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POST LOSS COMPLIANCE: THE DUTY TO GIVE PROMPT NOTICE

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All property insurance policies impose responsibilities on an insured in the event of a loss. One of those responsibilities is to provide notice of a claim. The purpose of a policy's notice clause is to allow the insurance company to evaluate its rights and afford it an opportunity to investigate the claim. Depending on the terms of the insurance policy, notice must be immediate, timely or prompt.

A failure to provide immediate, timely, or prompt notice may jeopardize an insured's right to benefits under the policy. If notice of a claim is not provided in the manner outlined by the policy, an automatic presumption of prejudice in favor of the insurance company may arise. That presumption means an insured would then have the burden to prove that the late notice did not cause prejudice to the insurance company. That burden may be difficult to overcome.

Although immediate, timely, or prompt notice must be given, most insurance policies do not define these terms or provide a fixed period of time within which an insured is required to report the loss. Most often, notice is necessary when there has been an occurrence that would lead a reasonably prudent person to believe that a claim for damages would arise. If an insured sustains damage to property from a hurricane, or other event, it is prudent to notify the insurance company or insurance agent even if it is unclear whether the loss is covered or would exceed the deductible. The law does not give much weight to the reason for the late reporting. Acting with little or no delay will help an insured protect their rights under the insurance policy and increase the chances of a timely resolution.

For more information on how to properly report an insurance claim, please contact Michael J. Higer or Gina Clausen Lozier on the firm's dispute resolution team.

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