

Hanis Irvine Prothero, PLLC

FLOOD/DISASTER PREPERATION: From A Legal Perspective**Patrick M. Hanis, Partner
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As an attorney, I've had several people ask me my thoughts on how they might prepare for a flood or other disaster from a legal perspective. As news of the potential flooding in the valley continues, the only answer seemingly given by our government agencies is: buy insurance. That may be a good start, but it's only a very small first step. The better answer is: prepare, prepare, prepare. When it comes to dealing with insurance companies, or other responsible parties, a large part of the battle is proving what damage you experienced. As I've negotiated and litigated with responsible parties or insurance companies following disasters like fires or floods, the following could be construed as my "wish list" of what I'd like a client prepared with. Every situation is unique, but this list will hopefully spark your thinking in preparing for any kind of disaster that may affect your home or business.

Pre-disaster:

- Read your insurance policy and verify that it says what you think it does. If you can't find a provision you think is in the policy now, you won't find it when you need it. If the policy is unclear, contact your insurance provider to determine what is/isn't covered and then have them confirm their representations to you in writing. If they won't confirm it in writing, then confirm it yourself to them with a letter starting something like, "Per our conversation today, you confirmed ...). Keep a copy for yourself, date it, sign it, and send a copy to your insurance carrier. Reviewing an insurance policy with an attorney can be helpful too in determining the limits of the policy. The small amount you'll pay for that review will be much less than trying to enforce your interpretation after the disaster strikes.
- Take pictures of your premises and personal property (inside and out) and date those pictures. Keep documents (receipts, owner manuals, warranty cards, etc) that prove your ownership. Put these documents in a safe place that is accessible. Storage at an offsite location or a second copy at another location may be crucial in the event of a disaster that destroys the premises.
- Businesses should consider business interruption and disruption insurance coverage and extra expense coverage. Property insurance may cover damaged product/equipment and similar tangible items. But it is unlikely to provide for lost income while you are closed. Can you afford to lose employees or not take home salary? If not, find coverage that will provide for this potential lost.

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Continued from page 1

- Even with insurance coverage, satisfying the insurers demands for proof of your loss can be difficult and time consuming. Keep your pre-disaster financial records (accounts payable/receivable; income tax returns, forms and schedules including profit and loss statements); salary/benefit information for yourself and your employees, utility bills, rent, and other operating expenses. There are many exclusions and exceptions in these types of policies. Consider reviewing the policy with an attorney to see if the policy will be effective for the types of losses you most likely face. Be very mindful of the policy limits as the cleanup of a serious disaster can take many weeks.
 - Review your lease/mortgage. What does it provide regarding emergencies/disasters? In commercial leases, there are often very specific rights and remedies involved that may include very specific deadlines. Review those and consider consulting with an attorney so that you are refreshed as to your rights. Prevention is much less expensive than the cure. Odds are you will still be obligated to pay your mortgage even while the property cannot be occupied. Contact your bank to see if they have any type of assistance program for disasters and get the applications now so you have them on hand. Verify if your insurance coverage will provide for payments while you live or operate your business elsewhere.
 - Determine what cleanup the insurance company will provide for. If there are limitations, consider whether those are sufficient. Otherwise, that work will fall to you and your wallet. Plan on the many costs associated with a cleanup (time off work, rags, hiring people to help, trash bags and other clean up material, dump fees, etc.).
 - Will you need to hire security personnel or other services to protect your property during a disaster. Determine what those services are now so you can call on them in the event the need arises.
- During the disaster:**
- Act in a reasonable. Try to block off areas that are unusable, inform customers of your temporary location, determine if you can use part of your residence or building in a safe manner or if you need alternative housing or business space.

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Continued from page 2

- Document the event (pictures truly are worth a 1000 words). Keep receipts, invoices, costs to open at a temporary location, extra living expenses, etc. You have legal obligations to mitigate your damages. So act prudently as this isn't an opportunity to receive a windfall at the hand of your insurer. Be conscious of what you submit for reimbursement to your insurer as that amount will be subtracted from your final settlement.
- Contact your insurance provider as soon as possible. They can be a good resource in providing assistance and ideas. They are experienced in times of disaster and may be a good place for advice.
- Document the promises/assurances made verbally to you. Emails are great for this purpose. Use the same letter/format mentioned above "Per our conversation, you informed me...."). Memories have a tendency to fade/fail/and even be intentionally ignored. It is often very surprising the promises made at the time of events to my clients versus what the insurance carrier later claims. Expect your insurance provider to read the insurance policy very strictly when it comes time to pay out money. Their interpretation of the policy isn't always right so the assistance of an attorney can be very valuable at this point. These efforts in dealing with the insurance carrier may seem like a deviation from the task of cleanup, but it essential to your ultimate recovery.
- Keep good records of personal expenses and business expenses/profits during the disaster and cleanup. These can be crucial to proving your ultimate loss.
- If the insurance carrier or at fault party gives you the name of a company for the cleanup, it doesn't mean that company is the best fit for you. Ultimately, you may be responsible for cleanup costs that are not covered by the policy or the at fault party. Ask questions. Verify what is covered in the insurance policy versus what isn't. Determine who is hiring the contractor- you or the insurance carrier/at-fault party. Take pictures with dates and written descriptions of what is depicted during the cleanup process. Negotiate with the provider if appropriate, and if time permits, get other bids.

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Continued from page 3



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- In the event of a wide spread disaster, there will be lots of illegitimate contractors and cleanup companies. Be wary! Review the contracts. Don't give huge deposits. Verify their insurance and bonding (easily done online). Get references and verify those references. A little effort before signing a contract could avoid costly and emotionally draining disputes later- at a time when your finances and emotions will have already been tested. Speak to an attorney to maximize your rights and to assist in this review.

Post Disaster:

- Give prompt notice to your insurance carrier of your loss. You may be contractually obligated to do so. Don't wait. You can always provide additional details later. One of the insurance companies and at fault party favorite defenses is that they didn't receive timely notice. If you need more time, ask the insurance company or at fault party for a tolling agreement to extend deadlines that may be applicable. The more notice these parties have, the less they can challenge your actions and decisions in responding to the disaster.
- Don't accept the insurance company's interpretation/opinion as final. You have a legal right to be treated fairly and to be fully compensated under the terms of your insurance policy. In large disasters, insurance carriers may send insurance adjusters from out of state. Those people may not have the knowledge necessary to understand local conditions, costs, and other relevant information. Don't take no for an answer as it may be the wrong answer. An attorney can be helpful in this process.
- The emotional impact cannot be underestimated. Seek help from family, friends and professionals. Write in a journal, which can be very valuable tool in documenting the day-to-day efforts to respond to the disaster as well as negotiating with your insurance carrier or other responsible party. It might also give you a place to vent the emotions you'll feel on a day-to-day basis.
- When dealing with banks, contractors, insurance carriers, landlords/tenants, and other third parties, those discussions may largely ignore the emotional toll the event caused and just focus on the "money" aspects. Those people will likely be overworked and stressed in responding to the situation. They are not unsympathetic to your situation, they may simply not know how to respond to the non-monetary aspects of it. A kind word and patience may give you the leg up over others that are less kind.

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Continued from page 4

- If the situation arises that you feel you are being ignored, document those concerns and provide notice specifying the situation with the other party. Be concise, avoid name calling/defamatory remarks. A judge/jury may read those documents in the future if the problem becomes significant. You'll want to come across as the good person.
- Consider what professionals can assist you. Accountants, loss adjusters, appraisers, attorneys, and similar professionals can help you present a full and complete claim that the insurance provider or at fault party must pay attention to. These independent people can give new insight and suggestions that can be very valuable.
- Only have one point of contact for your family or business that speaks with the insurance company. This will help avoid confusion and misinformation. An employee assigned this responsibility should have sufficient knowledge and background to work on this task.

This work will not be wasted if there is not a flood. These items can come in handy in the event of other disasters (fire, earthquake, theft, etc.), selling your business/property, and reminding you of the assets you have. To borrow from a wise man, "if you are prepared, you need not fear." Now excuse me, I need to get my camera and start taking some pictures!

Patrick Hanis is partner with the Law Firm of Hanis Irvine Prothero, PLLC, located in Kent, Washington. He is experienced in insurance claims, business, real estate, leasing and condemnation issues. He can be reached at 253-520-5000.