1 – The Property Claims Handling Process

**1 – How The Claims Handling Process Applies to Property Losses**

**Objective**: Explain how the claims handling process applies to property losses.

Promptly resolved, equitable claim settlements are crucial to a claims representative’s ability to help insured’s lives return to normal after their possessions have been damaged, destroyed, or stolen. That’s why the claims handling process facilitates efficient and fair settlement.

The claims handling process is triggered when the insurer is notified of the loss. This might be done through a loss notice form that includes basic information about the loss, by phone, through an agent or broker, or through an app that allows the insured to include photos of damaged property. After the loss notice is received, the insurer begins the claims handling process.

Regardless of the applicable coverage, the claims handling process involves six main activities:

**A - Acknowledging and Assigning the Claim**

**The first activity in the claims handling process is acknowledging receipt of the claim and assigning it to a claims representative**. The insurer sends the insured and acknowledgment notice informing the insured that the claim has been received. Some insurers acknowledge the claim when they receive the loss notice, and other insurers acknowledge the claim after the claim rep has been assigned.

Some insurers’ systems will assign the loss to a claim representative based on geographic territory, type of claim, size of claim, need for an on-site inspection, or claims rep availability. Other insurers have their Claims supervisor or manager make the assignment according to the skill level of their claims representatives. I some cases, claims management may assign the loss to an independent adjuster. Most often, the independent adjuster receives the assignment by a phone call that is followed with any special handling instructions, relevant policy data, and other pertinent claims documents.

**B – Identifying the Policy**

**After receiving the assignment, the claim rep identifies the policy in force on the date of the loss and reviews the policy.** The claims rep should determine whether the claimant is an insured under the policy, whether the loss occurred at a covered location and within the policy period, and whether the policy covers the type of loss reported.

The claim rep should read the applicable policy forms carefully, mindful of coverage questions. Example, a theft claim being filed under a named-perils policy that does not include theft? Is the insured a tenant who is claiming building damage under a personal property form? The claim rep should examine limitations and exclusions. Perhaps an insured homeowner has just reported theft of $5,000 in cash during a break-in, but the Insured’s homeowner policy has a $200 limit on money. A nonwaiver agreement may be necessary if policy violations are known, such as late reporting or discarding of the damaged property before inspection.

The claims representatives sometimes must consult with an expert to determine issues such as the cause of loss. Perhaps a computer network broke down shortly after a thunderstorm, and the claim rep must determine whether it was damaged by lightning (a covered peril under the policy) or suffered a coincidental mechanical breakdown (excluded by the policy). The typical claim rep may not have the expertise to make such determinations, but an expert can expedite the coverage decision. If an expert is needed, the claim rep should schedule the first meeting with the insured so that the expert can attend.

**The claim rep usually reviews the policy before contacting the insured and inspecting the loss. If the coverage verification and review cannot be completed before contacting the insured, the claim rep must take care not to say or do anything that might waive any policy defenses. If the claim has been assigned to an independent adjuster, the insurer’s claim supervisor/claim resp must advise the independent adjuster of the coverage. Coverage reviews should occur throughout the course of investigation as new information is learned**.

**C – Contacting the Insured**

The claim reps initial contact with the insured often sets the tone for the adjustment process. Many insureds probably consider the loss a major disruption and may never have made a property claim before. **The claim rep sets the proper tone for the handling of the claim with advice, explanation, and assistance throughout contacts with the insured**.

During the initial conversation, the claim rep learns essential facts about the loss and the extent of damage. The claim rep might have to direct the insured to protect the property from further damage, such as instructing the insured to board up windows following a serious fire. The claim rep can also make an appointment to inspect the loss site or advise the insured of who will inspect the site. This conversation can help the claim rep make some preliminary decisions about the need for outside vendors, such as a restoration company, to assist with the loss adjustment.

During the initial contact, the claim rep may also learn that the insured has retained a public adjuster or an attorney. In these instances, the claim rep should discuss claim-related issues with the public adjuster or attorney.

Most insureds do not fully understand the details of their insurance policies. The claim rep must explain the policy and its meaning in relation to the loss. **The claim rep should also explain any possible policy violations, exclusions, or limitations that could affect coverage because withholding that information can be considered a breach of the claim rep’s or insurer’s duties**. The claim rep must be careful to avoid giving the insured or the claimant the impression that a claim will be paid when there may be grounds to deny the claim. At the initial meeting, the claim rep should explain the adjustment process and take these actions:

* Explain what inspection, appraisal, and investigation of the claim rep will conduct
* Tell the insured what is required to protect the property and to present the claim
* Supply the insured with blank inventory forms, a blank proof of loss form, and any necessary written instructions
* Explain potential coverage questions or policy limitations or exclusions and obtain a nonwaiver agreement when necessary. Be prepared to tell the insured what additional investigation is needed to resolve potential coverage issues
* Explain the time involved to process and conclude the claim
* Assist the insured in protecting the property by arranging for board-up, storage, and restoration and cleaning firms (when appropriate)
* Make emergency advance payments to the insured for clothing, living expense, food, or other expenses, and obtain an appropriate receipt for the payment when the circumstances support such a payment

**D – Investigating and Documenting the Claim**

**Proper investigation is the basis of every claim settlement. The investigation’s focus should be on obtaining information that will help determine the cause of loss, the associated damages, applicable coverages, and the amount of the covered loss**.

Property losses range in complexity and can even require a team of experts to perform specialized tasks. Example, if an insured suffers a significant home fire loss, the claim rep can utilize expert services to arrange temporary living accommodations, temporary board up, cleaning, restoration, personal property inventory identification evaluation, and so forth. Insurers generally have approved lists of experts that have been previously vetted. It is the claim rep responsibility to direct and coordinate the use of experts.

The property policy lists specific actions that the insured must perform during the investigation. These are called the insured’s duties after a loss. Unless they suspect fraud or lack of coverage for the loss, claim reps should work with insureds to accomplish those duties.

As claim reps perform activities in their investigation, they must document what was done to investigate, adjust, settle, and otherwise resolve the claim. Some states require claim files to contain all notes and work papers in enough detail to facilitate reconstruction of the pertinent file events and dates. File documentation consists of:

* File status notes – an activity log most accurately reflect and document investigations, evaluations, coverage decisions, and settlement details. Clear, concise, and accurate file notes are essential because a claim file must speak for itself. The notes should contain all the pertinent activities undertaken and present them in chronological order. Factual, Fair, and Balanced.
* Reports – three types of reports are most commonly used are Preliminary, Status (or Interim), and Summarizes (or Captioned). Preliminary usually acknowledge receipt of the claim, initial activity, suggested reserves on certain coverages, advise of coverage questions, and requests for assistance or guidance. Status (Interim) usually filed periodically 15 – 30 days after assignment. **Summarized when the loss size or settlement authority exceeds a set amount, coverage denial, and where arson or fraud is suspected.**
* Other documentation – emails or texts. Letters and attachments sent and received. The claim rep should communicate to the insured in writing when making requests for documentation and compliance with policy conditions.

**E - Determining Cause of Loss, Liability, and Loss Amount**

If the cause of loss is uncertain, the claim rep may confer with someone in the claim department or hire an expert to aid in determining the cause of loss. Example, for a serious fire, it is common for claim reps to use the services of an origin-and-cause expert. After the cause of loss has been established the claim rep can determine whether the policy covers the loss.

Claim reps are asked to determine liability for subrogation potential. The claim reps investigation can determine that a third party is potentially legally liable for the loss. The insurer has a right to seek reimbursement of its payment from the responsible third party. Example, a kitchen fire may have occurred because of a defective coffee maker. Experts can be employed to gather and preserve evidence, to analyze and report on the cause of loss, and to testify if needed. If an expert is not hired, it is the claim rep’s duty to gather and preserve the evidence.

Investigation establishes the amount of the loss. The claim rep documents the value of the property, the amount of loss to the property, and the amount claimed under the policy. **The amount claimed under the policy is determined by reviewing the policy for coverage limits and extensions, deductibles, coinsurance or other insurance-to-value conditions, and the loss payment condition**. Negotiations as to the extent of loss often occur at this time.

**F - Concluding the Claim**

The claim rep concludes the claim by either payment or denying the claim. When a covered claim is settled through negotiation or other means, the claim rep must issue a claim payment. Claim payments can be made by check, draft, or electronic funds transfer. When issue a claim payment, the claim rep must ensure that the proper parties are paid, such as a mortgageholder on the insured building. Claim reps must also check various databases to ensure that the claim payment complies with federal and state law. The office of Foreign Asset Control, US Dept of Treasury, requires all claims payers to check the master list of potential terrorists and drug traffickers before making a claim payment.

A claim may conclude with denial. Before denying a claim, the claim rep must analyze the coverage carefully, investigate the loss thoroughly, and evaluate the claim fairly and objectively. When the investigation reveals that coverage is not provided under the policy or when an insured fails to meet a policy condition, the claim rep must make a timely claim denial. Insurers often have strict guidelines for denying a claim that include management’s approval to issue the denial.

Once authority has been given to deny a claim, the claim reps timely prepares a denial letter for review by management for compliance with jurisdictional requirements**. A denial letter must usually state all the reasons for the claim denial, quote specific policy language, and relate the policy provisions to the facts of the loss. Also, the insured is invited to submit additional information that would give the insurer cause to reevaluate the claim**. The denial letter is sent by certified mail with return receipt requested. Some insurers also send a copy by regular mail, marked “personal and confidential”, in case the certified mail is not claimed.

**2 – Handling Claims that Involve Public Adjusters**

**Objective**: Describe public adjuster’s role in claims handling process.

Property adjusters representing insurers should be prepared to handle claims that involve a public adjuster representing the insured.

**Public adjusters are active in many states and metropolitan areas. They help insureds present claims to insurers for a fee**. Although some claims lead to disputes between public adjusters and insurer-employed adjusters, the goal of both is the proper adjustment of the insured’s claim.

**Public Adjuster’s Role**

Public adjusters are most often involved in presenting fire claims to insurers, but they also handle property losses caused by other covered perils. **The fee for their service** is typically 10-15% of the amount paid under the policy.

Hired by insureds to act on behalf of insureds, **public adjusters perform many of the duties required of insureds in presenting and documenting claims.** They analyze the scene and prepare a scope of the loss, prepare inventories, and obtain repair or reconstruction estimates in connection with personal property and structure losses. They also assist insureds in documenting and presenting claims for additional living expense and fair rental value (for personal lines customers) and loss of business income and extra expense (for commercial customers). Finally, they are involved in the settlement negotiations and sometime act as appraisers when differences arise regarding the amount recoverable in accordance with policy conditions. Because of public adjusters’ knowledge of property policies and experience in claims, **they can help insureds** by:

* Presenting claims in an organized manner, which may expedite settlement
* Compiling and documenting claims to fulfill the insured’s obligations under the policy and allow the insured to focus on other tasks
* Reassuring the insured that the claim settlement is fair

Because **most states require public adjusters to be licensed,** they meet certain minimum qualifications based on experience and education. Most public adjusters have worked as property adjusters for one or more insurers. They generally have extensive knowledge of property policies and insurer’s claims procedures. **Many public adjusting firms belong to the National Association of Public Insurance Adjusters (NAPIA)**. The association was founded in 1951 **and seeks to establish ethical and professional standards for representing insureds before insurers.**

Many states have laws requiring public adjusters to be licensed. In the few states that do not have such laws, public adjusting is considered an unauthorized practice of law, although some states license insurance consultants who perform the same function as public adjusters.

**Dealing With Public Adjusters**

Public adjusters can help or hinder efficient claims processing, depending on the public adjuster or public adjusting firm with whom the insurer is dealing and the claim’s circumstances. When problems arise with public adjusters, the problems are usually related to how a public adjuster has procured business from the insured and the manner in which the public adjuster has evaluated and presented the insured’s claim.

Public adjusters may obtain business by monitoring police and fire calls and appearing on the scene immediately after a loss. Unfortunately, some public adjusters take advantage of the insured’s vulnerable position by causing the insured to distrust the insurer by indicating that a fair settlement cannot be reached unless a public adjuster is retained. The insured’s resulting anxiety might cause him or her to hire a public adjuster.

Public adjusters are usually paid a percentage of the amount paid to the insured by the insurer. This fee arrangement may encourage some public adjusters to overstate or exaggerate, and in some cases to misrepresent, the extent and/or amount of loss to increase the amount of recovery. For example, disputes might occur overt eh cost to repair or replace structures. Public adjuster also may submit bids from contractors who routinely work with them, which can make reaching an agreement on scope and price difficult.

During claims adjusting, some public adjusters resist or delay the submission of documentation, books and records, and inventories, and object to other request to which the insurer is entitled under the policy. Such public adjusters must be **reminded that compliance with all policy conditions is a prerequisite to payment**. Public adjusters might also appear at examinations under oath to try to object to questions posed to the insureds by claims personnel and the insurer’s attorneys even thought they have no contractual or other legal right to do so.

**An adjuster representing the insurer should handle a claim involving a public adjuster just as professionally and expediently as if the adjuster were dealing directly with the insured**.

**3 – Investigating and Documenting Property Claims**

**Objective**: Explain how to take statements and document essential information when investigating a property claim.

The insured is responsible for providing proof of the claimed loss, and the claims rep must thoroughly investigate and document the loss – so the rep needs to know how to take statements from the insured and witnesses, examine books and records, take photos or videos of the loss scene, draw diagrams, and create a scope of the loss.

During a storm, lightning strikes a large oak tree, causing it to crash into the insured’s organic specialty food store.

To begin the claim investigation, the claim rep meets with the insured at the store and takes a statement to establish ownership of the property and the extent of the loss. The rep requests various records from the insured, such as ownership title, invoice, and order forms or receipts for the damaged inventory. To asses the building damage, the rep takes photos or video, creates a diagram with measurements of the damage to the building and prepares a scope (or scope sheet) and estimate of the building damage.

**Scope: a list of the areas damaged that includes the type of damage, a description of the proposed action to take regarding the damaged property (such as repair, replace, remove, or demolish), and the area’s measurements**.

The rep will guide the insured in documenting damaged inventory and other business personal property.

**Statements of the Insured and Witnesses**

The claim rep might not need to take the insured’s statement if the claim is small or uncomplicated, the facts of the loss are clear, and coverage applies. **In larger more complicated losses, especially those involving a coverage question or suspected insurance fraud, the insured’s statement is an essential part of the investigation.**

**The purposes of the statement are to establish the property’s ownership, the extent of the loss the cause of loss, and the facts surrounding the loss. And for subrogation purposes, the insurer may need to determine whether any third party is responsible for the loss**.

While statements can be either written or recorded, most are recorded. Many insurers provide their claim reps with software or apps that enable mobile devices to record a statement and instantaneously add it to the claim file, saving the time and money it would cost to have the statement transcribed. The statement usually follows this format:

1. Identity of the insured
2. The ownership or, or interest in, the property
3. The existence of other insurance
4. The existence of mortgages or encumbrances
5. The facts and cause of the loss, including the insured’s whereabouts at the time of loss, the presence of any witnesses, and the involvement of the police or fire department
6. A description of the damaged property, including the nature and extent of the loss or damage to personal and real property, plus information regarding other losses that the policy might cover, such as loss of business income
7. The establishment of a basis for subrogation, including identifying individuals or organizations who might be responsible for the damage.

Statement taking is a skill developed through preparation and practice. The claim rep must review the initial report an analyze the information at hand, including the policy, so that he or she can develop specific questions that fit the particular claim. Some claim reps use statement outlines, which can be useful guides but should not be the sole source of questions. They can be too restrictive or may not address key issues in a particular claim. Using a statement outline can also lead the claim rep to concentrate on asking the next question rather than listening to answers, resulting in a failure to ask crucial follow-up questions.

In some jurisdictions, obtaining a statement might waive the insurer’s right to an examination of the insured under oath; it may also waive the requirement that the insured file a sworn statement in a proof of loss. This waiver is based on the theory that the insurer has been fully informed of all the information that would normally be supplied by an insured’s compliance with these conditions. **Using a nonwaiver agreement avoids the problem of waiving any conditions.**

The claim rep may need to take witness statement when gathering information regarding the cause of loss, especially if fraud is suspected. Witnesses can be identified through police reports, information provided by the insured, and witness canvassing. A witness canvass involves contacting residents of the neighborhood, people living round the insured’s residence, or people or businesses near the loss location. When making contacts, the claim rep should provide his or her identification, state that the purpose of the contact is to locate anyone with knowledge regarding the occurrence, and then obtain a statement when appropriate.

**Documentation**

**Claim reps must document the extent of the loss or damage for these reasons:**

* **To identify the property for coverage, limits, and conditions**
* **To inform the insurer of the amount of the loss so that reserves can be established**
* **To establish the cost of repairs or replacement for settlement**
* **To minimize disputes with the insured over the amount payable**
* **To help contractors prepare bids for repair or reconstruction**

To document a loss, the claim rep may have to obtain and review records, photograph and videotape the loss site, draw floor plans and diagrams, prepare scopes of the damage and estimates, assist the insured with inventories, and review financial records. The documentation required varies depending on the type of loss. Most insurers have guidelines that outline the specific ways to document a particular loss.

New technology provides claim rep with an array of solutions for documenting claims, enabling reps to, for example, measure without a measuring tape, create floor plans and diagrams with minimal effort, measure a roof without climbing a ladder, and remotely access vast amounts of information. Different members of a claims team can share data from the claim file instantaneously and without duplicating work.

**Records**

The insured is obligated to prove the facts of loss, but the claim rep can help by explaining specifically what is needed. The insured often doesn’t have all of the information the claim rep needs at the first meeting, and in many cases, the insured needs to organize and submit bills or invoices to substantiate purchases and values later. Some insurers provide apps that allow the claim rep to scan a copy of any records the insured has available during an on-site visit and add it directly to the claim file.

**The types of records needed will vary based on the property damaged.** Example; in a commercial property loss, relevant records may include the most recent stock inventory, purchase orders, invoices, and receipts. When investigating building damage, leases and title are usually needed. The insured’s general ledger, banking records, and tax statements can serve as records for loss of business income claims. **In a theft from a residence, some of the documentation the claim rep might request includes bills or receipts for the claimed items, credit card statement, photos, videos, an appraisal, and instruction manuals or warranties that prove the insured owned the claimed items.**

**Photos and Videos**

**During the initial property inspection, photos or videos should be taken to document the type of property, the nature and extent of the damage, the presence or absence of damage to the structure and contents, the types of construction material used, and the overall condition of the premises**

**For structural damage**, the claim rep should start by photographing the exterior of the building, including the roof (if damaged) and all sides. **The rep should then move to the interior, usually starting with the main entrance**, and take enough photos in each room to thoroughly document the damage. Claim reps may be able to take aerial imagery of roofs instead of climbing a latter to take the photos. When taking videos, the rep can add narration that includes the date, identifying information, and comments regarding the property.

Photos should be taken of personal property, contents, merchandise and equipment. Close-ups of the damaged property might be necessary to document damage or show nameplates with an item’s manufacturer’s name, model, and serial number.

**Floor Plans and Diagrams**

**Floor plans and diagrams are helpful in depicting the structure’s size, the damaged areas,** and **the extent of the damage**. **These documents enable the claim rep to calculate repair costs and explain the extent of the loss to an insure**r. For smaller losses, the entire structure normally isn’t diagrammed, but a complete floor plan is essential for larger losses.

Property-adjustment software allows claim reps to create floor plans and diagrams on their tablets or other devices. Many reps use hand-held laser measuring devices for more rapid and accurate measurements. The claim rep typically starts by measuring and diagramming the structure’s entire exterior perimeter, then the interior rooms. In addition to a floor plan, side elevation diagrams are sometimes drawn to illustrate gable ends and unusual or oddly shaped structure so that repair costs can be estimated. When the roof is involved, it must be measured. Claim reps may have access to an app that, along with aerial images, provides a sketch of the roof, including its dimensions, slopes, and other characteristics.

**Scope and Estimate**

Software allows the claim rep to create the diagram and scope at the same time. The software for estimating building losses accesses current local databases to determine cost estimates using the reps entries. The Reps scope of needed repairs and the estimate for the cost of repairs are then merged.

**A preliminary scope is normally provided to the insurer with initial reports and it’s also commonly provided to the contractors that have been asked to submit repair or reconstruction bids. The preliminary scope allows the contractor to prepare a bid that covers the same items as the claim reps scope.**

Claim reps can also use the scope to ensure proper reserving, agree on settlement directly with the insured when contractor’s bids aren’t required, and **compare contractors’ bids when appropriate**. In the last case, **a line-by-line comparison of items can be made to ensure that the contractors included all the areas/items requiring repair and to confirm that their cost of repair is fair and reasonable**.

If the contractor’s repair costs differ, the claim rep can discuss that particular item with each contractor and adjust the cost accordingly. The goal is to achieve an agreement with all contractors so that settlement can be reached with the insured.

**Inventory and Other Personal Property**

One of the insured’s duties after a property loss is to prepare an inventory of damaged property. The claim rep often provides the insured with inventory forms and guidance on completing them correctly. To assist the insured when numerous items of property are damaged, the insurer may retain the services of a consultant to assist the insured with compiling the inventory and values.

The claim rep should examine the damaged property and note which items can be repaired and which should be replaced. The rep should also note any property that might be obsolete or no longer available. To the insured, these items might have had some functional or sentimental value but have relatively low actual cash value. Some insurers seek assistance form personal property valuation software with a database of local pricing.

**4 – Use of Experts in Property Claims**

**Objective**: Recommend the appropriate type of expert to address a described need or problem in a property claim.

Experts are commonly used in property claims to determine facts, to verify the extent of loss or damage, and to estimate the value of loss to real and personal property.

The ultimate purpose of using experts is to assist the claim rep in determining whether the claim is payable and how mush should be paid. In claims that have the potential for subrogation, experts are consulted to ascertain and establish the facts that would show whether the insurer has the right to seek reimbursement from a third party for the amount paid on the loss. Several types of experts can be used in connection with property claims.

**Origin and Cause Experts**

**Origin and cause experts have an extensive background in fire science and arson investigation. They determine whether a fire was accidental or intentionally started and the identity of the person, organization, or entity that might have been responsible for the fire. The origin and cause expert’s work includes investigating the scene at which the loss occurred and sometimes contacting witnesses**. Private investigators and engineers can assist origin and cause experts when such expertise is required.

**Private Investigators**

Private investigators are typically employed when insurance fraud is suspected. They can also be used in connection with other intensive investigations. In most states, they must be licensed. They have the knowledge and skills required to obtain information for their clients from witnesses, public records, and law enforcement agencies.

Insurers can use the information gathered by private investigators to reach coverage decisions, determine whether insurance fraud is being attempted, and document potential subrogation. **Private investigators can work with origin and cause experts to establish facts that would determine whether an insured or someone at the insured’s direction is guilty of arson**. In personal property losses, private investigators can contact witnesses and retailers to confirm ownership.

**Accountants**

Claim reps should have some knowledge of accounting, especially in connection with the handling of business losses. Nevertheless, accountants specializing in claims and legal matters are occasionally needed to resolve financial issues related to property claims.

**Claims accountants are often used to verify the extent of business merchandise or stock losses as well as business interruption losses. An accountant can help resolve cases in which the insured might have overstated or exaggerate the amount of a loss in the claim**.

Accountants can also determine the financial condition of the insured’s business and whether the insured actually had the fund to purchase the property that was purportedly stolen or destroyed. Example; an insured might claim that a large amount of property was purchase within 6 months to a year before the date of loss. **An accountant, using books and records and some times testimony obtained through an examination under oath (EUO), can determine whether the insured had the funds to purchase the items claimed to have been destroyed or stolen.**

**Restoration Specialist**

**Restoration specialist are firms specializing in cleaning structures, equipment, stock, merchandise, and personal property following a loss caused by fire, smoke, water, windstorm, or another peril**.

Claim reps usually consult restoration specialist immediately after receiving the initial report so that steps can be taken to limit the amount of damage and protect the property from further damage. Household goods, personal property, merchandise, stock, and equipment are often moved to a restoration firm’s plant or warehouse for further processing and cleaning. The removal of such items also facilitates the structure’s cleaning, repair, and reconstruction. Restoration specialists can remove, clean, and dry carpets that have been damaged by smoke or water, they also clean and prepare interior walls and floors for painting and other repair work.

**Salvors**

**Salvors are mainly used in connection with business losses to separate damaged from undamaged merchandise, supplies, and equipment; to prepare inventories of damaged and destroyed property; and to establish values of damaged or destroyed business property**. They can also inventory the entire stock of merchandise or supplies so that the insurer can determine whether a coinsurance penalty should apply or to confirm that the claimed amount of loss is accurate. Salvors are also employed to sell salvage or, by arrangement, to purchase salvage. Salvors are rarely used on homeowners claims except when the amount of loss is large.

**Attorneys**

**Attorneys commonly provide advice and counsel to insurers on coverage issues and on investigations of complex claims. Insurers often retain attorneys to help direct investigations**. They might conduct an investigation by formally requesting the insured’s books and records and by conducting an EUOs in these circumstances:

* Coverage might be in questions
* The amount of loss payable is in dispute
* Insurance fraud is suspected

Attorneys provide accountants with copies of books and financial records as well as transcripts of testimony given during an EUO so that coverage and settlement disputes can be resolved. Attorneys also offer legal opinions and make recommendations to insurers regarding a claim’s ultimate disposition. **Attorneys can also file suit on the behalf of the insurer to pursue subrogation, to resolve coverage disputes through declaratory relief actions, and to defend insurers against suits by insureds.**

Many law firms specialize in subrogation and typically handle cases on

Select one:

A. A contingent fee basis.

B. A sliding fee scale.

C. An hourly fee basis.

***Incorrect***

***Incorrect. Law firms which specialize in subrogation typically handle cases on a contingent fee basis.***

D. A flat fee basis.

**Engineers**

**Electrical engineers, mechanical engineers, and other engineers are occasionally needed to resolve issues related to the cause of loss. However, they are usually employed to document for subrogation purposes** whether a third party or manufacturer is responsible for a fire or another cause of loss. An electrical engineer for example, is sometimes used along with an origin and cause expert to establish whether a fire was accidental or whether is was caused by a defective or malfunctioning electrical device.

**Architects**

**Architects are sometimes needed to draw plans and provide specifications for partial or complete reconstruction of structures**. Plans are needed so that contractors can calculate accurate estimates or bids and can obtain remodeling or building permits. Architects can also be consulted to formulate engineering specifications and for special equipment.

**Appraisers**

**Appraisers are needed to establish the value of personal property, merchandise, equipment, and real property for settlement or for resolving disputes about the amount of loss**. An appraiser can be anyone who has specialized knowledge of the kinds of property involved and their values. Some might be certified as appraisers in certain fields by professional organizations, such as the International Society of Appraisers or the American Association of Appraisers, others such as real estate appraisers, are usually licensed by the state in which they do business.

**Contractors**

Building contractors are often asked, sometimes on an emergency basis, to repair structures damaged by fire, water, windstorm and other covered perils. However, in a dispute over the amount payable, building contractors can also act as appraisers.

**Conflicts of Interest**

**Conflicts of interest can arise between an expert, claims rep, and/or an insured whenever anyone receives gratuities or when a relationship is so close that there is an appearance of impropriety.** When an appraiser (the expert) is needed to establish the amount recoverable in connection with a fire loss, that appraiser, whether a contractor or an antiques dealer, should be impartial. **The word “impartial” means that any appraiser may not be closely related to, a friend of, or economically dependent on, the insurer, insured, or claim rep**. If the appraiser is not impartial and a conflict of interest exists, the appraisal award might not be binding and might be voided by either party unless the other party agrees to waive any objection before the proceedings. Therefor, the claim rep must choose experts carefully and keep the relationship on a professional level.

**5 – Pursuing Subrogation and Reinsurance Recoveries**

**Objective**: Explain how insurers and claim reps pursue subrogation and reinsurance recoveries for covered property losses.

During and after the claim handling process, the claim rep must conscientiously pursue the insurer’s right of recovery against any responsible third party. **If notification of reinsurers is not handled by another process, the claim rep must also recognize when a policy is subject to reinsurance so that proper notices and reports can be distributed**.

An insurer that pays a covered claim has the right to seek reimbursement and recover the amount paid from a third party that is legally liable for the loss or damage. This is called the right of subrogation. The insurer s said to be subrogated to the rights of the insured, which is the party that would normally have a right to receive payment for damages. Subrogation is the substitution of one person or entity for another in a claim. When the policy is subject to reinsurance, the insurer must notify the reinsurer.

**Subrogation**

**Subrogation rights are established by insurance policies and by law**. Insurance policies include provisions regarding the insured’s role in the subrogation, the waiver of subrogation, and the subrogation amount. The insurer’s right to subrogation is established and expressed in the policy under a condition often referred to generically as the subrogation clause. The transfer of Rights of Recovery Against Others to Us Clause in the ISO Commercial property policy.

Additionally, the insurer has a right of subrogation implied in law, regardless of whether the policy expresses such a provision.

**Insured’s Role in Subrogation**

Most subrogation clauses require the insured to cooperate with the insurer by executing assignment of rights to the insurer, also known as subrogation agreement. The insured’s sworn proof of loss often contains the subrogation agreement, or assignment. Additionally, **the subrogation agreement typically requires the insured to give testimony and appear in court when necessary so the insurer can establish the legal basis to recover.**

**An insured might breach the subrogation condition by impairing or interfering with the insurer’s right of subrogation, by failing to cooperate in preserving evidence, by giving or failing to give testimony, or by releasing the responsible party from the liability following the loss**. In cases of a breach by the insured, the insurer would have a right to collect damages from the insured in the amount that would have been recoverable from the responsible 3rd party.

Some policies permit the insured to waive rights of recovery before a loss. In those cases, the insurer waives its right of subrogation. Lease agreements between landlords and tenants typically contain waivers of liability or subrogation. **Construction contracts often contain waivers of subrogation clauses in them**. In bailment situation, the insured might also release a 3rd party before a loss. Example, if the insured has placed personal property in the custody of other parties, the insured might be required, as a condition of the bailment, to waive the claim or release liability. If the insurer has not permitted a release of liability by the insured before a loss and the insured has executed a release or waiver before a loss, the insurer will not be liable for the loss claimed under the policy. **It is very important for the claim rep to determine early in the claim handling process whether the insured has granted waivers of recovery that were not permitted by the insurance policy.**

**Amount of Subrogation**

**The insurer has the right to receive only the amount that has been paid. The insurer would have no right of recovery for losses that the insured retains because of lack of coverage, exclusions, or limitations of coverage under the policy.**  Thus, both the insurer and the insured might have right to recover damages against a responsible 3rd party. When insureds retain only a deductible amount on, insurers commonly pursue recovery of that deductible amount on their behalf.

The decision to pursue subrogation usually includes consideration of the cost involved and the likelihood of success. This is especially true if litigation is needed to pursue subrogation. Therefore, there may be times when the insurer decides that pursuing subrogation is not cost-effective. However, the insurer’s decision does not preclude the insured from pursuing a third party for the unpaid portions of his or her claim.

**Typical Claim Situations**

Claim reps encounter many situations in daily claims handling in which a 3rd party is legally liable for damages, such as:

* Negligent operation or malfunctioning of equipment, such as automobiles, trucks, heavy equipment, and airplanes
* Fire, explosion, and water losses caused by the negligence of tenants occupying apartments or business complexes
* Fire, explosion, and water losses caused by construction workers at a building site or adjacent to a structure
* Losses resulting from poor workmanship of contractors or subcontractors that occur after work has been completed, such as malfunctioning sprinklers or alarms
* Losses caused by defective or poorly designed products such as electrical appliances
* Water and fire losses caused by owners or landlords failing to maintain plumbing and heating systems
* Losses caused by government entity’s failure to properly maintain public works, such as sewer and water systems
* Losses caused by a utility company’s negligent installation of or failure to maintain gas and electrical lines

All of theses situation have the potential for subrogation. The likelihood of success depends on the thoroughness of the claims investigation and the existence of contract provisions that might negate the pursuit of subrogation.

**Preservation of Evidence**

During the initial investigation into the cause of a loss, the claim rep should be mindful of potential avenues of subro. After a potentially responsible 3rd party is identified, the claim rep should investigate this part of the loss at the same time that the insured’s loss is being investigated. This ensure that evidence will not be discarded or destroyed.

Preserving evidence for use in subro proceedings and subsequent litigation is an important aspect of claims investigation. Without the physical evidence of the cause of the loss, the chances of successfully pursuing a subro claim against the 3rd party are significantly diminished. An insurer can be denied recovery if the evidence is intentionally or negligently lost or destroyed. Similarly, and insurer defending a first party coverage suit might be found liable if evidence is intentionally or negligently lost or destroyed. This is often referred to as spolation of evidence**. The property owner, the claim rep, and the origin-and-cause expert share the responsibility for preserving evidence**.

**Use of Experts in Subrogation**

Claim reps must recognize claim situations that have subrogation potential and must take steps to document the right to recovery through the use of experts, whenever warranted. Experts can be employed to gather and preserve evidence, analyze and report on the cause of loss, and testify in litigated cases. Any expert retained should have a set protocol for collecting and preserving evidence. Example, **The origin and cause report indicates that the fire was accidental. The adjuster and the public adjuster have agreed on the value of the loss. The public adjuster presents the adjuster with a duly executed proof of loss, The adjuster must make a payment within the specified time period from receipt of the proof of loss, usually 30 days under a Building and Personal Property Coverage Form.**

**If an expert is not hired, then the claim rep is responsible for collecting and preserving the evidence. It is advisable to get the property owner’s permission in writing before taking any evidence from the scene.** Photographs or a videotape should be taken of the evidence as it is found. This should document the surrounding area as well. Evidence collected should be clearly marked with the date and time of collection, where it was found, and by whom. Evidence should be stored in a clear container and kept in a locked storage area or compartment. On some losses, many parties will be interested in the evidence. Whenever a claim rep takes possession or relinquishes possession of a piece of evidence, a written receipt should document the transfer of possession, and each party should retain a copy.

After a coverage suit or subro action has ended, the evidence may be disposed of as long as no other litigation is pending. If the property owner’s permission was given to the evidence, the owner should be given notice that it will be destroyed. If other litigation is pending, then all interested parties should be advised that the evidence will be deposed of and a specific date and allowed the opportunity to take possession of the evidence. If an interested party request that the evidence not be destroyed but does not wish to take possession of it, the insurer could recover reasonable storage fees.

**Intercompany Arbitration**

When the responsible party has liability insurance, the insurer that has paid a property loss can present a subro claim for payment. In most cases, the liability insurer responds by paying the entire loss or by making an offer to compromise on the claim, depending on how the liability insurer assesses liability. **When liability or the amount payable is questioned, arbitration can resolve disputes between the insurers**.

Many insurers are members of signatories of the Property Subro Arbitration Agreement. This agreement was created by Arbitrations Forums, Ind., so that insurers would have a means of resolving subro matters without resorting to litigation. A local Arbitration Forums office can tell a claim rep whether another company subscribes to this agreement. **That agreement is mandatory arbitration program for certain claims.**  Member insurers must use arbitration when liability or the amount payable is disputed. It is not used to resolve coverage issues between insurers. **The main benefits of the arbitration program are the savings in litigation expenses and the quick resolution of disputes**.

Intercompany arbitration is accomplished by having the arbitrator(s) review the written submission of the applicant (the party that applied for arbitration) and the respondent (the party that must respond to the applicant’s allegation). Although the case can be presented in person, it usually is not. Therefore, the **claims material presented should be legible and in chronological order**. The arbitration file should be self-explanatory, but it is good practice to highlight or tab specific documents for the arbitrator’s benefit. A well written arbitration statement, outlining the party’s contentions, should accompany the file. **Under the rules of intercompany arbitration, the decision of the arbitrator(s) is final and binding without right or rehearing or appeal except under very limited circumstances, such as lack of jurisdiction.**

**Reinsurance**

Many insured properties are subject to reinsurance. Reinsurers assume the financial consequences of a certain share or amount of loss otherwise payable by the original insurer. Each insurer has its own reinsurance procedures for flagging a policy as being subject to reinsurance. **Each insurer also sets a dollar threshold for the amount of loss that will trigger notice to the reinsurer**.

Many insurers set a threshold of 50% of the retention as the point at which the insurer needs to be given notice of a potential claim. The issue of who actually puts the reinsurer on notice can be handled in different ways. Many insurer have a reinsurance accounting department that perform this function. Insurers may have a flag on the policy in their underwriting and claims processing systems, which automatically notifies the reinsurance accounting department when a claim file is set up with a reserve that exceeds a specified amount. The reinsurance account department would then provide notice to the reinsurer. **If the insurer does not have a separate process or system for notifying reinsurers, then the claim rep needs to recognize when a policy is subject to reinsurance so that the proper notices and reports can be distributed**.

Reinsurers have the right to participate in a claim’s investigation and settlement. The claim rep may have to work with the reinsurer, or the reinsurer may be satisfied with periodic updates from the claim rep. Claim payments and reserve changes often trigger a request for an update on a loss. Because a fiduciary relationship exists between the insurer and the reinsurer, the claim rep must be prepared to share relevant information with the reinsurer.