

SPECIAL REPORT

THE IMPORTANCE OF FILING A TIMELY SWORN PROOF OF LOSS WITH THE INSURER FOLLOWING A PROPERTY CLAIM

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A recent Michigan Court of Appeals decision illustrates the importance of the timely filing of a sworn proof of loss document with the insurer following a covered property loss.¹

Every commercial property policy and homeowners policy has as a condition that the insured sign and file a sworn statement in proof of loss usually no later than within 60 days of the time of the loss.

If you fail to file a proof of loss as required by the policy, it is typically a bar to the ability to sue the insurer for the claim.

In a recent case, a homeowner suffered a total fire loss and asserted an entitlement to coverage under the homeowners policy he had purchased. The insurer denied coverage due to the failure of the insured to submit a sworn statement of proof of loss within 60 days of the fire. The homeowner filed a lawsuit claiming breach of contract by the insurer in refusing to pay for the fire loss.

The insurer argued that the homeowner did not file the proof of loss until many months following the claim and further asserted that the 60-day deadline in the policy could only be extended in writing by the insurer and was not. The insurer further stated that a letter had been sent to the homeowner in which it reminded the homeowner of the sworn statement requirement in the policy and included copies of the form. The homeowner

¹ *Durall v. Home-Owners Insurance Co*, LC No 08-088948-CK (March 29, 2001)

argued that he never received that letter and did not know of his obligations to file a proof of loss statement by the end of the 60-day deadline.

The trial court granted judgment in favor of the insurer and the Court of Appeals affirmed this holding, stating that the homeowner was bound to the clear provisions of the policy even if he did not receive the letter from the insurer reminding him of this requirement.

This case is yet another example of the broad requirement in Michigan that an insured must read his or her insurance policy. If the insured does not read his or her policy, he or she is nonetheless charged with knowledge of the terms and conditions of that policy.²

Another key point that was raised by this court was that under Michigan law there is no requirement that the insurer be prejudiced by the failure of the insured to file the proof of loss form within 60 days.

Tips of Handling Proof of Loss Forms Following a Loss

1. It is clear that there is a 60-day time period under most insurance policies in which to file a signed, sworn proof of loss with the insurer. While many times the insurer will send this form to the insured after a loss, the insured should not rely upon that because the insured will be bound to the language in the policy that requires the submission of the proof of loss within the 60 days time period.
2. Request an extension but do not assume it has been granted unless the insurer agrees to it in writing. It is routine for insurers to agree to such extensions.
3. Read your policy. Courts in Michigan continue to reaffirm the requirement that an insured is obligated to read his or her insurance policy and raise any questions within a reasonable period of time. Yet many policyholders do not read their policies and even if they do, may not understand what they are reading or what questions to ask.
4. Following a property loss it is usually a good idea to retain an expert third-party adjuster or attorney to assist you in the claim. These

² *Auto-Owners Ins Co v. Zimmerman*, 162 Mich App 459 (1987); *Zaremba Equipment, Inc. v. Harco Nat'l Ins Co*, 280 Mich App 16 (2008).

professionals have an understanding of the requirements of proof of loss forms and other technicalities of coverage.

5. Be cautious about information included in proof of loss forms. Remember that these forms are sworn statements and information that is inaccurate can provide a reason for the insurer to deny coverage for a material misrepresentation.
6. Other conditions are critical to comply with as well, including submitting to an examination under oath where the insurer, usually through its attorney, can ask you about the claim and the information included in the proof of loss. It is advisable to obtain legal counsel to represent you in any examination under oath.

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