
TABLE OF CONTENTS

Publisher Remarks	xvii
About the Authors	xix

— CHAPTER 1 — Introduction

§ 1.01. HISTORY AND BACKGROUND OF FLOOD INSURANCE.....	(1):3
§ 1.02. FLOODING IN NORTH CAROLINA.....	(1):3
§ 1.03. THE “FLOOD EXCLUSION” IN PROPERTY POLICIES	(1):4
(1) Generally	(1):4
(2) Statutory Notice of Flood Exclusion	(1):4
(3) Duty of Agent or Broker to Obtain Flood Coverage.....	(1):5
§ 1.04. THE FLOOD INSURANCE “MANDATE”	(1):5

— CHAPTER 2 — The Private Market and Flood Insurance

§ 2.01. INTRODUCTION.....	(2):3
§ 2.02. PRIMARY COVERAGE.....	(2):3
§ 2.03. EXCESS COVERAGE	(2):4
§ 2.04. NFIP COMPLIANT PRIVATE FLOOD INSURANCE.....	(2):5
(1) Private Market Policies.....	(2):6
(2) Advantages of an NFIP Compliant Policy.....	(2):6

— CHAPTER 3 — Functioning of the National Flood Insurance Program

§ 3.01. INTRODUCTION	(3):3
§ 3.02. MAPPING AND REGULATION	(3):3
§ 3.03. ZONE DESIGNATIONS.....	(3):4
§ 3.04. THE STANDARD FLOOD INSURANCE POLICY	(3):5
§ 3.05. PREMIUMS.....	(3):6
(1) Calculation of SFIP Premiums.....	(3):6
(2) Preferred Risk Policy	(3):6
(3) Grandfathering Rules: Potential Benefits	(3):7
§ 3.06. LIMITS OF COVERAGE	(3):8
§ 3.07. POLICY ISSUANCE	(3):8

(1) FEMA Issued Policies; Direct Servicing Agent.....	(3):8
(2) Write Your Own Companies	(3):8
§ 3.08. DISSEMINATION OF FLOOD INSURANCE INFORMATION	(3):9
§ 3.09. STATE REGULATION.....	(3):10
§ 3.10. THE FLOOD INSURANCE ADVOCATE.....	(3):11

— CHAPTER 4 —

Interpretation of the FEMA Policy

§ 4.01. INTRODUCTION.....	(4):3
§ 4.02. APPROPRIATIONS CLAUSE OF THE CONSTITUTION	(4):3
§ 4.03. FEDERAL COMMON LAW.....	(4):3
§ 4.04. NATIONAL FLOOD INSURANCE ACT.....	(4):5
§ 4.05. BASIC FEMA REGULATIONS.....	(4):6
§ 4.06. FEMA MANUALS, HANDBOOKS, BULLETINS, AND LETTERS AS AUTHORITY	(4):6
§ 4.07. APPLICABILITY OF COMMON LAW DOCTRINES; NORTH CAROLINA LAW	(4):7
(1) <i>Contra Proferentem</i>	(4):7
(2) Insurer Bad Faith	(4):8
(3) Loss in Progress.....	(4):10
(4) Known Loss	(4):10
(5) Obligation of Insured to Preserve Property from Loss	(4):11
(6) Constructive Total Loss Doctrine	(4):11
(7) Mend the Hold	(4):11
(8) Adhesion Contracts.....	(4):11
(9) Doctrine of Reasonable Expectations.....	(4):12

— CHAPTER 5 —

The Policy Forms

§ 5.01. THE POLICY FORMS	(5):3
(1) The General Property Form.....	(5):3
(2) The Dwelling Form Policy	(5):3
(3) Residential Condominium Building Association Policy	(5):4
(a) Condominiums.....	(5):4
(b) Homeowners and Property Owners Associations.....	(5):5
§ 5.02. POLICY ISSUED IN ERROR.....	(5):6

— CHAPTER 6 —
The Flood Insurance Policy Application

§ 6.01. STATUS OF THE APPLICATION.....	(6):3
§ 6.02. SCHEDULED BUILDING POLICY	(6):3
§ 6.03. PROVIDING INFORMATION AND REVIEWING THE APPLICATION.....	(6):3
§ 6.04. SECURING THE DESIRED COVERAGE.....	(6):4
§ 6.05. CHANGED CIRCUMSTANCES	(6):4
§ 6.06. APPLICATION CONTENTS	(6):5
(1) Mortgagees	(6):5
(2) Type of Occupancy	(6):5
(3) Building Purpose	(6):6
(4) Basement.....	(6):6
(5) Condominiums and Homeowners Associations	(6):7
§ 6.07. WAITING PERIOD.....	(6):7
§ 6.08. DETERMINING THE EFFECTIVE DATE.....	(6):8
(1) General Rules.....	(6):8
(2) Loan Transaction	(6):9
(3) Map Revision.....	(6):9
(4) Residential Condominium Building Association Policy	(6):9

— CHAPTER 7 —
The Declarations Page

§ 7.01. INTRODUCTION.....	(7):3
§ 7.02. NAMED INSURED; REFORMATION	(7):3
§ 7.03. ADDRESS OF INSURED PROPERTY	(7):3
§ 7.04. FLOOD ZONE IDENTIFICATION	(7):4
§ 7.05. ASCERTAINING THE NAME OF INSURER.....	(7):5
§ 7.06. STATUS OF DECLARATIONS PAGE	(7):5

— CHAPTER 8 —
Annotated Contents of the Standard Flood Insurance Policy

§ 8.01. INSURING AGREEMENT	(8):3
§ 8.02. KEY DEFINITIONS	(8):3
(1) The Policy.....	(8):3
(2) Flood	(8):3
(a) Two or More Properties	(8):4
(b) Continuous Flood.....	(8):4

(c)	Direct Physical Loss	(8):4
(d)	Erosion	(8):5
(e)	Surface Waters	(8):5
(f)	Mudflow	(8):5
(3)	Condominiums	(8):6
(4)	Improvements	(8):6
§ 8.03.	WAIVER OF POLICY PROVISIONS	(8):6
§ 8.04.	COVERED PROPERTY	(8):7
(1)	Building Property—Coverage A	(8):7
(a)	Coverage for Single Building	(8):7
(b)	Additions and Extensions	(8):8
(c)	Fixtures and Improvements	(8):8
(d)	Buildings Under Construction and Materials and Supplies	(8):9
(e)	Lower Level and Basements	(8):9
(f)	Property Moved to Different Location	(8):11
(g)	Detached Garage	(8):11
(2)	Building Property—Coverage B	(8):11
(a)	Covered Personal Property	(8):12
(b)	Personal Property in Lower Level or Basement	(8):12
(c)	Limited Coverage	(8):12
(d)	Household Personal Property	(8):12
(e)	Personal Property Stored at Another Location	(8):12
(f)	Leasehold Improvements	(8):12
(3)	Coverage C	(8):13
(a)	Debris Removal	(8):13
(b)	Loss Avoidance Measures	(8):14
(c)	Property Removed to Safety	(8):14
(d)	Pollution Damage	(8):14
(e)	Condominium Loss Assessment	(8):15
(4)	Increased Cost of Compliance—Coverage D	(8):15
(a)	Coverage	(8):15
(b)	Eligibility	(8):16
(c)	Conditions	(8):16
(d)	Other Provisions	(8):17
(e)	Exclusions	(8):17
§ 8.05.	PROPERTY NOT COVERED	(8):18
§ 8.06.	EXCLUSIONS	(8):19
(1)	Economic Losses	(8):19
(2)	Flood in Progress	(8):19
(3)	Earth Movement	(8):20

(4) Water Related Losses	(8):21
(5) Land Leased from Federal Government.....	(8):21
(6) Testing or Monitoring of Pollutants.....	(8):22
§ 8.07. DEDUCTIBLES.....	(8):22
§ 8.08. COINSURANCE CLAUSE.....	(8):22
§ 8.09. OTHER INSURANCE CLAUSE	(8):23
§ 8.10. VALUED POLICY.....	(8):23
§ 8.11. POLICY VOIDANCE.....	(8):24
§ 8.12. REDUCTION AND REFORMATION OF COVERAGE.....	(8):24
(1) Reformation Prior to Loss.....	(8):24
(2) Reformation After Loss.....	(8):25
§ 8.13. POLICY RENEWAL	(8):25
§ 8.14. CANCELLATION OF THE POLICY BY THE INSURED OR THE MORTGAGEE	(8):26
(1) Cancellation by the Insured	(8):26
(2) Cancellation by the Mortgagee	(8):27
§ 8.15. CLAIMS.....	(8):27
(1) Requirements.....	(8):27
(2) Response to Claim.....	(8):28
(3) Loss Payment.....	(8):29
(4) Loss Settlement	(8):30
(a) General Property Form	(8):30
(b) Dwelling Form.....	(8):30
(c) Residential Condominium Building Association Policy.....	(8):32
(d) Appraisal	(8):33
§ 8.16. CHANGES BY FEMA BROADENING COVERAGE.....	(8):35
§ 8.17. ASSIGNMENT OF POLICY.....	(8):36
§ 8.18. LEGAL ACTIONS.....	(8):36
§ 8.19. SUBROGATION	(8):36
§ 8.20. DUPLICATE POLICIES.....	(8):36
§ 8.21. PAIR AND SET CLAUSE	(8):37
§ 8.22. ABANDONMENT AND SALVAGE	(8):37
§ 8.23. CONTINUOUS LAKE FLOODING	(8):37
§ 8.24. CLAIM GUIDELINES IN CASE OF A FLOOD.....	(8):38

__ CHAPTER 9 __ Notifying the Insurer of a Claim

§ 9.01. INTRODUCTION	(9):3
§ 9.02. NOTICE-PREJUDICE RULE.....	(9):3
§ 9.03. TIMELINESS OF NOTICE	(9):3

§ 9.04. LATE NOTICE.....	(9):4
§ 9.05. NOTICE TO INSURER OR AGENT.....	(9):4
§ 9.06. FEMA NOTICE OF LOSS FORM.....	(9):4
§ 9.07. TIMELY NOTICE AFTER CATASTROPHIC EVENT.....	(9):5
§ 9.08. ACCURACY OF NOTICE.....	(9):5

— CHAPTER 10 — The Adjustment Process

§ 10.01. INDEPENDENT ADJUSTER.....	(10):3
(1) Timely Contact From the Adjuster	(10):3
(2) The Timely Inspection	(10):4
(3) Non-Waiver Agreement.....	(10):5
(4) Preliminary Report.....	(10):6
(5) Adjuster Preliminary Damage Assessment Form.....	(10):6
(6) Specific Adjustment Issues	(10):7
(a) Evidence of Loss.....	(10):7
(b) Depreciation	(10):7
(c) Separating Wind Damage from Water Damage.....	(10):7
(d) Advance Payment.....	(10):7
(e) Other Insurance Clause	(10):10
(f) Overhead and Profit	(10):11
(g) Mortgagees and Lienholders	(10):11
(h) Lease Agreements	(10):11
(i) Repair Versus Replacement.....	(10):11
(j) Increased Cost of Compliance	(10):12
(k) Subrogation	(10):13
(l) Supplemental Claims.....	(10):13
(7) Treatment of Specific Items.....	(10):14
(a) Air Conditioning Condensers and Solar Heating Elements.....	(10):14
(b) Bailee Goods.....	(10):15
(c) Boat Houses	(10):15
(d) Carpeting and Drapes	(10):15
(e) Commercial Losses.....	(10):15
(f) Countertops	(10):16
(g) Decks.....	(10):17
(h) Elevators.....	(10):17
(i) Foundations.....	(10):17
(j) Garages	(10):18
(k) Manufactured and Mobile Homes.....	(10):19

(l)	Swimming Pools, Hot Tubs, and Spas	(10):19
(m)	Self-Propelled Vehicles	(10):19
(8)	Final Report	(10):19
(a)	Supporting Documentation.....	(10):20
(b)	Redress of Errors.....	(10):20
(c)	Proof of Loss Form.....	(10):21
§ 10.02.	CLAIM FILE	(10):21
(1)	Contents of File.....	(10):21
(2)	Policyholder Access to the Claim File.....	(10):22
§ 10.03.	RELATIONSHIP BETWEEN THE ADJUSTER AND THE INSURED.....	(10):23
§ 10.04.	PUBLIC ADJUSTER.....	(10):24

— CHAPTER 11 —

Proof of Loss Statement

§ 11.01.	THE PROOF OF LOSS STATEMENT REQUIREMENT	(11):3
(1)	Duty of Insured to Submit Proof of Loss	(11):3
(2)	Transmitting the Proof of Loss	(11):4
(3)	Official FEMA Proof of Loss Form	(11):4
(4)	Increase Cost of Compliance Proof of Loss.....	(11):4
(5)	Waiver of Requirement to Submit Proof of Loss.....	(11):5
(6)	Exception to Proof of Loss Requirement.....	(11):5
(7)	Proofs of Loss Completed by Independent Adjuster	(11):6
(8)	Proofs of Loss Provided by WYO Carrier	(11):7
(9)	Insurance Agent Assistance with Proof of Loss	(11):7
(10)	Proving Submission of Proof of Loss	(11):7
§ 11.02.	ADEQUACY OF PROOF OF LOSS.....	(11):8
§ 11.03.	AMOUNT OF CLAIM	(11):10
(1)	Specific Sum Certain Required.....	(11):10
(2)	“Undetermined” Amount May Suffice	(11):11
§ 11.04.	SIGNED AND SWORN REQUIREMENT	(11):11
(1)	Proper Signatory.....	(11):11
(2)	Meaning of “Sworn”	(11):12
(3)	Notarization.....	(11):12
§ 11.05.	TIMELINESS.....	(11):12
(1)	State of Disaster Automatic Stay of Proof of Loss	(11):13
(2)	Date of Loss.....	(11):13
(3)	Computation of 60-Day Period.....	(11):13
(4)	Termination of 60-Day Period.....	(11):14
(5)	Strict Enforcement of the Limit.....	(11):14

(6)	Documenting Compliance.....	(11):15
(7)	Supplemental Claims.....	(11):15
(8)	Tolling of the Limit.....	(11):15
(9)	Burden to Show Lack of Compliance.....	(11):15
§ 11.06.	SUBSTANTIAL COMPLIANCE.....	(11):15
§ 11.07.	DOCUMENTS ACCOMPANYING THE PROOF OF LOSS.....	(11):16
(1)	Detailed Repair Estimates.....	(11):16
(a)	Placeholder Claim.....	(11):17
(b)	Use of Adjuster's Damage Estimate.....	(11):17
(c)	Discrepancies in Adjuster's Damage Estimate.....	(11):17
(d)	Contractor's Estimate.....	(11):18
(e)	Combination of Documents May Suffice.....	(11):18
(f)	Bills and Receipts.....	(11):18
(g)	Challenge to Insurer's Objection.....	(11):19
(2)	Inventory.....	(11):19
(a)	FEMA Form.....	(11):19
(b)	Related Attachments.....	(11):20
(c)	Missing Documents.....	(11):20
(d)	Determining Actual Cash Value.....	(11):20
(e)	Request for Additional Inventory.....	(11):21
§ 11.08.	MULTIPLE PROOFS OF LOSS.....	(11):21
§ 11.09.	SUPPLEMENTAL CLAIMS.....	(11):21
§ 11.10.	REJECTION OF PROOF OF LOSS.....	(11):24
§ 11.11.	DEFENSES TO FAILURE TO COMPLY WITH PROOF OF LOSS REQUIREMENT.....	(11):24
(1)	Waiver.....	(11):24
(a)	Express Waiver.....	(11):24
(b)	Constructive Waiver.....	(11):25
(2)	Estoppel.....	(11):25
(3)	Statutory "Good Cause".....	(11):27
§ 11.12.	FEMA EXTENDED DEADLINES.....	(11):27
(1)	Blanket Post-Disaster Extensions/Waivers.....	(11):27
(2)	Hurricane Florence Extension/Waiver.....	(11):29
(3)	Requests for Individual Extensions/Waivers.....	(11):29
(a)	Multiple Extensions/Waivers.....	(11):29
(b)	Procedure for Request for Extension/Waiver.....	(11):30
(c)	Tolling Proof of Loss Deadline.....	(11):30
(d)	FEMA Processing of Extension/Waiver Requests.....	(11):30
§ 11.13.	SETTLEMENT.....	(11):32

— CHAPTER 12 —

Denial of Claim

§ 12.01. DENIAL STATEMENT	(12):3
§ 12.02. DENIAL AND MORTGAGEES	(12):4
§ 12.03. ADMINISTRATIVE APPEAL	(12):4
(1) Limitations on Appeal	(12):4
(a) Appraisal	(12):5
(b) Legal Action	(12):5
(2) Filing an Appeal	(12):5
(3) Form of Written Appeal	(12):6
(4) Contents of Written Appeal and Additional Documents	(12):6
(5) FEMA Decision	(12):6
(6) Judicial Review	(12):7

— CHAPTER 13 —

Assignment of Claims and False Claims

§ 13.01. ASSIGNMENT OF CLAIMS	(13):3
§ 13.02. FALSE CLAIMS	(13):3
(1) The Federal False Claims Act	(13):3
(a) Penalties	(13):4
(b) Scierter	(13):4
(c) FEMA and the False Claims Act	(13):4
(d) Corporate Liability	(13):5
(e) <i>Qui Tam</i> Actions	(13):5
(2) The Federal False Statements Statute	(13):6

— CHAPTER 14 —

Arbitration and Litigation

§ 14.01. ARBITRATION	(14):3
§ 14.02. LITIGATION	(14):3
(1) Preconditions	(14):3
(2) Exhaustion of Administrative Remedies	(14):5
(3) The Role of FEMA	(14):5
(4) Declaratory Judgment	(14):6
(5) Proper Party Defendant	(14):6
(6) Third-Party Standing	(14):7
(7) Federal Jurisdiction	(14):7

	(a)Jurisdiction Over WYO Companies	(14):7
	(b)Concurrent Jurisdiction	(14):8
	(c)Claims to Which NFIA Jurisdictional Statute Applies	(14):8
	(d)Federal Question Jurisdiction	(14):8
(8)	Jury Trial	(14):9
(9)	Waiver of Defenses	(14):9
(10)	Limitations Period.....	(14):9
	(a) Notice of Disallowance or Denial.....	(14):10
	(b) Different Language in the Policy and Statute	(14):12
	(c) Federal Rules of Civil Procedure	(14):13
	(d) Improper Venue.....	(14):13
	(e) Tolling	(14):13
	(f) Denial of Claim Based on Adjuster's Report.....	(14):13
	(g) Filing Claim in State Court	(14):13
	(h) FEMA's Post-Sandy Explanation of the Limitation	(14):14
(11)	Preemption of State Law Claims.....	(14):14
	(a) Claims Handling.....	(14):14
	(b) Premiums	(14):15
	(c) Procurement Claims.....	(14):15
	(d) Actions Against Party that Built in Flood Zone	(14):20
	(e) Attorney's Fees.....	(14):21
(12)	Federal Claims	(14):21
(13)	Discovery: Production of FEMA Manuals	(14):21
(14)	Consequential Damages.....	(14):22
(15)	Punitive Damages	(14):22
(16)	Attorney's Fees.....	(14):22
	(a) General Prohibition	(14):22
	(b) Federal Equal Access to Justice Act.....	(14):22
(17)	Interest.....	(14):24
(18)	Reimbursement of WYO Carriers.....	(14):24
(19)	Claims by Condominium Unit Owners	(14):24
	(a) Claims Against Insurer	(14):24
	(b) Claims Against Association for its Failures.....	(14):25

— CHAPTER 15 —

Wind Versus Flood Loss

§ 15.01. SCOPE OF THE PROBLEM.....	(15):3
§ 15.02. FEMA GUIDANCE	(15):3
(1) FEMA Bulletins	(15):3

(2)	Adjuster Claims Manual	(15):4
§ 15.03.	STATUTORY REQUIREMENTS	(15):5
(1)	COASTAL Act.....	(15):5
(2)	State Disaster Claims Mediation Programs	(15):6
(a)	Federal Statutory Requirement	(15):6
(b)	The North Carolina Requirement for Mediation of Disaster-Related Claims	(15):6

— APPENDICES —

National Flood Insurance Program: FEMA Forms and Policies

APPENDIX 1:	General Property Form
APPENDIX 2:	Dwelling Form Policy
APPENDIX 3:	Residential Condominium Building Association Policy
APPENDIX 4:	Notice of Loss (FEMA Form 086-O-11)
APPENDIX 5:	Adjuster's Preliminary Flood Damage Assessment (FEMA Form 086-O-20)
APPENDIX 6:	Adjuster's Preliminary Report (FEMA Form 086-O-13)
APPENDIX 7:	National Flood Insurance Program Narrative Report (FEMA Form 086-O-15)
APPENDIX 8:	Increased Cost of Compliance (ICC) Adjusters Report (FEMA Form 086-O-19)
APPENDIX 9:	Worksheet – Contents – Personal Property (FEMA Form 086-O-06)
APPENDIX 10:	Worksheet – Building (FEMA Form 086-O-07)
APPENDIX 11:	Worksheet – Building (Continued) (FEMA Form 086-O-08)
APPENDIX 12:	Manufactured (Mobile) Home/Travel Trailer Worksheet (FEMA Form 086-O-17)
APPENDIX 13:	Manufactured (Mobile) Home/Travel Trailer Worksheet (Continued) (FEMA Form 086-O-18)
APPENDIX 14:	Statement as to Full Cost of Repair or Replacement (FEMA Form 086-O-12)
APPENDIX 15:	Cause of Loss and Subrogation Report (FEMA Form 086-O-16)
APPENDIX 16:	Adjuster's Final Report (FEMA Form 086-O-14)
APPENDIX 17:	Proof of Loss (FEMA Form 086-O-09)
APPENDIX 18:	Increased Cost of Compliance Proof of Loss (FEMA Form 086-O-10)
APPENDIX 19:	Adjuster Registration Application (FEMA Form 086-O-21)

INDEX