

1. Rental Assistance -- You can get up to two months of rental assistance if your home or apartment is inhabitable. You will not likely get anything from FEMA for property destroyed inside your home or apartment.
2. Some Home Repairs -- FEMA pays for repairs based on how much of your primary living space was damaged. For example, if you have a three-story home and only the first floor flooded, but there were no bedrooms on that level, you will not likely receive any money from FEMA for repairs. If floodwaters damaged your water heater or furnace on the first floor, you should receive some assistance to replace that equipment deemed necessary.
3. Some Personal Property -- FEMA pays to replace things like eyeglasses and dentures, but not clothing. It may able pay to replace or repair your household's primary vehicle. If you have more than one vehicle in your household and all were damaged, FEMA will only pay to replace one. In some instances, if your auto insurance pays a certain amount to replace your vehicle, but it's not enough, FEMA will pick up the remaining amount to replace your primary vehicle.

\*Source - click2houston.com

#### *4. CLEANING OUT YOUR PROPERTY*

- As best you can, before removing items from your property or DOCUMENT, DOCUMENT, DOCUMENT EVERYTHING!!!! Take close up pictures, far away pictures, medium distance pictures. With today's devices, you are not charged per pixel or picture so make sure to take lots of them. Also, take video. Be slow with your panning around the property. Make comments when walking the property. Make sure to say the date and approximate time of when the video was taken, your name, and anyone else that is a witness. Use things for reference to show the height of the water level. GO SLOW! It is not a race to get through the property. Describe the damaged items if you can.

- If you are able (and after documentation), after all water within the property receded, you can cut drywall one foot above what was damaged and remove soaked insulation (you may have to cut the insulation rather than ripping out the entire roll between the studs. This along with the use fans may go a long way to helping dry out the property and avoid further damage within the property.

- Remove damaged carpeting and padding. Generally, carpet is cheaper to replace than to clean in a flood situation. As for wood flooring, depending on how much water you had and how long it was there, the floors will likely buckle. If the damage was minor, there is the chance that they may go back down and you can salvage them.

- If certain furniture got soaked such as couches, mattresses, upholstered chairs, etc., it is likely damaged beyond repair. Remember, the water that came into your home could be toxic and heavily chemically laced. Even if dry, such furniture can remain damaged. Alternatively, you may wish to speak with a reputable remediation company and/or your insurance company to see if your particular furniture can be salvaged. However, in lots of instances, the cost to clean certain furniture may be more than the depreciated cost of it.

- Some solid wood furniture may be salvaged and return to its original condition given 4 weeks or so to dry out (if not completely soaked for days). Again, you may wish to speak with a reputable remediation company and/or your insurance company to see if your particular furniture can be salvaged.

#### *5. INSURANCE ADJUSTERS - THEY ARE NOT ALL "ALIKE" \*\**

Though all insurance adjusters perform a similar job, they are not made equal. There are several types of claims adjusters, and all of them have different responsibilities.

**A. Staff Adjusters** - These adjusters are also known as company adjusters, and the name says it all — these adjusters are employed by an insurance agency. They are full-time, are salaried, employees that work on behalf of the insurance agency to investigate claims and recommend a settlement amount. Staff adjusters are further broken down into two categories:

(1) **Field adjusters** go out “into the field,” traveling to the location of the claim in order to investigate it in person. (2) **Desk adjusters**, on the other hand, investigate claims at a distance via photos, documents and over the phone with the claimant.

**B. Independent Adjusters** - Independent adjusters also work for the insurance agency, but they are not employees. They are self-employed claims adjusters that are often contracted by insurance adjustment firms. Independent adjusters are used as a way for insurance agencies to outsource their claims; this is largely useful when there is an event that causes a large number of simultaneous claims, such as mass storm damage. Unlike staff adjusters, independent adjusters are paid a daily rate or on a fee schedule. In the more commonly used fee schedule, independent adjusters are paid a percentage of the claim settlement amount.

**C. Public Adjusters** - While staff and independent adjusters work for the insurance companies, the public adjuster works for the people. Public adjusters, unlike company adjusters, do not prepare the initial claim estimates; they are often called upon if the claimant does not believe the estimate is fair, and desires a second opinion. They work with company adjusters to negotiate settlements. Public adjusters are often self-employed, but may also work with a public adjusting firm. Like independent adjusters, they are not salaried and work on fee schedule.

Navigating the complex claims procedure can be tricky, and with so many types of claims adjuster, it’s hard to tell who is working on “your” side. Generally, while independent adjusters may sound less likely to work in favor of the insurance company, they are still paid by the insurance agency. Generally, public adjusters are arguably solely looking to maximize your settlement and arguably bring the benefits to you.

\*\* Source: ac-restore.com

## *6. WHAT TO LOOK OUT FOR REGARDING CONTRACTORS AFTER A STORM*

- You are going through a lot right now, but it is not the time for rash decisions. Hiring an un-vetted company, especially one going door-to-door, can end up costing you more time out of your property and thousands of dollars in additional repair costs.

- **DO NOT BE PRESSURED AND RUSH TO SIGN A REPAIR CONTRACT.** Some contractors are going to tell you, “There are 1,000 other jobs out there. If you do not sign up with me, it could be weeks before anyone will be able to help you.” Even if you do have to wait to find the “right” company, it is far better than getting tangled in with the “wrong” company.

- **DOCUMENT, DOCUMENT, DOCUMENT EVERYTHING!!!!** The homeowner ALWAYS should have a written, signed dated quote/contract before allowing a contractor to touch the property. I would highly recommend that for major repairs, take time to shop around and get 3 to 4 estimates based on the same specifications and materials.

- **DO NOT, UNDER ANY CIRCUMSTANCES** pay cash or write a check up front for proposed work, or you risk scammers taking off with your money. Anyone asking you for the full payment up front is, in my opinion, is not viable. Pay in installments (at least 1/3<sup>rd</sup>, 1/3<sup>rd</sup>, 1/3<sup>rd</sup>), and wait until the repair work is completed to your satisfaction to make the final payment.

- You have the internet.....use it! Any potential contractor that you look to engage, you should be doing research on them. Use Google, Angie's list, Better Business Bureau and other searches to get information on the company. You may use the word "scam" with their name to see if anything pops up. Ask the company how long they have been in business. The best protection is personal references. Ask for references for other jobs they did. Check out references that are at least one year old. Actually, call those references. Use local companies that you've used in the past and trust. Ask your relatives, neighbors and friends who have had good experiences with contractors. Look on the company's website. You may even wish to cross reference what you find in the old-fashioned paper yellow pages.
- Make sure the company is local (or has a local office). If not, you run the risk that if the work was not done properly, you may never be able to get the company back to do repairs in the future. **Look for out-of-state tags / license plates on their trucks.** This indicates that the contractor may only be in town for storm work. Remember that a "warranty" is only as good as the person/company providing it. Always try to get a physical address, as contractors who use a P.O. Box and forward their calls out of state to appear "local." Remember the number they give can be disconnected at any time they decide to move on.
- Check to make sure that any non-locally engaged contractor has been properly licensed locally. Check the license numbers provided using the internet. Verify with your local government to find out whether or not businesses are required to be licensed/registered to do work in your area, and check with your local building inspector to see if a building permit is required.
- Ask contractors for current certificates of workman's compensation and liability insurance. Call the companies to verify the policies. This is for *your* protection. They should have both, as one covers property damage and one covers their workers from injuries if they are hurt in your property. Contractors usually use sub-contractors to make repairs or install the roofs, and a lot have crews that travel with them. In certain instances, the home owner or their insurance company will be liable if something happens to the contractor or his subcontractors. Do not risk your home.
- Be mindful of door-to-door contractors. These companies/people could (but not in all instances) be in it to make a quick buck and to take advantage of you at your most vulnerable. Do the appropriate vetting!
- Be leery if a worker shows up on your doorstep to announce that your property is "unsafe." If you are concerned about possible structural damage in your property, have an engineer, architect or building official inspect it. While most contractors abide by the law, be careful allowing someone you do not know inspect your property (including the roof). An unethical contractor may actually create damage to get work.
- **DO NOT UNDER ANY CIRCUMSTANCES SIGN ANY CONTINGENCY CONTRACTS WITH A CONTRACTOR.** These typically will be very vague, lacking in description of the work to be done and will lack information about insurance proceeds. Note that depending on the terms of the proposed contingency contracts, you may be assigning all your rights to insurance proceeds to the company (essentially cutting yourself out of money to fix your property).
- Check with your mortgage company before repairs (as lots of times they are also listed on your insurance policies).
- Ask the contractor if they have dealt with insurance claims and companies before (if you do not intend to pay them cash). Lots of insurance companies want information presented a certain way
- Look up contractors and companies to see if they have any lawsuits.

Harris County Justice Court:  
<https://jpwebsite.harriscountytx.gov/FindMyCase/search.jsp>

Harris County Clerk:  
<http://www.cclerk.hctx.net/applications/websearch/CourtSearch.aspx?Casetype=Civil>

Harris County District Court:  
<http://www.hcdistrictclerk.com/Edocs/Public/search.aspx>

Fort Bend County Justice, Civil and District Court:  
<http://tylerpaw.co.fort-bend.tx.us/default.aspx>  
<http://www.fortbendcountytx.gov/index.aspx?page=517>

Brazoria County Justice, Civil and District Court:  
<http://publicbrazoria-county.com/PublicAccess/default.aspx>

## *7. DEALING WITH THE CONTRACTOR AFTER SELECTION*

- GET IT IN WRITING! The homeowner ALWAYS should have a written, signed dated quote/contract before allowing any contractor to touch the property. If you are married, and the property to be repaired is your homestead, both you and your spouse must sign the agreement. Be sure the contractor's name, address, license number (if applicable), and phone number are included in the contract. **Read and understand the contract in its entirety, and NEVER, NEVER, NEVER sign a blank contract.** A copy of the signed contract is to be given to you at time of signature. DO NOT let the contractor leave without providing you with a copy, and do not fall for the line "I'll just fax or email you a copy of it when I get back to the office."

- If any subcontractors are being hired by the contractor, make sure you have their information to verify they have been paid by the contractor as work progresses.

- The agreement/quote MUST be detailed as to exactly what is going to be done. Clearly written proposals that are detailed and broken down into separate line items are a good sign that the contractor is being thorough and has prepared an accurate estimate. The following is a non-exclusive list of items your estimate or proposal should include:

- Detailed scope of work to be done (not just "fix everything on the inside" or "removal and replacement of existing roof");
- Approximate starting and completion dates;
- Payment procedures;
- The type of materials to be used indicating the manufacturer and color, as applicable;
- The installation method being a description of how the materials to be included in the work will be installed (e.g., underlayment, protection membrane, padding, Flashing work (e.g., existing flashings to be replaced or reused, adding new flashing, flashing metal type), etc.;
- Outline who is responsible for repairing/replacing exterior landscape or interior finishes that are damaged during the course of the work? Make sure the agreement contains language addressing who is responsible for any damage that occurs as a result of the proposed work. All items of concern and proposed work to be done should be included in the contract.
- Length of warranty and what is covered, e.g., workmanship, procedures, etc.
- Who will haul away the old materials and/or project waste (e.g. extra materials, packaging, etc.)? Is there extra charge for this service?

- DO NOT, UNDER ANY CIRCUMSTANCES pay cash or write a check up front for proposed work, or you risk scammers taking off with your money. Anyone asking you for the full payment up front is, in my opinion, is not viable. Pay in installments (at least 1/3<sup>rd</sup>, 1/3<sup>rd</sup>, 1/3<sup>rd</sup>), and wait until the repair work is completed to your satisfaction to make the final payment. Inspect (or have a proper party inspect) the work for each stage before payment is provided.

- DOCUMENT, DOCUMENT, DOCUMENT EVERYTHING!!!! Keep notes and dates of your conversations. I know it seems to be a common why to communicate, but DO NOT RELY ONLY ON TEXT MESSAGES. If you have a discussion, email the contractor and outline what the discussion was. Do this every time. If the contractor will not provide you with something, you need to document it. Also, check with your insurance company yourself to make sure the contractor is not already trying to get your insurance company to pay it directly based on some “unknown agreement.”

- **Make sure that all materials used are paid for.** There have been instances where storm chasing contractors come in, perform work on properties, and leave without paying the suppliers; thereby leaving the homeowner to pay twice! Ask to see invoices for payments and verify those payments have been made.

- **GET MECHANICS' AND MATERIALMEN'S LIEN WAIVERS.** In exchange for each partial payment (i.e. as a condition of, and not after), require that the contractor provide you with a lien release indicating that all work to the point of payment has been paid for. This will reduce the risk of the contractor coming to you during or after the job and saying that they did not get paid enough (or at all).

#### *8. CHECK WITH YOUR INSURANCE COMPANY BEFORE REBUILDING.*

- Depending on your neighborhood or your particular home, if they have been flooded before, there is the possibility that your insurance company and/or the Federal government may not offer flood insurance any longer. Alternatively, the cost of flood insurance may skyrocket. Also, there is to possibility that the Federal government may seek to purchase your property outright to prevent any further building in the area. Therefore, it may be prudent to contact your insurance company to obtain information about future costs and availability PRIOR TO investing amounts back into your property.

- While an insurance company may make a policy decision in the future regarding coverage of an area, make sure that you get any representation regarding coverage for your home, in writing, before making the investment. DO NOT just rely upon a telephone call to an agent who may say, “Sure, you’ll be covered again. No problem!” Relying only on a verbal representation will not be enough. Again, if you are told something, and the insurance company says that it “cannot send you anything in writing about future coverage,” be sur to write to your insurance company and outline who you spoke with and specifically what you were told. You may also use phrases like, “On \_\_\_\_\_ (date), I spoke with \_\_\_\_\_ (name of person), being \_\_\_\_\_ (insurance company’s name) agent. I was informed that \_\_\_\_\_ (specifics of what was said). In reliance of what was told to me I \_\_\_\_\_ (state what you are going to do). If this is not correct, please notify me immediately in writing at \_\_\_\_\_ (email and physical address).”

#### *9. CONSIDER USING AN ATTORNEY TO REVIEW CONSTRUCTION CONTRACTS*

- I know that this is a stressful time and there is the thought that all available funds should be used for repair; however, I would encourage people to seek out a competent attorney who has experience in this area to aid you in the review of any proposed contractor agreements. The use of an attorney, although it carries a cost, may ultimately be able to help you navigate and assess your situation and take the emotion out of a difficult and timely decision to be made. I have seen it many times where a few hundred dollars to receive perspective

and guidance on a proposed contract turns into many thousands of dollars to deal with the aftermath of a poor contractor.

I am proud of how Texans and others all over the United States have come together to help Houston and surrounding areas during the very difficult time with Hurricane Harvey. I hope that in some small part, this article will help those in need as they rebuild and move forward. Let me know if I can be of any assistance.

Sincerely,

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