

# Kanner & Whiteley, L.L.C.

701 Camp Street ■ New Orleans, Louisiana 70130 ■ (504) 524-5777 ■ Fax (504) 524-5763

## For Attorneys Handling NFIP Claims

**[Please note, this information is to be used only by attorneys licensed to practice in Louisiana. If you are not an attorney, you should contact your attorney who is qualified to deal with your special circumstance and legal claim.]**

Understanding the relationship between Federal Emergency Management Agency (“FEMA”) and private flood insurers will help ease the process of filing a flood claim. The typical or primary flood insurance policy is a Standard Flood Insurance Policy (“SFIP”) issued pursuant to the National Flood Insurance Act (“NFIA”), which is administered by FEMA through the National Flood Insurance Program (“NFIP”). FEMA does not issue and administer all SFIPs and has developed the Write Your Own (“WYO”) insurance program to allow private insurance carriers to issue and administer SFIPs under the NFIP. It is important to note that the NFIP is a federal program with many requirements to meet prior to claim payment approval. The following information is essential for filing a successful NFIP claim.

1. **Save all Correspondence.** A copy of all correspondence with FEMA, the WYO insurance carrier, and/or any representatives or agents acting in their behalf, should be saved, as well as notes from meetings and calls, including the name(s) of the representative(s), dates and times. Keeping a notebook or journal is helpful.
2. **Document Losses.** Insureds should begin an inventory list of property that was damaged due to flood as early as practical. This can be a very difficult and tedious process, especially coupled with the enormity of personal loss and economic impact. Videotaping or photographing the loss as soon as possible before cleaning up or mitigating is a good way to capture damage in the immediate aftermath. We recommend beginning the inventory by listing the most obvious damages to the building or structure from the exterior and then turn to an interior room by room inventory of structural damage. The attached Building Worksheets provided by FEMA (086-0-7 and 086-0-8) are useful in documenting the structural damage. The more time consuming inventory involves documenting personal property damaged due to flood. A comprehensive personal property inventory also is best achieved via a room by room itemized listing. We would recommend the use of an Excel spreadsheet<sup>1</sup>, Mobile Apps, or the attached Contents Worksheet provided by FEMA (086-0-6) to aid in this task.
3. **File all forms before filing suit.** An insured cannot sue FEMA or its WYO agent (absent a waiver from the agency) if they do not comply with all of FEMA’s requirements, including the timely submission of a notice of loss and proof of loss. Strict adherence to

---

<sup>1</sup> Sample Excel spreadsheet, UP Home Inventory, available through the non-profit organization United Policyholders, 381 Bush Street, 8th Floor, San Francisco, CA 94104, <http://www.uphelp.org/resources/library/flood>.

the proof of loss requirements is a condition precedent to recovery under SFIP.<sup>2</sup> (Note that FEMA cannot waive these requirements except by a written waiver by FEMA's Director. DO NOT rely upon verbal representations about the requirements.)

4. **File Notice of Loss promptly.** "Prompt written notice" of loss is to be filed to notify FEMA that a loss has been sustained.<sup>3</sup> The insured should submit form 086-0-11 Notice of Loss, as soon as possible.
5. **File Proof of Loss within 60 days of loss.** The requirements for a proof of loss are strictly enforced. Use form 086-0-09, Proof of Loss. The form must be signed by the insured and notarized. To aid in compliance, attaching the following forms will be important: 086-0-7 (Building Worksheet), 086-0-8 (Building Worksheet. cont.), 086-0-6 (Contents Worksheet), 086-0-10 (Increased Cost Of Compliance Proof of Loss), and if repairs have been done, 086-0-12 (Statement as to Full Cost of Repair or Replacement). The requirements for written notice and proof of loss<sup>4</sup> are excerpted below:

#### SFIP Section VII. General Conditions

##### J. Requirements in Case of Loss

In case of a flood loss to insured property, you must:

1. Give prompt written notice to us;
2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it;
3. Prepare an inventory of damaged property showing the quantity, description, actual cash value, and amount of loss. Attach all bills, receipts, and related documents;
4. Within 60 days after the loss, send us a proof of loss, which is your statement of the amount you are claiming under the policy signed and sworn to by you, and which furnishes us with the following information:
  - a. The date and time of loss;
  - b. A brief explanation of how the loss happened;
  - c. Your interest (for example, "owner") and the interest, if any, of others in the damaged property;

---

<sup>2</sup> See *In Villemarette v. FEMA et al.*, 2014 U.S. Dist. LEXIS 113667 (E.D. La.); *Dickson v American Bankers Insurance Company of Florida*. Case No. 13-1863 (C.A. 8, Jan. 7, 2014); *Sanz v. United States Security Insurance Co.*, 328 F.3d 1314, 1318 (11th Cir. 2003); *Suopys v. Omaha Property and Casualty*, 404 F.3d 805, 810 (3rd Cir. 2005); *Dawkins v. Witt*, 318 F.3d 606 (4th Cir. 2003); *Mancini v. Redland Insurance Co.*, 248 F.3d 729, 733-34 (8th Cir. 2001).

<sup>3</sup> See SFIP Section VII. General Conditions, J. Requirements in Case of Loss, F-122 / October 2015, per 44 C.F.R. Pt. 61, App. (A)(1), vol.1 (2011).

<sup>4</sup> *Id.*

- d. Details of any other insurance that may cover the loss;
- e. Changes in title or occupancy of the covered property during the term of the policy;
- f. Specifications of damaged buildings and detailed repair estimates;
- g. Names of mortgagees or anyone else having a lien, charge, or claim against the insured property;
- h. Details about who occupied any insured building at the time of loss and for what purpose; and
- i. The inventory of damaged personal property described in J.3. above.

5. In completing the proof of loss, you must use your own judgment concerning the amount of loss and justify that amount.

6. You must cooperate with the adjuster or representative in the investigation of the claim.

7. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

8. We have not authorized the adjuster to approve or disapprove claims or to tell you whether we will approve your claim.

9. At our option, we may accept the adjuster's report of the loss instead of your proof of loss. The adjuster's report will include information about your loss and the damages you sustained. You must sign the adjuster's report. At our option, we may require you to swear to the report.

SFIP, F-122 / October 2015

Note: Due to the widespread catastrophic loss, it is possible that FEMA will extend the 60 day deadline by which individuals can file their proofs of loss. This was the case following Katrina, Sandy, and most recently, following the March 2016 floods. However, any extension will be in writing and an official notice or bulletin will be issued.

**6. File Suit Within One Year of Date of Partial/Total Denial.** The statute of limitations for filing a lawsuit under the NFIP is one year from the date of written denial of any portion of the claim. The SFIP provides: "You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within one year after the date of the written denial of all or part of the claim, and you must file the suit in the United States District Court of

the district in which the covered property was located at the time of the loss. This requirement applies to any claim that you may have under this policy and to any dispute that you may have arising out of the handling of any claim under the policy.” *See* SFIP Section VII. General Conditions, R. Suit Against Us, F-122 / October 2015, per 44 C.F.R. Pt. 61, App. (A)(1), vol.1 (2011).

#### **ADDITIONAL REFERENCE MATERIALS ATTACHED**

- FEMA’s Claims Handling Book (F-687 8/14, Expires 4/30/2017)
- NFIP Preliminary Report (086-0-13)
- NFIP Final Report (086-0-14)
- Narrative Report (086-0-15)
- Cause of Loss & Subrogation Report (086-0-16)

Last updated: August 16, 2016