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## Property Management

### How to handle building component samples following a loss

When dealing with a property loss, both insured and insurer have responsibilities and duties under the insurance policy that they must perform. Every insurance policy outlines the post-loss responsibilities of a policyholder in a section generally referred to as “duties in the event of loss.” These include obligations such as promptly notifying the insurance company of the loss, notifying the police when appropriate, submitting a “Sworn Statement in Proof of Loss” statement and cooperating with the insurance company’s investigation, to name just a few. Another duty found in nearly all insurance policies is described in varying ways as the obligation to, “Permit us [the insurer] to inspect the property and records proving the loss or damage, as well as take samples of damaged property for inspection, testing and analysis.”

Both of these components provide valuable investigative tools to an insurance company. Taking and testing samples of damaged materials assists in evaluating and determining the cause and extent of the loss, evaluating the characteristics and condition of building mate-



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rials, and testing for the presence of any harmful materials. The ability to examine and copy books and records can be necessary to evaluate what, if any, business interruption loss has been sustained and to understand the history of the building or insured structure. However, these investigative tools also can pose risks of loss and/or hardship to a policyholder who must be evaluated and properly mitigated. While both risks warrant discussion, this article will focus on the risks associated with an insurance company’s request for taking samples of damaged property.

When an insurance company exercises its right to take samples or perform intrusive testing of any kind, it is important for the policyholder to fully understand what this request encompasses. The policyholder should know what testing will be done, the purpose of the testing, who will be performing the

testing, who will be performing the repairs at testing locations, if the testing will affect or void any warranties, and specifically how the repairs will be performed. This is especially true when the testing is performed on critical components of the building envelope. Isolated repairs at areas of intrusive testing such as roof systems, building exterior façade like stucco and exterior insulation finishing systems can have a lasting impact on a building’s performance if not performed properly. Unfortunately, most building owners are unlikely to possess the technical expertise to understand the potential impact of these types of repairs and testing or to ensure that the repairs to such areas are done properly.

Obtaining answers to these basic questions can be critical to ensuring irreparable harm is not done to your building. In addition to obtaining answers to these questions, it is critical to obtain confirmation from an insurance company, in writing, that they will take responsibility for any loss or damage resulting from their testing and any subsequent repairs. Additionally, we always recommend that policyholders ask to be added as additional “named insured” not just a “certificate holder” on the liability insurance policy of the companies hired to perform the testing and subsequent repairs. This is critical to ensure that the policyholder has the ability to seek relief from the performing party’s insurance company when appropriate (in the event of damage that results from the testing and a subsequent dispute over the cause and responsibility of such damage).

When making these requests for clarification and assurances of an insurance company, policyholders inevitably can expect to be met with resistance. They can even expect to be met with a hostile and threatening response. An insurance compa-



This repair was performed by a roofer selected by the insurance company. The repair used the wrong roof membrane material, was not repaired in accordance with accepted industry practices and was poorly executed, resulting in water intrusion into a building with high amounts of asbestos-containing materials. This type of mistake was made on nearly 20 buildings of a multifamily community.

ny is likely to reference a policyholder’s obligation to “cooperate” with an insurer throughout the course of the investigation in support of their resistance to providing assurances. When communicating these types of requests to an insurance company, it is important for policyholders to clarify and reiterate to their insurance company that the goal is to cooperate and that no attempt is being made to interfere or prohibit exercising of rights under the policy. Ultimately, if after making these professional and polite requests the insurer declines to provide assurances or clarification, I would encourage all policyholders to allow the testing to be performed. However, in all testing scenarios it is critical that the policyholders retain their own consultant such as an engineer, professional roofing consultant, building consultant or qualified public insurance adjuster to observe and properly document the testing, the subsequent repairs and any issues that result from the insurance company’s testing.

At first glance, these issues may seem like problems that don’t materialize often, or something a policyholder shouldn’t be overly concerned

with. I would caution policyholders to take intrusive testing very seriously. I have represented numerous policyholders who found themselves dealing with poorly performed testing and corresponding repairs, and the battle that ensues when it’s time for the insurance company to take responsibility for their testing. Notably, a policyholder had damage approaching \$2 million to a residential structure caused by an insurance company’s testing, but the insurance company refused to take responsibility for it, even after having agreed in writing to do just that.

In summary, it’s important to both the policyholder and the insurance company that when testing of this nature is helpful in the investigation of a loss that the testing is performed. It’s also important to cooperate with your insurance company in their pursuit to perform necessary testing. I believe it to be equally important for policyholders to understand the purpose and extent of such testing and obtain assurances that it will be handled properly and, in the event it’s not, that the insurance company will take responsibility for any repairs that are necessary.▲



This damage occurred when a contractor failed to perform any repairs at areas of intrusive testing. Six similar cuts were made and not repaired. When a snow storm hit the building, these cuts were a significant source of water intrusion into a multifamily high-rise building in Denver.