

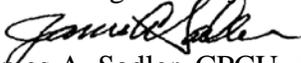


FEMA

W-08043

July 8, 2008

MEMORANDUM FOR: Write Your Own (WYO) Principal Coordinators
and the NFIP Servicing Agent
for Dissemination to all Claims Managers, Independent Adjusters,
and Mailing List Adjusting Firms

FROM: 
James A. Sadler, CPCU, AIC
Director of Claims
National Flood Insurance Program

SUBJECT: CLAIMS GUIDANCE – DETACHED GARAGES, ETC.
1. Detached Garages
2. ICC and Cumulative Substantial Damage or
Repetitive Loss Ordinances
3. Formal Appeals Process – Denial Letters
4. Demands for Appraisal
5. Discontinue Use of the Term “SHEETROCK®”
6. Property Removed to Safety

FEMA is issuing the following claims guidance to clarify appropriate handling of the six areas noted in the subject line of this bulletin. THE PROVISIONS OF THIS BULLETIN ARE RETROACTIVELY EFFECTIVE TO JUNE 1, 2008.

1. Detached Garages

The Standard Flood Insurance Policy (SFIP) – Dwelling Form at III.A.3. on page 3 of 19 states:

A. COVERAGE A – BUILDING PROPERTY

We insure against **direct physical loss by or from flood** to:

3. A detached garage at the **described location**. Coverage is limited to no more than 10 percent of the limit of liability on the **dwelling**. Use of this insurance is at your option but reduces the **building** limit of liability. We do not cover any detached garage used or held for use for residential (i.e., **dwelling**), business, or farming purposes.

WYO companies and the NFIP Servicing Agent should use the ordinary dictionary meanings of the words “residential” (e.g., suitable for or used as a residence or dwelling) and “dwelling” (e.g., a place to live in, abode) when applying coverage to detached garages. Insurers will no longer broadly apply these words that limit coverage. However, for the purpose of this limitation, kitchen facilities are not required for the space to qualify as residential use or a place to live in.

2. **ICC Claims Involving a Cumulative Substantial Damage Provision or Repetitive Loss Provision of a Community’s Floodplain Management Ordinance**

The SFIP – Dwelling Form at III.D.3.a.(1)(a)-(d). on page 7 of 19 states:

D. COVERAGE D – INCREASED COST OF COMPLIANCE

3. Eligibility

a. A structure covered under Coverage **A** – Building Property sustaining a loss caused by a **flood** as defined in this **policy** must:

(1) Be a “repetitive loss structure.” A repetitive loss structure is one that meets the following conditions:

(a) The structure is covered by a contract of **flood** insurance issued under the **NFIP**.

(b) The structure has suffered **flood** damage on two occasions during a 10-year period which ends on the date of the second loss.

(c) The cost to repair the **flood** damage, on average, equaled or exceeded 25 percent of the market value of the structure at the time of each flood loss.

(d) In addition to the current claim, the **NFIP** must have paid the previous qualifying claim, and the State or community must have a cumulative, substantial damage provision or repetitive loss provision in its floodplain management law or ordinance being enforced against the structure

A community’s substantial damage ordinance includes “damage from any origin.” However, the insurer’s Increased Cost of Compliance (ICC) decisions consider only damage by or from flood. If the community floodplain management ordinance includes a cumulative substantial damage provision or repetitive loss provision, the insurer should verify that flood damages that resulted in the two NFIP claim payments averaged 25 percent of the market value of the building at the time of the loss.

The second (i.e., current) qualifying flood loss is considered much like ICC losses typically encountered, with no cumulative damage or repetitive loss provision. It is the first qualifying flood loss that should be carefully scrutinized. The first qualifying flood loss may be up to 10 years prior to the second (current) qualifying loss. The SFIP’s ICC provisions require that both flood losses must have resulted in paid NFIP claims.

If the community declares a building substantially damaged under the terms of a cumulative substantial damage provision or repetitive loss provision of the community’s ordinance, but the records of the insurer and/or the NFIP verify that the first qualifying loss was not a paid NFIP loss, or that the first qualifying loss occurred more than 10 years prior to the second qualifying loss, the community should be tactfully notified of this information.

Also, a community may amend its floodplain management ordinance and cease to enforce a cumulative substantial damage provision or repetitive loss provision after a flood event. When adopted and enforced, the amended provisions apply only forward and may not be retroactively enforced. Permits issued before the community withdraws its cumulative, substantial damage provision or repetitive loss provision will be considered valid. However, if allowed by the community's ordinance, permits may be withdrawn (voided) and reissued after the cumulative, substantial damage provision or repetitive loss provision is withdrawn.

3. Formal Appeals Process – Issuance of the Denial Letter

WYO Clearinghouse Bulletin W-06079, issued on October 13, 2006, announced the Formal Appeals Process and advised the WYO Companies and the NFIP Servicing Agent of the proper procedures regarding issuances of denial letters. We are finding that many companies are not adhering to the specifics of the Bulletin. To reiterate, “. . . the WYO Companies and the NFIP Servicing Agent must make sure that they provide a written denial letter to policyholders when their claim, in whole or in part, is denied. The denial letter should provide specific information on the reasons why the claim was denied.”

In the appeals process, we have seen far too many denial letters that simply state “upon conclusion of our investigation, your claim is being denied.” This is an unacceptable denial as it does not provide a basis for denial. Denial letters should specifically state all reasons for denial known at the time the letter is written and refer the insured to the applicable section(s) of the SFIP.

The Bulletin goes on to state, “In order for the Federal Insurance Administrator to provide a timely written final appeal decision to the policyholder, it is imperative that any request made to a WYO Company and the NFIP Servicing Agent by FEMA or the NFIP Bureau and Statistical Agent for information is fulfilled within 48 hours. In most cases, a copy of the claim file will be requested (the copy, including all photographs, must be legible). In all cases, the response to a request for information must include a detailed synopsis of the claim handling that focuses on the issues related to the denial.”

In many cases, the NFIP Bureau and Statistical Agent is not receiving a legible copy of the file within the required 48-hour time period. If there are time constraint issues, the insurer should immediately advise the requestor.

4. Demands for Appraisal

Requests for appeals are being made through the Formal Appeals Process when insurers refuse the policyholder's and/or his representative's demand for appraisal. Demands for appraisal should be honored when the issue is strictly pricing. All coverage and scoping issues should be resolved prior to agreeing to the appraisal process. Unless these issues are first resolved, both parties could waive any coverage and scoping defenses. The SFIP – Dwelling Form at VII.P. states that “If you and we fail to agree on the actual cash value or, if applicable, replacement cost of your damaged property to settle upon the amount of loss, then either may demand an appraisal of the loss.” Requests for appraisals should be responded to within 20 days after receiving a written request and the claim file properly documented with the details of the reason(s) that the request is to be honored or denied.

Please refer to the NFIP *Flood Insurance Claims Handbook* at page 12, which states:

1. Disputes that are or have been subject to appraisal as provided for in the SFIP cannot be appealed.
2. If you file an appeal on any issue, that issue is no longer subject to resolution by appraisal or other pre-litigation remedies.
3. If you file suit against an insurer on the flood insurance claim issue, you are prohibited from filing an appeal. All appeals submitted for decision but not resolved shall be terminated upon notice of the commencement of litigation regarding the claim.

Note that, although appraisal is allowed after commencement of litigation, the filing of an appeal is not allowed after suit is filed and pending appeals are closed.

5. Discontinue Use of the Term “SHEETROCK®”

In WYO Clearinghouse Bulletin W-05014, April 14, 2005, WYO Companies and the NFIP Servicing Agent were advised that we had been notified of the possibility of copyright infringement for use of the term “SHEETROCK®,” a registered trademark of USG Corporation’s United States Gypsum Company for its brand of gypsum board and related products. This is a reminder that only the generic term “drywall” should be used.

6. Property Removed to Safety

The Property Removed to Safety coverage described in the SFIP – Dwelling Form at III.C.2.b. on page 5 of 19 shall apply both to the cost of removing the covered property from the described location and also to any cost of returning the same covered property to the described location. If there are costs associated with uninstalling and reinstalling the covered property to be removed and returned, these costs are also covered. All such costs must be reasonable and are subject to the \$1,000 limit of liability; any payments under this coverage do not increase either the Coverage A or Coverage B limits of liability.

If you have questions about any of the six areas addressed in this claims guidance, please contact the NFIP Bureau and Statistical Agent Claims Department.

cc: Vendors, IBHS, FIPNC, Government Technical Representative

Required Routing: Claims and Underwriting