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Insurance Law Basics for General Contractors

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Topics


- The Basics
- Coverage and Causation
- Material Matching
- Building Code Coverage
- Bad Faith
- Appraisals



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The Basics

- Contract Requirements
 - Written
 - Contain Minnesota's pre-lien notice
 - 3-day cancellation notice (2 copies)
 - Insurance cancellation notice (2 copies)
 - Mold notice
 - Urea/Formaldehyde Notice
 - Performance Guidelines
 - 327A warranties
 - Can be subject to insurance proceeds



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The Basics

• Mandatory Cancellation Notices

- Minn. Stat. § 326B.811
 - 2 Copies
 - An insured can cancel within 72 hours of claim being denied
- Minn. Stat. § 325G.08
 - 2 Copies
 - Any homeowner can cancel a "home solicitation" sale within 72 hours



The Basics

Bulletin 2010-4 - What you can do

- Offer an opinion as to how and when damage occurred
- Recommend filing an insurance claim
- Provide an estimate for repair
- Be present at an insurance adjustment
- Discuss the price and scope of repair with adjuster



The Basics

Bulletin 2010-4 - What you cannot do

- Negotiate on behalf of the homeowner
- Represent the homeowner in dealings with insurer
- Take a power of attorney
- Hold yourself out as a public adjuster



The Basics

• Insurance Deductibles

- Minn. Stat. § 325E.66:

A residential contractor shall not *as an inducement to sale*, advertise or promise to pay, all or part of any deductible **or** offer to compensate an insured for providing any service to the insured.



Coverage and Causation

Only public adjusters and attorneys can discuss “coverage”

- “The Policy does this . . .”
- “You have to do this by law . . .”
- “This is covered under the Policy”

But, contractors **can** talk about causation and repair methods

- “This damage was caused by hail”
- “This product does not match”
- “This is required by building code”



Material Matching

Cedar Bluff v. American Family (2014)

The Court made three important holdings:



1. Appraisal panels can determine if there’s a reasonable match;
2. “Comparable material and quality” means a reasonable match between new and existing product;
3. Product mismatch constitutes a “direct physical loss” under the policy



Material Matching

Takeaways from *Cedar Bluff*

- It goes beyond color
 - Texture, grain, appearance, profile, width, depth, etc.
- It goes beyond siding
 - It has been applied to windows, shingles, fascia, trim, etc.
- It is policy specific
 - Some policies do not require a “comparable” or “like-kind” repair
 - Some policies now have specific exclusions



Building Code Coverage

Minn. Stat. § 65A.10

- “the insurance **must** cover the cost of replacing, rebuilding, or repairing any loss or damaged property in accordance with the **minimum code as required by state or local authorities**”
- Code compliance, not “code upgrades”
- Most codes defer to “manufacturer’s recommended installation”



Bad Faith Practices

Minn. Stat. § 604.18

- Bad faith insurance practices require:
 1. No reasonable basis for denying benefits; and
 2. That the insurer knew it had no basis or acted in “reckless disregard” of the lack of reasonable basis



Appraisals

Minn. Stat. § 65A.01

- Every policy covering fire losses must have an appraisal clause
- Heavily favored by the courts



How it works

- Written demand by either party (NEVER by the contractor)
- The other party names its appraiser within 20 days
- The appraisers select a neutral umpire



Appraisals

The appraisal hearing

- Panel selects a hearing date
- Hearing usually takes place at the loss location
- Parties can present evidence
 - Witnesses, reports, building code, experts, etc.
- Testimony
 - From contractors, experts, homeowners, etc.
- Attorneys and contractors can be present
- The panel issues an award for the ACV and RCV of the loss



Appraisals

After Appraisal

- The award is binding on both parties
- Policy exclusions can still be litigated
- Moves forward like any other insurance claim



Contractor's "Toolbox"



- Public Adjuster
- Engineer
- Attorney
- Manufacturer's Representative
- Code Book
- Technical Bulletins
- NOAA
- ITEL
- MNAES



Any Questions



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