Five Helpful Tips for Multifamily Property Owners in Addressing Casualty Claims During This Tornado Season

May 23, 2024

Categories:

Blogs
Multifamily Matters

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Tornado season is again upon us, bringing with it the threat of catastrophic property damage, upended lives, and interrupted businesses—as many multifamily developers and investors know all too well. For most multifamily property owners, their primary protection and main source of recovery when faced with a casualty event is through first-party insurance. Here are five helpful tips about insurance and the claims process.

Tip #1: Before the Storm, Review Your Policy

This might sound obvious, but many property owners go years without looking at their insurance—and some policyholders read their policies for the first time only *after* a loss event occurs and they need to make a claim.

The "right coverage" is different for every business and property, but here are some items to keep in mind:

- Make sure the property is accurately described in the policy declarations, especially if there are multiple covered locations.
- Understand the difference between "replacement cost" and "cash value" coverage.
- Make sure the limits of coverage (the dollar amounts listed in the declarations for each coverage type) are sufficient, considering current values for each structure, deductibles, and any coinsurance requirements.
- Take note of any sublimits and additional coverages, such as coverage for business interruption, loss of income, and loss of rental value.

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Insurance agents and brokers can answer questions and help you get the insurance that best fits your needs, but you should not assume that your current coverage is adequate simply because you worked with a broker when you purchased the policy.

Tip #2: After the Storm, Notify the Insurance Company

Failing to notify your insurance company within a reasonable time after you become aware of property damage can jeopardize your right to receive payment under the policy. Although late notice might not automatically result in a denial of your insurance claim in every case, it is always to your advantage to alert the carrier as soon as possible. Check your policy for the specific notice requirements (in addition to your other duties and obligations following a loss), and work with your insurance agent to notify the appropriate carrier(s) and provide an initial description of the damages. Decide up front who will be your point person for communicating with the insurance company. Will it be you, a property manager or asset manager, or your attorney? The person assigned to this role needs to be diligent about gathering and providing information and documents requested by the insurance company.

Tip #3: Coordinate Damage Mitigation Work

Most property insurance policies state that the policyholder must take reasonable steps to protect covered property from further damage, while excluding coverage for any damage attributable to the insured's failure to do so. Examples include temporarily sealing any openings (e.g., tarping roof holes and covering broken windows) and relocating salvageable contents if they may be exposed to further damage.

Insurance companies often assign third-party vendors to perform roof tarping, moisture removal, mold remediation, and other mitigation tasks. So, you should communicate with your claim adjuster about what work needs to be done and who will be doing it, to avoid potential miscommunication. If you have already arranged

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for mitigation work, tell the insurance company what is being done, who is doing the work, and provide any contracts, estimates, and invoices so that the insurance company can pay contractors or reimburse you for the expense.

Tip #4: Document the Damage

Thoroughly inspect the property and take lots of photographs of the damaged area(s) from multiple angles and perspectives.

- Your insurance company will probably send someone to inspect the damages soon after receiving notice, but photos taken closer in time to the storm event might prove useful in depicting the condition of the property before any emergency mitigation work and showing any progression of damage; they might also be helpful in communicating with the insurer about the nature and scope of the damage.
- Drone photography, if available, could be valuable in documenting damage to roofs and other building elements that are difficult to reach or see from the ground.
- Video recordings are especially useful if there is an active or continuing loss, such as water visibly leaking through ceilings, walls, or windows.

Prepare an inventory of damaged items. Your insurance company might ask you to provide a written "proof of loss" in which you identify damaged items and their claimed values.

Gather any historical maintenance and repair records for the affected property. Your insurance company might ask for these, as they might be relevant to the pre-loss condition of the property and whether any damage occurred before the storm.

You should also be prepared to document your business losses (to the extent they may be covered under your policy), including extra expenses you incurred for mitigation and cleanup, loss of income, and loss of rental value. Business interruption coverage typically requires the policyholder to provide information from which it can be estimated what the policyholder's income would have been if the damage had *not* occurred, so it is important to gather pre-loss

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business records as well as post-loss records. If you are working with an attorney or accountant, they may be able to help you organize and present the relevant information to the insurer.

Tip #5: Work with Contractors You (and Your Lender) Trust

When you are ready to repair and rebuild, it is typically the property owner's responsibility to hire appropriate contractors to perform the work. Your insurance adjuster should be kept apprised of all quotes and where you are in the process of contracting with a construction professional.

After a large storm or tornado, it is common for contractors—and persons claiming to be contractors—to descend upon the area seeking business. Before signing any agreement, it is important to research the background of the contractor to confirm that it is a legitimate business and to ensure that the contractor has its own insurance and the proper licenses to perform any necessary work. Your legal counsel can assist by researching the contractor's litigation history.

Property owners should carefully review the terms of any construction contract before signing. Construction contracts regularly define the scope of the work, including the payment terms and timeline, allocate risks between the parties, and sometimes contain dispute resolution procedures or limitations of liability that can significantly alter a business owner's ability to seek recourse should disputes arise. Special attention should be given to differing scopes of work when comparing different proposals, as they will sometimes explain the difference in cost and may end up being more expensive should more work be required than the scope agreed to by the parties. Also note that some types of contractual terms are unenforceable under the laws in certain states, so you should consult an attorney about the relevant laws in your jurisdiction.

Finally, be aware that contractors and suppliers will generally have certain lien rights that are typically not available to other parties with whom an owner does business. In the event there is a payment

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dispute, contractors can file property liens, and those liens can be used to force sales of property to satisfy those unpaid balances. In some instances, liens may be filed by parties with whom the property owner never contracted, such as the general contractor's subcontractors or suppliers. A lien may also have significant consequences under a lending agreement and may be considered a default under a loan agreement. An attorney *should* be consulted immediately upon receipt of a notice of intent to file a lien.

It is highly recommended that before entering into a contract, a business owner consult with an experienced attorney to review the contract and negotiate any changes on the front end to lessen the chance that issues arise during or after construction. Engaging legal counsel will also help you understand what requirements a lender or other third party might have in connection with the restoration work. In the immediate aftermath of a catastrophic storm, attention is likely to be diverted in many different directions, and an attorney can assist a business owner in the time-consuming and detailed process of reviewing and negotiating differing contracts with contractors, so that you can focus on keeping the business up and running.

Conclusion

No one wants to suffer a casualty event. Severe storms can result in significant frustration and uncertainty for multifamily housing owners; however, it is crucial that property owners understand the types and amounts of coverage they have and how to help preserve and, in some cases, expedite the claims process. Be on the lookout for our next article about what multifamily property owners should consider in connection with their purchase and sale agreements, joint venture equity documents, and/or loan documents!

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