

Flood Ebbs, Insurance Woes Don't

The New York Times

The mayor of Hoboken, N.J., isn't the only one complaining that her Hurricane Sandy relief money has been held hostage.

Some homeowners whose properties were damaged by the storm would say the same about their flood insurance carriers: More than a year after the hurricane struck the East Coast, there are still families battling it out with insurers to collect money they believe they are rightfully owed. And time is running out.

Chrisanthe Cholakis, a 79-year-old retired secretary, is among those still hoping for more compensation. Three days after the storm pounded her seaside neighborhood of Belle Harbor on the Rockaway peninsula in Queens, her oven fell through the kitchen floor into her basement. Less than two weeks after the storm, her family hired an engineer, who confirmed what they already knew: The surge of salt water and sewage that flooded the two-story home's basement was to blame.

But the insurer, whose engineer assessed the situation eight months after the storm and after the floor was repaired), denied the claim for those damages and other items, which are estimated at about \$80,000. The insurer did pay about \$30,000 to fix certain items in the basement, according to Ms. Cholakis's daughter and the representative they hired to handle the claim. But they appealed the insurer's decision, and they are still trying to prove their case.

Launch media viewer

Robert Neubecker for The New York Times

"It was a nightmare," said Ms. Cholakis, who is legally blind and lived largely on a diet of Lean Cuisine and other microwavable meals while her kitchen was in disarray. "I had some savings in the bank, and I took out \$35,000 just to get some stuff done. I laid out more than they did."

For many homeowners who find themselves ensnared in similar disputes, the deadline to submit their final flood insurance claims is approaching. The insurers generally need to receive the form, known as a proof of loss, and piles of supporting documents by April 29.

The National Flood Insurance Program, which is run by the Federal Emergency Management Agency but

largely administered by private insurance companies, said it had paid about \$7.9 billion to victims of the storm. But private insurers typically sell those policies, collect about 30 percent of the premiums and hire adjusters to assess the damage. Policyholders often hire their own representatives, known as public adjusters, to deal with the insurer's hired help and the overall claim. That's what Ms. Cholakis did.) There are a few different methods homeowners can use to try to collect more money. But as lawyers, consumer advocates and individuals can attest, it's a notoriously laborious and difficult process. Filing a lawsuit is the most extreme option, but experts say that, too, is challenging, particularly given restrictive laws in New York and New Jersey.

SUPPLEMENTAL CLAIMS Most homeowners have already submitted their initial flood claims. But they can also submit a supplemental claim, which allows them to submit revised or added expenses, if they believe they are owed more money or found additional damage after the initial inspection. All claims must be submitted through a "proof of loss" form, found on FEMA's website, and must be received by the insurer 18 months after the date of loss, according to FEMA, which is April 29 for people whose homes were hit by Sandy on Oct. 29, 2012. The original date was extended.) It must be signed by the homeowner, include all supporting documentation and be notarized.

"For a lot of homeowners, an insurance adjuster filled it out for them initially and they simply signed it," said Amy Bach, executive director of United Policyholders, a consumer advocacy group whose website has a wide array of tools and advice for homeowners. "When they go to submit additional documents or prepare a supplemental claim on their own, they are not aware how nitpicky the program is. You have to follow the rules or your claim will be rejected."

When you file a supplemental claim, the home may be reinspected by an adjuster different from the one who initially evaluated the home, said Johnathan C. Lerner, founder of Lerner, Arnold & Winston, a New York law firm that specializes in property damage cases against insurance companies. "But this is not always the case," he added.

To bolster your case, try to include proof of your payment when you can, as opposed to estimates, though this means you need to have the money to lay out, which can be impossible if you're rebuilding a house. "That seems to be more in favor these days to support a supplemental claim," said Jonathan Wilkofsky, founding and managing partner of Wilkofsky, Friedman, Karel & Cummins, a law firm that represents policyholders. He also said that claimants need to "understand precisely what the policy covers."

APPEAL Homeowners can appeal the insurer's decision to FEMA within 60 days from the date of the insurer's denial letter, although it is not always entirely clear what qualifies as the denial letter — so be

sure to check with the insurer. It might be that they said they awarded you \$50,000 instead of \$75,000, Mr. Wilkofsky said. Again, you need to include all the pertinent documentation to support your case a full list of those items can be found in FEMA's Flood Insurance Manual online).

"You lay out in as much detail as possible why you have been shorted, and it goes to separate eyes for review," Mr. Wilkofsky said, adding that FEMA has 90 days to respond. "I have seen quite a number of FEMA appeals. I have yet to see many victorious appeals."

Ms. Cholakis's public adjuster filed an appeal on her behalf, which FEMA denied. A spokesman for the insurance company, which is owned by Assurant, said its adjusters determined that some, but not all, of the damage could be tied to the flooding, and that she could refile her appeal. But Ms. Cholakis's representative argues that they gave her file short shrift: "They totally ignored the reports of the insured's engineer," said Michael Palmiero of American Claims Adjusters in Brooklyn. He said that the flood insurance company's own engineer said the supporting beams were largely submerged.

APPRAISAL If homeowners and insurers can't agree on the dollar value of the claim, they can request an appraisal though homeowners cannot pursue both an appraisal and an appeal). Before this step can be taken, the parties need to agree on what was actually damaged and what is actually covered by the policy. In other words, you need to agree that, say, 1,000 square feet of wood flooring was damaged, but the carrier believes it costs \$4 a square foot to repair, and the homeowner believes it costs \$12 a square foot, explained Mr. Lerner.

Each side then hires an impartial appraiser, and the two appraisers pick an umpire, who will intervene if the two appraisers cannot reach a mutual decision on the amount of the loss. This process wouldn't help in Ms. Cholakis's case because the insurer does not believe her kitchen was directly damaged by the flood.

LITIGATION This is probably the most difficult route to pursue and usually comes down to a battle between each side's experts: your engineer, for instance, versus the insurer's. Given the limited amount homeowners can potentially recover and other restrictions, many lawyers tend to be highly selective with the cases they take on. It can also be expensive, which is why a homeowner would want to hire a lawyer who will work on contingency, meaning you pay only if the case is successful. It's also important to find someone who has been down this road before and is considered a policyholder lawyer, consumer advocates said.

The case must be filed in Federal District Court, in the district where the property is located, according to Mr. Lerner. There is no jury; the cases are heard by a judge. Awards cannot include lawyer's fees or interest and are limited to \$250,000 on a residence and \$100,000 for contents, he added.

If you're thinking about suing — whether the National Insurance Flood Program or one of the carriers that administers the policy — you must file the suit within one year of the date of the first written denial from the carrier from any part of the claim).

"When the insurer does not fully and fairly handle the claim, it improperly foists its own burdens onto the homeowner," said Benjamin Rajotte, director of Touro Law Center's Disaster Relief Clinic, where law students assist homeowners with their claims. "There are deep systemic problems that stack the cards against the homeowner."