

TECHNICAL ADVISORY

TA 347 - Revised

Subject

Contents

February 9, 2022 (revised)
February 3, 2021 (original)

**180 Day Notice of Intent to
Repair/Replace**

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EXECUTIVE SUMMARY

- In most Replacement Cost property policies, there is a provision which requires the policyholder to notify the insurer that they plan to repair or replace the property no later than 180 days after the loss or damage, in order to recover the depreciation.
- There is some debate about the applicability of these provisions, but best practices are to submit the policyholder's intent to repair or replace within 180 days after the loss event.

Necessary Action

- Discuss with your property carriers any replacement cost limitations that may apply to your insureds.
- On any property that is not completely repaired or replaced, provide the insurer with a written intent to repair or replace the building.
- Always document these communications with insureds and carriers in your agency management system.

TECHNICAL ADVISORY

BACKGROUND

180 days after a storm is an important date to keep in mind for agents with hurricane claims. Because of the scale of hurricane damages, oftentimes many claims remain open, and buildings remain unrepaired for extended periods of time. As such, agents need to be aware of replacement cost limitations found in many property policies. Replacement cost limitations require policyholders to notify the company in writing of their intent to repair or replace the damaged building within 180 days of the loss in order to protect their right to recover the depreciation amount.

REPLACEMENT COST LIMITATIONS – POLICY LANGUAGE

Homeowners' Policy: SECTION I – CONDITIONS

D. Loss Settlement

e. You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss to buildings on an actual cash value basis. You may then make claim for any additional liability according to the provisions of this Condition D. Loss Settlement, provided you notify us, within 180 days after the date of loss, of your intent to repair or replace the damaged building.

Commercial Property Policy: Optional Coverages

3. Replacement Cost

c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.

In both the Homeowners and the Commercial Property policies, there is language requiring notice of the intent to repair the building within 180 days of the loss. Note that this does not require the building to be fully replaced by this time, only that notice has been given to the company that the insured INTENDS to repair or replace. In some policy forms, notably older ISO forms, there WAS a requirement that the repairs be completed within one year. Therefore, it may be worth checking your policy form to ensure that there is not a specific deadline for repairs, but those have been largely phased out of modern forms.

LOUISIANA LAW

In Louisiana's Insurance Code, [R.S. 22:1264](#) sets a minimum timeframe for proof of loss submissions on all policies:

The time limit for the submission of proof of loss shall be not less than one hundred eighty days. The time limit shall not commence as long as a declaration of emergency is in existence and civil authorities are denying the insured access to the property.

An important caveat to this protection is the NFIP. Because it is a federal program, NFIP is not subject to these statutes, instead being governed by federal regulation. In most cases, NFIP requires proof of loss within 60 days from the loss event, though that has been extended in the case of some significant catastrophes.

R.S. 22:1264 goes on to ensure that no property insurance policy restricts the time to repair or replace property in order to recover depreciation to less than a year:

For losses that arose due to a catastrophic event for which a state of disaster or emergency was declared pursuant to law by civil officials, for those areas within the declaration, any policyholder with replacement cost provisions shall be entitled to complete repairs to the property within one year from the date of the loss or the issuance of applicable insurance proceeds, whichever is later. Adherence to this provision shall entitle the policyholder with a replacement cost provision to receive full value of the covered damage that has been repaired, without reduction due to depreciation.

REPLACEMENT COST LIMITATIONS – APPLICABILITY

There is some disagreement about the application of the 180-day notice limitations for RCV coverage. As [Chris Boggs argues in this IIABA article](#), there is a reasonable argument to be made that only the policyholder has the right to request ACV coverage, assuming that they have met the basic RCV requirements. It is only when the policyholder makes such a request that they are subject to the 180-day notice limitation. If they change their mind and decide to rebuild and seek the full RCV amount. However, IIABL has heard of multiple companies applying the 180-day notice limitations unilaterally, denying coverage for the depreciation when insureds do not notify the carrier of their intent to repair before the deadline. Consequently, best practices are to advise the insured to keep in contact with the company regarding their plans to repair well before the 180 days expire.

CONCLUSION

As we approach 180 days after a catastrophe, agents need to be particularly aware of the 180-day notice provisions because many buildings will remain unrepaired, and many property insurance claims left open. Agents should communicate with both their insurance companies and their policyholders regarding any deadlines to notify regarding the intent to repair. As long as policyholders understand their duties in the claim, and the insurer is kept apprised of the status of the insured's damages and plans for repair, the normal insurance process allows for the delays naturally caused by contractor and supply shortages in post-catastrophe environments.

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