

Understanding Time Sensitive Provisions

by Joshua Gold

When reading the fine print of almost any insurance policy, one will see a host of often daunting insurance policy conditions. Almost all insurance policies, including liability, crime, kidnap and ransom, and property insurance policies call for “notice” of claims within a certain period of time.

Additionally, many insurance policies, such as property or crime policies, call for the filing of a proof of loss within a set amount of time and also may require that any suit against the insurance company for its failure to pay a claim (in part or in full) must begin within a reduced statute of limitations period—sometimes as short as 12 months. Such a provision may even be found in a liability policy, although this is rare.

Policyholders should be careful with these time-sensitive provisions as insurance companies often seek a complete forfeiture of insurance coverage when arguing that the policyholder failed to comply with them—even where no harm to the insurance company has resulted.

Notice Provisions

Failure of a policyholder to provide timely notice of a claim can result in a protracted legal battle over the consequences of the alleged late notice. While the great majority of states require an insurance company to demonstrate actual prejudice as a result of the late notice before escaping coverage, a small minority of states holds that late notice can result in complete forfeiture of insurance coverage without a demonstration of prejudice to the insurance company.

Although there are a host of exceptions to finding a forfeiture of coverage, policyholders should still err on the side of caution when faced with notice of claims and should provide notice to all insurance companies as soon as possible. It is also wise for policyholders to obtain preferred language for their notice clauses, which can often be accomplished with the help of a good insurance broker.

Some insurance policies also contain clauses that specify when and how a policyholder is to give notice of circumstances that may result in a claim. It is important to check these provisions to see if they are discretionary or mandatory. Even if not mandatory, it is prudent to evaluate whether notice should be provided anyway in conjunction with considerations about disclosure under a renewal insurance application, changing insurance companies or other risk management objectives.

Policyholders should also check notice terms that may be found in umbrella and excess insurance policies to see if they differ from the requirements imposed by the primary insurance policy. Just because an excess insurance policy is called a “follow form” policy does not mean it actually is.

Proof of Loss Provisions

Almost every property insurance policy contains a clause calling for the policyholder to submit a proof of loss to the insurance company in connection with a property claim. This is often true of crime policies and fidelity bonds as well. Most, but not all, property insurance policies call for a proof of loss to be filed within a certain period of time, such as 60, 90 or 120 days from the property loss or damage.

Anyone who has ever been involved in quantifying the loss from a serious claim will know the time period afforded by the policy for the proof of loss is often unrealistic. As with “late” notice, failure to abide by the terms of the proof of loss may lead to an insurance company seeking a complete forfeiture of insurance coverage. Many courts have held that an insurance company cannot deny insurance coverage for lack of a proof of loss where the insurance company does not send the policyholder a form of proof of loss for completion. Even so, the better practice is to negotiate a Time extension with the insurance company and preserve that agreement in writing before time expires to file a proof of loss. This proactive method of handling the filing of a proof of loss is far preferable to battling it out in court.

Suit Limitation Provisions

Additionally, policyholders must also keep in mind suit limitation provisions, which will be used by some insurance companies in an attempt to escape their coverage obligations for even the most clearly covered claim. Under many property insurance policies, the insurance company seeks to shorten the applicable statute of limitations by, for example, providing in the policy that “any suit for the recovery of any loss hereunder shall not be brought...after the expiration of 24 months from the discovery of such loss.” These suit limitation provisions can prove to be a snare for the unsuspecting, even where the otherwise applicable statute of limitations would provide a much longer period in which to file suit for certain causes of action, such as breach of contract.

In some states, insurance company efforts to shorten the statute of limitations are strictly prohibited or restricted. Court decisions in other states have found numerous exceptions to applying a suit limitation as a means of avoiding insurance coverage. Nevertheless, the safer practice is to mark the date in which a policyholder should be able to start an insurance coverage action should the insurance company refuse to honor coverage.

While no one enjoys dealing with the fine print of insurance policies, it is worth the effort to be proactive

so as to leave as few technical arguments at the insurance company's disposal when you need your insurance protection the most. ■

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