

Homeowner Property Damage Insurance and Commercial Property Damage Insurance

Insurance is a fact of life and having the right insurance policy can make the difference between obtaining coverage for a loss and being left out in the cold. Pennsylvania homeowner's insurance policies typically provide four basic types of coverage: (1) property damage coverage, (2) personal property (content) coverage, (3) additional living expense ("ALE") coverage and (4) liability coverage. In addition to the four types coverages provided by most Pennsylvania property damage insurance policies, there are also two basic types of property insurance policies sold by insurance companies in Pennsylvania: (1) All-Risk Insurance Policies and (2) Named Peril Insurance Policies.

An All-Risk property insurance policy covers all types of losses other than losses that are specifically excluded by the property insurance policy. A typical All-Risk property insurance policy will read, "we cover any and all losses unless otherwise excluded by this policy." For example, this would mean that if you had water damage to your home that was the result of a pipe break, your Pennsylvania property damage insurance company would be required to pay for the damages. Now, if the pipe had been leaking for an extended period of time and you did nothing about it, your property damage insurance company may refuse to pay for the damages to your home if your policy contained a provision that stated that the property damage insurance company does not pay for long term seepage. This is known as an exclusion and all property damage insurance policies sold in Pennsylvania contain exclusions regardless of whether you have purchased an All-Risk property damage insurance policy or a Named-Peril.

In comparison to an All-Risk property damage insurance policy, insurance companies in Pennsylvania also sell what are referred to as Named-Peril property damage insurance policies. Named-Peril property damage insurance policies are typically less expensive and provide less insurance coverage than their counterpart All-Risk property damage insurance policies. The primary difference between an All-Risk and a Name-Peril property damage insurance policy is that the Named-Peril policy only covers *specifics causes* of damages. Assuming the same facts in the previous example, under an All-Risk property damage insurance policy, *any* cause of the pipe break and resultant water leak will be a covered loss, subject of course to any exclusions in the policy. However, under a Named-Peril policy, the pipe break would only be covered if the pipe break was caused by a specific loss, such as freezing and thawing.

What should you do if you have property damage to your home or business?

- 1. Immediately report the property damage to your insurance company.**

Under most insurance policies, an insurance company will provide emergency services if your home has sustained damage that requires immediate attention, such as water damage, wind damage or fire and smoke damage. If you do not immediately report the property damages to your insurance company, the insurance company will typically not send out an emergency services. Similarly, most Pennsylvania property damage insurance policies include provisions that permit a property damage insurance company to deny a claim if the loss is not timely reported.

- 2. Assess the damages.**

It is important that immediately after the property damage loss, you write down notes on what was damaged, how the damages occurred and where you first noticed the damages. You should also take photographs of any of the damaged property prior to attempting to clean up or repair your home or business.

- 3. Take immediate action to protect your property from further damage.**

Most Pennsylvania property damage insurance policies include provisions which require a homeowner or business owner to protect the property from further loss and a policyholder's failure to do so, can lead to the denial of the claim. This goes hand in hand with immediately reporting the claim to your insurance company.

- 4. Retain competent contractors or other professionals to assist in the valuation and evaluation of the damages.**

At its core, property damage insurance is meant to place the policyholder in the same position that they were in prior to the date of the loss. Often, a disagreement will arise between the property damage insurance company and the policyholder concerning the value of the damages (valuation) and/or the cause of the damage (evaluation). Retaining a competent contractor at the onset of your claim to prepare an estimate of what it will cost to repair the house or business to the condition it was in prior to the loss many times makes the difference between a policyholder being adequately compensated for their loss and being unable to afford the cost of the repairs to their property. Too often, policyholders rely on the insurance company assigned adjuster who may or may not be familiar with local building codes, materials and labor costs, which all affect the value of the claim. Property damage adjusters typically use a computer based estimating system to determine the cost of the repairs to the damaged home or business, which may not be reflective of the actual cost of repairs. In comparison, a competent contractor who is familiar with local building codes, material costs and labor costs will be able to more accurately determine the cost of repairs.

- 5. Locate or obtain a copy of your property damage insurance policy including all endorsements.**

The property damage insurance policy governs the sole rights and obligations between the property damage insurance company and the policyholder.

6. **Communicate with your property damage insurance company in writing.**
7. **Request updates on the status of your claim.**

The Pennsylvania legislature has promulgated a number of regulations that dictate how an insurance company is to treat their policyholders. The two primary sources of these regulations are found in Pennsylvania's Unfair Insurance Practices Act ("UIPA") and Pennsylvania Bad Faith Statute. Under UIPA a property damage insurance company is required to notify its policyholder in writing within thirty days of the submission of the claim as to whether they will provide coverage for the damages or not. In the event that the property damage insurer cannot make a determination as to whether they will provide coverage for the damages, they must notify the insured in writing and they are given an additional fifteen days to make a coverage determination. Because of the complexities of UIPA and the companion property damage insurance regulations, it is important that you contact an experienced property damage attorney.

What is Pennsylvania Insurance Company Bad Faith?

In Pennsylvania, an insurance company has a duty to act fairly and honestly with its policyholders and may not unreasonably withhold insurance money or benefits. At The Rehmeyer Law Firm, we provide representation where it is alleged that the insurance company has acted unreasonably in the withholding of insurance money or benefits from its policyholders. Such actions which may be considered bad faith under Pennsylvania law include allegations that an insurance company:

1. Failure to pay a claim;
2. Failure to settle a claim;
3. Failure to timely investigate the claim and make a coverage decision;
4. Failure to defend or indemnify an individual or business against a lawsuit.

What is an Exclusion in a Property Damage Insurance Policy?

An exclusion is a specific term found in a property damage insurance policy which removes specific causes of damage from coverage under the insurance policy. For example, if a property damage insurance policy included an exclusion for wear and tear, damages that were caused by wear and tear would not be covered by the insurance company.

What is a Declarations Page?

A declarations page, often referred to as a "dec page," is usually a one or two page document that accompanies your property damage insurance policy. The dec page typically lists the named insureds on the policy, the various limits of coverage, any endorsements on the policy, and the yearly premium payment. It is important to review your declarations page yearly to confirm that you have the correct coverage limits and to immediately notify your homeowners insurance

company immediately if you feel that your coverage limits are inadequate. If you are unsure if you are property damage insurance policy coverages are sufficient, you should contact an experienced property damage insurance attorney.

How Long Does a Homeowner or Business Owner Have to File a Lawsuit After a Property Damage Loss?

In Pennsylvania, there is a 4 year statute of limitations on a breach of contract claim and a 2 year statute of limitations for a bad faith claim. It is important to point out that most property damage insurance policies sold in Pennsylvania contain a suit limitation provision, that limits the amount of time a policy holder has to file a lawsuit if their property damage claim was denied or underpaid. Typically, the suit limitation provision limits the time in which a homeowner or business owner has to file suit to either 1 or 2 years. It is extremely important that you review your insurance policy immediately after property damage to your home or business as your time for filing suit may be less than what you initially expected. Because of this, after any homeowner or business property damage loss, you should contact an experienced property damage attorney.

What is a Statement Under Oath or Examination Under Oath?

Almost every insurance policy requires an insured to appear for an Statement or Examination Under Oath (“EUO”) upon request as one of the duties of the insured post-loss. The EUO is a formal proceeding conducted by an attorney hired by the policyholder’s insurance company in front of a before a court under oath. Just like a deposition, the statements the policyholder makes under oath at an EUO are admissible in a court of law. The policyholder does have the right to have an property damage attorney present but the policyholder’s property damage attorney may not ask questions and may not raise objections. This is the primary difference between an EUO and a deposition.

Does a Homeowner or Business Owner Need to Comply with the Property Damage Insurance Company’s Request for EUO and what Happens if they Refuse to Appear for the EUO?

An EUO is under a property damage insurance policy is known as a condition precedent. Under Pennsylvania law, a condition precedent simply means that a policyholder must comply with the terms in order to obtain coverage for the loss. It is important to point out that if a policyholder refuses to comply with *any* condition precedent, a property damage insurance company may deny their claim even if the loss would otherwise be covered under the policy. As part of the property damage insurance policy, the insurance company may take the EUO of anyone who qualifies as an insured under the insurance policy. For example, this could include other members of the policyholder’s household, or in the context of a commercial property damage insurance policy, this could also potentially include The insurance company may take the Examination of the persons identified as “insureds” under the policy and, depending on the type of policy you have, employees, members of your household, or others “to the extent it is within the insured’s power to do so.”¹ Also, the insurance company has the right to examine each insured separately. For example, spouses who are both insureds under a policy do not have the right to sit in on each other’s EUO.² Furthermore, many insurance companies request insureds to produce documents pertinent to the claim either before or at the time of the EUO. The failure to comply with the insurance company’s requests may be used as a basis for denying the claim.³

The scope of the EUO is broad. Ostensibly, the purpose of the EUO is to allow the insurer the opportunity to gather information from the insured regarding the facts, circumstances, and amount of a loss; however, the EUO is frequently used instead as a means to justify denial of the claim. California permits insurance companies to require the insured to submit to an EUO even if its purpose is to gather evidence to defeat the claim.⁴ What this means, is insurers can and use the EUO to search for misrepresentations and facts that may negate coverage for the loss.

To protect your claim, consult an experienced insurance property damage attorney before agreeing or refusing to be examined under oath.

What does my homeowners property damage liability section cover?

What is Additional Living Expense Coverage?

Addition