

A Checklist for Victims of Napa/Sonoma Fires: Recovering from Your Insurance

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The purpose of this alert is to provide victims of the Napa/Sonoma fires a checklist to use when seeking recovery from their insurance companies. Property Insurance policies may provide coverage for damage to both your property and your business. Business losses can result from a variety of causes, all of which may be covered under a property policy. These causes include: closure due to government action, inability of customers to reach your business, and interruption of your supply chain.

Commercial policies covering lost business income from property damage caused by a “covered peril” (e.g., a fire) have specific reporting requirements which may be strictly construed. Failure to meet these requirements (including a timely submission of the claim) may result in a forfeiture of coverage. Insurance companies, however, routinely extend reporting deadlines upon request. Policyholders should consult with a coverage expert as soon as possible to protect their rights.

Proof of loss needs to be established by the policyholder, and the engagement of attorneys and accountants with experience in submitting these types of claims is recommended.

Damage to the policyholder’s property may also be covered, but, like business interruption, the damage can result from several causes (not just the fire). The retention of consultants with experience in establishing cause of loss and cost of replacement or repair can expedite the recovery process and maximize the amount recovered.

Understand Your Reporting Requirements

Your property policy will set forth your reporting requirements. Simply informing the insurance company that a loss has occurred is typically insufficient and can result in the forfeiture of coverage. Property policies require submission of proof of loss within a specified period. The proof of loss must be verified (e.g. submitted as true under the penalty of perjury) and accompanied by evidence documenting the loss.

Put together Your Claims Team

An effective claims team should include a coverage lawyer, broker, accountant and key personnel within the organization in finance, IT, facilities management, sales, and marketing.

Identify, Locate and Recreate Important Documents

You will need various documents to prove your claim. These documents are sometimes destroyed in the fire. Identifying the documents you will need to prove your claim is the first step. Locating these documents, whether on or off site is next, followed by recreating important documents through other sources. This process can take time, which is why a request for an extension of the policy timelines for submitting a proof of loss is often necessary. Examples of the types of important documents needed would include: insurance policies, tax returns, and documents regarding the last five years of revenue and expenses, including personnel costs, costs of sales, and other documents evidencing the company’s five-year profit and loss. Other key documents could include sales contracts, customer inquiries, requests for proposal, and customer and supplier contracts.

Document the Cause of Property Damage

A business interruption provision typically requires a loss of income to be caused by a direct physical loss or damage to an insured's property. Be sure to document the fire damage to your business property through pictures, videos, or any other means.

Document Cessation of Your Operations

Business interruption coverage often requires a "suspension" of operations, which may mean a temporary, but *complete* cessation of business activity. Therefore, you may not recover under the policy if you have suffered merely a slowdown or reduction in business, or if only work on a particular project has been interrupted. But some coverage forms specifically define "suspension" to include coverage for a slowdown of an insured's business activities.

Identify Possible Areas of Recovery

Net income plus normal operating expenses. Your policy may provide coverage for both the loss of net income (i.e., the net profit or loss that would have been earned absent the fire damage) *and* continuing operating expenses. These coverages may apply separately; therefore, you may recover your normal operating expenses even if your business had no net profits at the time of the fires.

Extra expense coverage. Extra expense coverage is often combined with business interruption coverage and includes relocation and increased labor costs that you may have incurred when attempting to mitigate your business interruption and continue your operations.

Other related expenses. Check to see if your policy also provides coverage for rental income, valuable papers, accounts receivable, electronic media and records, pollution clean-up, debris removal, and cyber insurance for data breaches. Importantly, many property policies will also provide coverage for the cost of using certain professionals who help you submit your claim to the insurer.

Understand Your Coverage Period.

Most policies restrict coverage to the "period of restoration," which generally begins at the time of damage and extends to either: (1) the time the property is actually repaired, rebuilt, or replaced, or (2) the time a reasonable insured exercising due diligence should have been able to repair, rebuild, or replace the property, or (3) the time the business resumed at a new permanent location. Other policies may limit coverage by outlining a maximum period of time (e.g., one year) during which losses are covered.

Policyholders are required to take reasonable steps to try to maintain their business despite the interruption. Like every issue with insurance companies, what constitutes a "reasonable step" can be the source of negotiation and, ultimately, litigation.