



Dealing with the damage: Filing insurance claims after Hurricane Irma (Do's and Don'ts)



Sint Maarten, September 2017

Hurricane Irma has been unimaginably destructive and caused major damages island wide.

To help you out with some important questions that you may have about your insurance, we provide a short reference guide to those aggrieved parties that have to deal with the filing of an insurance claim. The below concerns a non-exhaustive summary of general tips. We advise you to check your individual insurance policies in the greatest possible detail and seek separate legal advice as to your specific situation.

1. Contact your broker and/or Insurance Company as soon as possible:

- An insured has a statutory obligation to inform the insurer immediately after the occurrence of the damage.
- If you have lost your insurance policy, you should request your insurance company to provide you with a copy of all applicable policy conditions and a duplicate of the Policy Schedule / Certificate, including its endorsements.
- Even if you cannot oversee the exact extent of the damage yet, reporting the damage is a must and will avoid the insurance company from relying on an exemption clause concerning untimely notification.

- You can check the website of your insurance company for online claim forms.

2. Make sure your premium payments are up to date:

- In case of a payment plan for the yearly insurance premium, there might have been an outstanding balance at the moment of the hurricane. A common clause of payment plans is that the rest of the yearly premium needs to be paid when submitting a claim under the policy before they will indemnify the damages. We advise to carefully verify your payment arrangements.

3. Document your loss:

- Make a thorough list of your property that has been lost or damaged. Provide copies of purchase receipts or estimate how much the belongings cost and when they were purchased;
- Take photographs and record video of every area of the damaged property;
- Don't throw away any damaged items before documenting their status and/or verifying with the insurance company whether the items need to be assessed by an insurance loss adjuster first;
- Don't make permanent repairs until you or a loss adjuster have documented the damage;

- Don't rely on visual inspection only, nor suggest that the list provided to the company is exhaustive;
- Preserve any and all rights in respect of hidden damages.

4. Take all reasonable measures to prevent or minimize damage or loss:

- Independent from any policy conditions, the insured is also obliged by law to act fast and do all that is necessary to prevent or reduce damage.
- The costs involved with the measures taken by the insured to prevent or reduce damage have to be borne by the insurer, even if these costs, when added to the damage suffered, would exceed the maximum sum insured or if the efforts made appear to have been fruitless.
- The insurance company cannot blame the insured for taking certain measures that later on appeared to be unnecessary because the severity of the danger was less than anticipated.

5. Ask for an advance payment:

- The lack of money to take measures to prevent or minimize the damage or loss does not release an insured from his obligation to ensure that such measures will be taken.

This means that the insured has to inform the insurance company if he cannot pay for the costs and request the insurance company to pay an advance to this respect.

- The advance could for example see to costs related to permanent or emergency repairs, but also concern the financing of the restocking of the business in order to limit business interruption (when covered).

6. Be pro-active:

- In exceptional circumstances like these, it can sometimes take several weeks to get an insurance loss adjuster to evaluate a property. If it takes too long for the insurance loss adjuster to come to inspect the damages and you cannot wait because you have to make (emergency) repairs and prevent continuing business interruption, then you can opt to appoint your own independent loss adjuster. This will speed up the process and safeguard your own interests. The costs of the independent loss adjuster has to be paid for by the insurer, provided that these costs meet the double test of reasonableness. Even if these costs, when added to the damage suffered, would exceed the maximum sum insured.
- The sooner you specify and substantiate your damages the sooner settlement or an advance can follow.

7. Take notes:

- Write down any information about the claim settlement process (such as the assigned claim number, name and contact information of the insurance company's claim handler and the loss adjuster);
- Keep record of the dates on which there was contact and what has been discussed. If possible get them to send you a confirmation or confirm what was discussed and send it back to the person via email;
- Ask questions and insist on answers if certain matters or policy conditions are unclear. If the Insurer will not commit or confirm, note the questions you asked and document that the Insurer would not respond to the content. The policy conditions must be clearly and comprehensively formulated in relation to a non-professional insured person. In case of doubt about the meaning of a condition, the most favorable interpretation for the insured prevails.

8. Use terminology wisely:

- During every contact with your insurance company, broker or adjuster, what you say or write matters. When discussing an insurance claim, try to avoid set-in-stone terms since the use of wrong terminology might void your coverage. For example, damage caused by flooding might be

excluded from coverage, while damage due to rainwater not. In such cases it is important to determine the cause of the water damage before using terminology such as flooding.

- Don't make assumptions when providing the insurance company with required information. If you are not sure about a certain fact, do not state it as a fact. The providing of wrong information might be considered insurance fraud causing the forfeiture of all rights under the insurance policy.

9. Scrutinize any (legal) document carefully that you are asked to sign:

- Insurance companies may prefer to settle a claim against full and final settlement. For this reason, the insurance company will most likely require you to sign a document that you accept their payment as a full and final settlement. These documents, for example, go by the name "form of acceptance", "discharge voucher", "release form" or "discharge receipt". If the payment does not amount to the maximum sum insured nor covers all your damages, then you should consider accepting payment under explicit preservation of rights in regard to the remaining damages and/or unpaid expenses.

10. Don't settle for less:

- Policyholders who are under stress to get their damage repaired sometimes settle for less than adequate compensation. Don't let yourself be pressured by the circumstances into signing a full and final release. Remember that you have the right to receive payment by the insurance company of the undisputed amount of damages and you can always proceed with dispute resolution in regard to the remainder of the claim.

- If you do not agree to the amount of damages as determined by the insurance company and/or their loss adjuster, you are entitled to appoint an expert to get a second opinion. These costs, if reasonable, are eligible for compensation since they are costs to determine the amount of damages, and have to be paid for by the insurance company. Even if these costs, when added to the damage suffered, would exceed the maximum sum insured.

- Any insurance clause limiting the amount for compensation to the costs of the insurance company's own expert is invalid.



HBN Law
SINCE 1938



CONTACT INFORMATION

For more information please contact:

HBN Law Sint Maarten
The Vineyard Building
W.G. Buncamperroad 33
Philipsburg, Sint Maarten
T: +(1721) 542-2272
F: +(1721) 542-4381

Eric R. de Vries
eric.devries@hbnlaw.com
M: +(5999) 434 3300

Chris van Amersfoort
chris.vanamersfoort@hbnlaw.com
M: +(31) 6 13155249

Charles Rutte
Charles.rutte@hbnlaw.com
M: +(721) 554 8535

HBN Law Amsterdam
Concertgebouwplein 7
1071 LL Amsterdam, Nederland
T +31 20 303 3020
F +31 20 671 8008
info@hbnlaw.com

HBN Law Aruba
Beatrixstraat 38
Oranjestad, Aruba
T +297 588 6060
F +297 588 6668
info@hbnlaw.com

HBN Law Bonaire
Kaya Korona 40
Kralendijk, Bonaire
T +599 717 6944
F +599 717 5628
info@hbnlaw.com

HBN Law Curaçao
Huize Belvédère, L.B. Smithplein 3
Willemstad, Curaçao
T +5999 434 3300
F +5999 434 3355
info@hbnlaw.com

HBN Law St. Maarten
W.G. Buncamper Road 33
Philipsburg, St. Maarten
T +1 721 542 2272
F +1 721 542 4381
info@hbnlaw.com