



The Soto Law Group, P.A.

# CONSTRUCTION PRACTICE GROUP

Legal Information for the Construction Industry

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## Insurance Authorizations

Many of our restoration clients have used and still use the “insurance authorization agreement” as a way to enter into a restoration contract with individuals, associations, and commercial entities before those parties have received payment from their insurer for the damages. Here’s how it works: after an owner of real property suffers wind, storm, fire and/or water damage to real property, the restoration company enters into an agreement with the customer. The entire agreement is based on the property owner’s insurance carrier’s approval of the owner’s claim under its insurance policy. The agreement typically states “this contract is subject to insurance company approval and this contract is null and void if owner’s insurance carrier fails to fund owner’s claim and/or funds less than the amount set forth in this contract.” The less popular version of the insurance authorization agreement states the contractor will negotiate the claim with the insurance carrier and perform the work for the monies obtained from the insurance carrier.

**THE PROS:** The obvious reason to use an insurance authorization agreement is to bind the owner before the owner receives the money for the remediation. Owners typically do not seek out a contractor unless and until they have the funds to pay for the work. This agreement offers the owner an easy way to enter into a contract without waiting months for its insurance company to approve and fund its claim. The owner is often comforted by the provision voiding the contract in the event the insurance carrier fails to fund the full amount of the contract. The restoration company benefits by avoiding the competition and usual bidding process because the owner is eager to repair the damage to the property.

**THE CONS:** The obvious problem occurs when the insurance carrier fails to pay the owner’s claim in an amount equal to or greater than the contract price. The owner can now void the contract as it received less money from its carrier than the price for the work as stated in the insurance authorization agreement. The less obvious pitfall occurs when the owner’s insurance carrier receives sufficient funds to pay for the work as set forth in the insurance authorization agreement yet refuses to allow the contractor to perform the work. The owner takes the position that it’s not a valid contract. Unfortunately, one Florida Court has agreed with this position.

In *Gables I Townhomes, Inc., v. Sunmark Restoration, Inc.*, 687 So. 2d 6 (Fla. 3rd DCA 1996), a roofing contractor entered into an insurance authorization agreement with an owner for a new roof. The price of the work under the contract was left up to the negotiations between the contractor and the insurance carrier. Thereafter, the owner received funds from its insurance carrier for the work. The owner then hired a different roofer for the work.

The roofing contractor filed suit against the owner for breach of contract. The Third District Court of Appeal held “the insurance authorization agreement fails for indefiniteness rendering it unenforceable. No meeting of the minds occurred between the owner and the contractor as the contract left it to the future will of the contractor and the insurance company to determine the price term of the contract.” The Court further reasoned that “in the absence of a definite price or a method of determining a price not left solely up to insurance carrier’s discretion, the agreement must fail as a binding contract.” Thus, the contract is not legally binding if the price of the work is not stated in the contract and is left to the discretion of the insurance company.

**The Takeaway:** The insurance authorization is still a good tool for inducing owners to enter into contracts quickly after a storm or emergency event. However, be mindful of the legal pitfalls involved and adjust your contracts accordingly. To protect themselves, many restoration companies include a provision that the work to be performed and cost of such work is reflected in a proposal/estimate to be attached and incorporated into the authorization. Before the work is performed, the restoration company provides the customer with the proposal, obtains the customer’s signature, and attaches the proposal to the authorization. A provision stating that the value of the contract shall be the reasonable value of the labor, materials, and services actually furnished by the restoration company and acknowledging that the customer is liable for any shortfall in the insurance proceeds may also protect the restoration company. In addition, many restoration companies take an assignment of the owner’s entitlement to insurance benefits to prevent the scenario where an owner receives a payout from the carrier but hires another company.



This article was originally drafted by Felena Talbott, Esq. in 2008 and has been updated with the assistance of Dale A. Evans Jr., Esq.



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Office Locations: 2400 E. Commercial Boulevard, Suite 400, Fort Lauderdale, FL 33308  
2901 Q. Street, NW Suite 2, Washington, D.C. 20007