

ROOF CLAIMS ISSUES IN TEXAS



**Independent
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Introduction

Texas experiences some of the most severe weather on Earth. Many of Texas' largest cities are located in the hail belt or tornado alley or are exposed to hurricanes along the coast. From 2004 to 2008, windstorm and hail losses accounted for 61 percent of Texas' homeowners losses.¹

The storms producing these losses come with the territory. According to Bill Proenza, regional director of the National Weather Service, Texas "is in the midst of a confrontational battlefield between colliding tropical and continental air masses" which leads to severe thunderstorms with frequent lightning, high winds and hail.²

As a result, some of the most destructive weather catastrophes in the nation have occurred in Texas. The May 5, 1995 hailstorm in North Texas remains the country's costliest hailstorm on record. On September 13, 2008, Hurricane Ike caused massive destruction along the Texas coast and became the country's third costliest hurricane on record, amounting to more than \$12 billion in losses.

Roofs are ground zero for damage caused by hail and wind. Many Texas insurance agents and adjusters can remember with virtual certainty the months and years that roofs have been replaced due to hail or wind storms in a given neighborhood over the last 20 years.

Despite the fact that roof damage may be the most common type of property insurance claim in Texas, controversies crop up every time a storm causes wind or hail damage. The IIAT technical staff answers a number of questions each year from agents who are puzzled by claims decisions made by the companies they represent. As a result, we decided to research the issues and publish this paper to:

- Describe issues involved in adjusting roof claims caused by wind and hail;
- Review insurance policy provisions used to make decisions regarding roof claims;
- Discuss positions taken by insurers and results of different positions taken by insurers; and
- Suggest ways for insurance agents to help policyholders understand the issues and decisions.

As a part of our research, we talked with independent adjusters who are on the front line of these issues. Because these individuals need to maintain good working relationships with the insurance companies that hire them, we agreed to maintain their anonymity. We also spoke to a public adjuster, who also wished to remain anonymous, to hear the consumer side of the issues. We appreciate the input and insight of all those who helped.

First, we start with some technical information regarding composition shingle roofs, the most common type of roofing material. Then, we take one issue at a time and discuss how various factors affect those issues, including policy language, state laws, TDI rules, and company adjusting practices.

1 "Texas Homeowners Insurance Rates" – Insurance Council of Texas

2 *ibid*

The Technical Aspects of Roofs³

This publication concentrates on claims issues involving composition roofing materials. They are the most common residential roofing material in the United States for two reasons: (1) They work well in a variety of climates; and (2) they are relatively inexpensive.

Composition shingles are made of a reinforcement (called a mat or felt) and a waterproofing binder (asphalt or modified bitumen) with a surfacing of granules. Reinforcements are most commonly made of woven glass fibers (fiberglass), but sometimes are made of paper (also known as an organic mat). Granules (crushed stone or fines⁴ coated with ceramic) protect the binder from direct sunlight, reflect heat, add color, and provide fire resistance and weight.

Composition shingles age naturally due to exposure to the elements and become more brittle with time. Shingles that have manufacturing defects or installation deficiencies can deteriorate more rapidly. Damage caused by natural or man-made factors can reduce the water-shedding capability and/or expected service life of a roof.

Many of the claims adjusting issues and controversies revolve around determining the amount of damage caused by natural deterioration (not covered by insurance) versus natural forces such as wind and hail (covered by insurance).

Once it is determined that covered damage has occurred, the degree of damage must be determined. This is the emerging question in roof claims: Has the roof been damaged enough to cause functional damage? Functional damage is defined by Haag Engineering Co.⁵ as a diminution of water-shedding capability or reduction in the expected long-term service life of the material. The other side of that question is: In a replacement cost policy, what difference does it make? We will explore these issues and questions in some detail later in this publication.

3 Much of the information in this section was reproduced from “Composition Roofs Damage Assessment Field Guide” © 2006 by Haag Engineering Co.

4 Fines are dust-sized particles produced in the stone-crushing process.

5 Haag Engineering Co. is one of the oldest firms in the United States specializing in the engineering analysis of failure and damage. Data developed by Haag Engineering Co. during laboratory testing programs and field studies have resulted in the publication and dissemination of information vital to persons involved in damage assessment, including a 20-year study of hail damage to cedar shingles and a 15-year study of hail damage to asphalt shingles. For more information see haagengineering.com and haageducation.com.

Insurance Policy Provisions Related to Roof Damage

Texas Homeowners Form B
Section I – Perils Insured Against
Coverage A (Dwelling)

We insure against all risks of physical loss to the property described in Section I Property Coverage, Coverage A (Dwelling) unless the loss is excluded in Section I Exclusions.

Section I – Exclusions

- 1.** The following exclusions apply to loss to property described under Coverage A (Dwelling)...
- f.** We do not cover loss caused by:
- (1)** wear and tear, deterioration or loss caused by any quality in property that causes it to damage or destroy itself.

Section I – Conditions

- 4.** Loss Settlement. Covered property losses are settled as follows:
- b.** Our limit of liability for covered losses to dwelling and other structure(s) under Coverage A (Dwelling) ... will be at replacement cost settlement subject to the following:
- (2)** If, at the time of loss, the Coverage A (Dwelling) limit of liability is 80% or more of the full replacement cost of the dwelling, we will pay the repair or replacement cost of the damaged building structure(s), without deduction for depreciation.

We will pay only the actual cash value of the damaged building structure(s) until repair or replacement is completed. Repair or replacement must be completed within 365 days after loss unless you request in writing that this time limit be extended for an additional 180 days. Upon completion of repairs or replacement, we will pay the additional amount claimed under replacement cost coverage, but our payment will not exceed the smallest of the following:

- (1)** the limit of liability under this policy applicable to the damaged or destroyed building structure(s);
- (2)** the cost to repair or replace that part of the building structure(s) damaged, with material of like kind and quality...; or
- (3)** the amount actually and necessarily spent to repair or replace the damaged building structure(s).

Insurance Policy Provisions (continued)

ISO Homeowners Form 3 (HO 00 03 10 00)

Section I – Perils Insured Against

A. Coverage A – Dwelling and Coverage B – Other Structures

1. We insure against risk of direct physical loss to property described in Coverage A and B.
2. We do not insure, however, for loss:
 - c. Caused by:
 - (6) Any of the following:
 - (a) Wear and tear, marring, deterioration;
 - (b) ... latent defect, inherent vice, or any quality in property that causes it to damage or destroy itself;

Section I – Conditions

C. Loss Settlement. Covered property losses are settled as follows:

1. Our limit of liability for covered losses to dwelling and other structure(s) under Coverage A (Dwelling) ... will be at replacement cost settlement subject to the following:
 - (2) Buildings covered under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:

- a. If, at the time of loss, the amount of insurance on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, after application of any deductible and without deduction for depreciation, but not more than the least of the following amounts.
 - (1) the limit of liability under this policy that applies to the building;
 - (2) the replacement cost of that part of the building damaged with material of like kind and quality and for like use; or
 - (3) the necessary amount actually spent to repair or replace the damaged building.
- d. We will pay no more than the actual cash value of the damage until actual repair or replacement is completed. Once actual repair or replacement is complete, we will settle the loss as noted in 2.a. ... above.
- e. You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss to buildings on an actual cash value basis. You may then make claim for any additional liability according to the provisions of this Condition C. Loss Settlement, provided you notify us of you intent to do so within 180 days after the date of loss.

Insurance Policy Provisions (continued)

ISO Commercial Property: Causes of Loss – Special Form (CP 10 30 06 07)	
<p>A. Covered Causes of Loss</p> <p>When Special is shown in the Declarations, Covered Causes of Loss means Risks of Direct Physical Loss unless the loss is:</p> <p>1. Excluded in Section B., Exclusions...</p>	<p>B. Exclusions</p> <p>2. We will not pay for loss or damage caused by or resulting from any of the following:</p> <p>d. (1) Wear and tear;</p> <p>(2) ... decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;</p>

ISO Commercial Property: Building and Personal Property Coverage Form (CP 00 10 06 07)	
<p>G. Optional Coverages</p> <p>If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.</p> <p>3. Replacement Cost</p> <p>a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.</p> <p>c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.</p>	<p>d. We will not pay on a replacement cost basis for any loss or damage:</p> <p>(1) Until the lost or damaged property is actually repaired or replaced; and</p> <p>(2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.</p> <p>e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:</p> <p>(1) The Limit of Insurance applicable to the lost or damaged property;</p> <p>(2) The cost to replace the lost or damaged property with other property:</p> <p>(a) Of comparable material and quality; and</p> <p>(b) Used for the same purpose; or</p> <p>(3) The amount actually spent that is necessary to repair or replace the lost or damaged property.</p>

Prior or Old Damage

According to our panel of independent adjusters, one difficult issue in adjusting roof claims arises when the adjuster determines the roof was damaged by a wind or hail storm that occurred months or even years in the past.

This situation usually occurs in one of three ways:

1. A new storm causes damage to a roof and the adjuster determines there is old damage as well as new damage.
2. A property owner learns that a storm caused damage to other property in the neighborhood, or sees evidence that his neighbors are getting new roofs, or suffers water damage from a leaky roof.
3. A property inspection obtained to sell the property reveals old damage and the buyer insists that the roof be replaced before closing.

New Damage on Top of Old Damage

The first situation should not be a problem for the insurance company when the policy provides replacement cost coverage. If the roof suffers damage in the most recent storm that requires replacement of the roof, the insurance company owes the full cost for replacement of the entire roof. (If the recent storm damage doesn't require full replacement see "Partial New Damage on Top of Partial Old Damage" below.) Take another look at the wording in a homeowners policy that provides replacement cost coverage:

We insure against all risks of physical loss to the property described in Section I Property Coverage, Coverage A (Dwelling) unless the loss is excluded in Section I Exclusions. Our limit of liability for covered losses to dwelling and other structure(s) under Coverage **A** (Dwelling) ... will be at replacement cost settlement...

The insurance company owes for full replacement in this case because that's what the policy says.

If the same company covered the property at the time of the first storm, either it saved money by having to replace the roof only once instead of twice, or it failed to verify the repairs were made after a claim was paid for the first storm. Either way, the company is contractually obligated to pay for replacement.

If another company covered the property at the time of the first storm, the current insurer is likewise obligated to pay for replacement. An insurance company has a right to inspect property when it provides coverage. If it failed to inspect the property, or failed to see the damage in an inspection, it has no case to deny the claim or reduce the amount owed for full replacement. This is true even if the property owner was paid for the damage by the prior insurer, but only if the new damage requires replacement of the roof without regard to the old damage.

"Neighboritis"

The second situation frequently occurs when a property owner notices all the neighbors are getting new roofs. Upon making inquiries, the owner learns about the storm. Perhaps the owner was away from the property at the time of loss, or thought the storm was not severe enough to cause damage.

In any case, this shouldn't be an issue as an inspection by a qualified adjuster will determine whether there is any damage to the roof. Weather history data is available at the neighborhood level, and claims adjusters keep records on severe weather events in their territories.

Fixing Up To Sell

The final situation in the old damage category is perhaps the most troublesome issue to handle. The damage may have occurred during the term of a prior policy, and that policy may have been placed with another company. An experienced adjuster can determine the extent of damage and approximately when it occurred based on an inspection of the roof and an examination of weather history data.

Late reporting is not necessarily an issue. The Texas homeowners policy, for example, simply requires the insured to report claims promptly. This can only be interpreted in the context of the insured's knowledge that a loss has occurred.

3. Duties After Loss

a. Your Duties After Loss. In case of a loss to covered property caused by a peril insured against, you must:

(1) give prompt written notice to us of the facts relating to the claim.

A recent and developing issue – at least with one company – is whether a claim reported long after the damage actually occurred should be paid on an actual cash value basis with no option to receive the difference between ACV and RC after the damaged property is repaired or replaced.

The Texas homeowners Form B requires replacement of the damaged property within 365 days after the loss unless the insured requests additional time in writing. The ISO forms require the insured to notify the insurer within 180 days after the loss that recovery on a replacement cost basis is intended.

If the loss occurred more than 365 days (Texas) or 180 days (ISO) prior to the first notice of loss, is the insurance company obligated to pay on a replacement cost basis? At least one company says “no.” TDI officials told IIAT they believe the company's interpretation is correct.

Texas Homeowners Form B

We will pay only the actual cash value of the damaged building structure(s) until repair or replacement is completed. Repair or replacement must be completed within 365 days after loss unless you request in writing that this time limit be extended for an additional 180 days.

ISO Homeowners Form 3

d. We will pay no more than the actual cash value of the damage until actual repair or replacement is completed. Once actual repair or replacement is complete, we will settle the loss as noted in 2.a. ... above.

e. You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss to buildings on an actual cash value basis. You may then make claim for any additional liability according to the provisions of this Condition C. Loss Settlement, provided you notify us of your intent to do so within 180 days after the date of loss.

Property Inspections

Our panel of independent adjusters identified an insurer's failure to inspect property as a leading cause of problems related to new damage on top of old damage. They had strong feelings that agents should inspect properties before writing them as new business or moving to a different insurer.

An inspection by someone qualified to observe and evaluate existing damage can prevent future problems related to roof damage claims. Our panel of experts was quick to point out that independent adjusters are uniquely qualified to provide such inspections but are seldom asked to do so.

One aspect of an insurer's failure to inspect is related to the contractual right to delay payment of the difference between ACV and replacement cost until receiving evidence of replacement. Evidence of replacement should include a visual inspection – or at least photographic evidence – prior to payment of the hold-back. If an insurer pays for replacement without exercising the right to hold back or inspect, the insured may pocket the money and not use it to replace the damaged roof, thereby setting the stage for a future problem when the next storm hits.

Reporting Possible Claims

Our panel of independent adjusters mentioned that insurance agents sometimes create problems for themselves and their customers by not reporting potential losses to insurance companies. Sometimes the customer is unsure whether they have incurred damage, so the agent suggests they contact a roofer to check it out.

If a customer calls the agent to report possible hail or wind damage, the agent is obligated to report the potential loss to the insurance company. Let the insurance company determine whether and how much damage has occurred.

There should be no fear that such a report will jeopardize the insured's premium or renewal. A residential property policy precludes any renewal underwriting decision based on weather-related claims.

6. Refusal to Renew

- a.** We may not refuse to renew this policy because of claims for losses resulting from natural causes.
- b.** We may not refuse to renew this policy solely because you are an elected official.
- c.** We may refuse to renew this policy if the insured has had three or more claims under the policy in any three year period that do not result from natural causes.

If you have had two claims in a period of less than three years, we may notify you in writing, that if you file a third claim during the three year period, we may refuse to renew this policy by providing you proper notice of our refusal to renew as provided in d. below. If we do not notify you after the second claim, we may not refuse to renew this policy because of losses. A claim does not include a claim that is filed but is not paid or payable under the policy.

Partial New Damage on Top of Partial Old Damage

The issue of new and old damage can be complicated when the amount of new damage does not require full replacement of the roof.

If the old damage was caused by a storm that occurred prior to the current insurer's coverage and the new damage can be adjusted with spot repairs or partial replacement, the current insurer may be justified in paying for the repairs or partial replacement necessitated by the recent storm. See the section on Partial Damage.

If the old damage was caused by a non-covered cause of loss such as normal wear and tear, see the section on "Covered and Non-Covered Causes of Loss."

Partial Damage

Arguably the most frustrating issue in adjusting roof claims – for policyholders, insurers and agents – is the issue of partial damage.

Hail isn't always large enough and wind doesn't always blow hard enough to cause total destruction of the roof. Sometimes only one slope of the roof is damaged or the detectable hail "pings" are spotty. These cases can present an immediate conflict between the policyholder who wants to replace the entire roof, and the adjuster who believes spot repairs or partial replacement are sufficient to indemnify the policyholder for the loss.

Composition shingles by their very nature are not easily spot-repaired. The act of repairing inherently causes additional damage to other shingles, as well as unsightly mis-matching with the old shingles.

Our panel of independent adjusters affirms there is a wide disparity in the way insurance companies view and pay for roofs that have suffered partial damage from wind and hail. Some companies simply don't quibble over these issues and do whatever is necessary to satisfy their policyholders. Other companies – well, not so much. Most agents know which companies are the former type and which are the latter. If an agent doesn't know which companies fall into the "agreeable" category and which don't, all one needs to do is attend an industry function – state association conference, local association meeting, or educational event – and ask around.

The independent adjusters say some companies use arbitrary guidelines to make decisions regarding repair versus replacement. For example, one company may decline to replace an entire roof unless the adjuster detects at least 10 hits by hail at least one-half inch diameter (or more) per square of roofing (100 square feet). Another company may require at least 13 hits.

Closely related or intertwined with the partial damage issue are the issues of functional damage, cosmetic damage and matching, which are covered in the next three sections.

Functional Damage

Some companies assert there must be “functional damage” to the roof before they will agree to replace it. Functional damage is defined by Haag Engineering as follows:

Functional damage of roofing materials is a reduction in water-shedding capability or expected long term service life. Composition shingles are functionally damaged when they are fractured by hailstones. The damage is immediate and noticeable visually and/or by feeling the top surface of a shingle. A hail-caused fracture is always apparent in the bottom surface of a shingle. Granule loss from a hailstone impact which does not fracture the mat does not affect the life of the shingle and is not functional damage. The definition of functional damage, as applied to composition shingles, is based on more than 40 years of research, testing, and experience, and has been published in peer-reviewed literature.

– ©Haag Engineering, Composition Roofs Damage Assessment Field Guide, third printing January 2009

To assess an argument that there must be functional damage to the roof before the loss is covered by the insurance policy, let’s take another look at the typical replacement cost policy language.

Section I – Perils Insured Against

Coverage A (Dwelling)

We insure against all risks of physical loss to the property described in Section I Property Coverage, Coverage A (Dwelling) unless the loss is excluded in Section I Exclusions.

We don’t find the phrase “functional damage” anywhere in the policy. Instead, it refers to “physical loss,” which has generally been defined by Texas courts to be synonymous with “damage.” The roof has certainly been damaged even with one “ding” by a single hailstone. In the words of one adjuster, “A bruise will eventually become a hole.”

There is an insurable loss with one “ding” or one bruise, but the next question is: How much will it cost to fix the damage and restore the insured to his pre-loss financial condition?

Let’s take another look at the policy provision regarding loss settlement (next page).

4. Loss Settlement. Covered property losses are settled as follows:

- b.** Our limit of liability for covered losses to dwelling and other structure(s) under Coverage A (Dwelling) ... will be at replacement cost settlement subject to the following:

We will pay only the actual cash value of the damaged building structure(s) until repair or replacement is completed. Repair or replacement must be completed within 365 days after loss unless you request in writing that this time limit be extended for an additional 180 days. Upon completion of repairs or replacement, we will pay the additional amount claimed under replacement cost coverage, but our payment will not exceed the smallest of the following:

- (1)** the limit of liability under this policy applicable to the damaged or destroyed building structure(s);
- (2)** the cost to repair or replace that part of the building structure(s) damaged, with material of like kind and quality...; or
- (3)** the amount actually and necessarily spent to repair or replace the damaged building structure(s).

Under this condition, the company is obligated to pay the ACV of the covered damage until the property is replaced, and then the company is obligated to pay no more than the “cost to repair that part of the building structure damaged,” or “the amount ...spent to repair ...the damaged building structure.” In either case, it refers to a specific part of the property – that which has been damaged by a covered cause of loss. What is the specific part that has been damaged? Are each of the shingles considered to be the parts that make up the roof as a whole? Or, is the entire roofing system considered the part that makes up the dwelling as a whole?

We think that question has been answered by several Texas court decisions. In *All Saints Catholic Church v. United National Insurance Co.* (05-07-01515-CV, Dallas Court of Appeals, June 18, 2008), the roof consisted of Hardi-Slate tiles, but the distinction from composition shingles is irrelevant. A hail storm damaged the roof in 2003. The damaged tiles could not be “spot” repaired without breaking other undamaged tiles. The church wanted the insurance company to replace the entire roof, but the insurance company wanted to pay just enough to replace the damaged tiles. The Court declined to treat the roof as a single, integrated unit and said the church was not entitled to recover the cost of replacement of the non-hail damaged tiles.

Cosmetic Damage

The issue of cosmetic damage is closely related to the issue of functional damage and arises frequently when a hail storm hits a building with a metal roof.

Hail stones will dent a metal roof. The dents do not compromise the life span of the roof, but they may be unsightly. Has the roof been damaged? Does the standard unendorsed insurance policy cover replacement of a dented metal roof?

We don't find the phrase "cosmetic damage" anywhere in the policy. Dents in a metal roof constitute physical damage, thereby triggering coverage and an insurer's obligation to replace the roof. To hold otherwise would be like saying the insurance company is not obligated to re-paint a wall after it has been painted purple by vandals.

If an insurance company doesn't want to provide coverage for cosmetic damage, then it should specifically exclude such damage. An endorsement is available for this purpose, when the insured has received a discount for the reduced coverage. Endorsement HO-145 (Exclusion of Cosmetic Damage to Roof Coverings Caused by Hail) or an equivalent company-specific endorsement can be used on the Texas homeowners policy.

Matching

Closely related to the partial damage issue is what happens when an insurance company wants to repair a roof instead of replace it. The new shingles don't match the old shingles. No one wants their roof to look like a patchwork quilt. The visual effect is not pleasing, and the value of the property may be affected.

Texas court decisions do not support policyholder demands to replace undamaged property in order to match damaged property that has been replaced with new materials. In the *All Saints* case cited previously and other cases, courts have consistently held that "the insured is entitled to recover only that portion of the damage caused solely by the covered peril."

Our panel of independent adjusters, however, say many companies do not generally want to fight the policyholder on this issue and will attempt to negotiate a settlement to satisfy the insured and settle the claim.

One adjuster reported having seen a policy used by at least one company that includes a specific exclusion or limitation related to replacing undamaged items in order to match damaged items. IIAT has not seen such a policy provision, but agents should watch for any new activity in this regard.

Covered and Non-Covered Causes of Loss

The issue of partial damage must be considered in another context when the roof is damaged beyond repair but by different causes of loss, one of which is a covered cause of loss and the other is excluded. In the *All Saints* case cited previously, the Court said the excluded cause of loss was primarily the “latent defect” of the Hardi-Slate tiles – a “quality in property that causes it to damage or destroy itself.”

More often than not, however, the excluded cause of loss is wear and tear. Again, Texas courts consistently hold that where covered and excluded causes of loss concurrently cause a loss, the policy only covers the damage by the covered cause of loss. If the covered damage to the roof can be repaired for less than the full replacement cost of the roof, then the company is obligated only to make repairs. The decision to repair or replace is determined by each company on each claim. Thus, some companies make decisions to replace while others make decisions to repair.

That’s when agents begin to hear complaints that go something like this: “My adjuster says the cost to repair my roof is less than my deductible, but my neighbor’s adjuster agreed to pay for a whole new roof. What’s wrong with this insurance company you put me with?”

There is no easy or readily-accepted answer to this question. The agent can appeal the decision and request a second opinion from another adjuster or roofer, but ultimately it’s the insurance company’s call. Another option available to the policyholder is the appraisal process – see the next section.

The Appraisal Process

When there is disagreement concerning the amount of loss, the policy provides a dispute resolution process known as the appraisal. The typical policy wording in Texas property policies reads as follows:

E. Appraisal

If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the “residence premises” is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Each party will:

- 1.** Pay its own appraiser; and
- 2.** Bear the other expenses of the appraisal and umpire equally.

The process is not particularly cumbersome and agents should be sure to mention it to their policyholders when there is a valuation disagreement, including disagreements regarding the amount of damage caused by hail versus wear and tear.

A roofer or independent adjuster can serve the policyholder quite well as the appraiser for their side. When the policyholder demands an appraisal, the insurance company must participate, even when the company believes the issue involves a non-covered cause of loss, rather than a simple disagreement over the valuation of the loss. The Texas Supreme Court made this clear in its 2009 decision in *State Farm vs. Johnson*.

The appraisal decision is binding but does not prevent either party from filing suit to set the decision aside and let a judge or jury decide. Our panel of independent adjusters believe the appraisal process is one-sided in favor of the policyholder. If the appraisal decision favors the policyholder, most companies are not going to challenge it.

Depreciation

According to the panel of independent adjusters and the public adjuster, it has become the accepted practice for insurance companies to withhold payment for the full cost to replace a roof until the repairs have actually been made. The companies will pay a lower amount – usually referred to as the actual cash value or depreciated amount – when the claim has been adjusted. Upon notification and verification that the roof has been replaced, the company will issue a supplemental check for the difference between the initial payment and the amount actually paid to replace the roof.

Not everyone agrees with this approach, especially some public adjusters, but the policy language seems clear to us.

- a.** If, at the time of loss, the amount of insurance on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, after application of any deductible and without deduction for depreciation, but not more than the least of the following amounts.
 - (1)** the limit of liability under this policy that applies to the building;
 - (2)** the replacement cost of that part of the building damaged with material of like kind and quality and for like use; or
 - (3)** the necessary amount actually spent to repair or replace the damaged building.
- d.** We will pay no more than the actual cash value of the damage until actual repair or replacement is completed. Once actual repair or replacement is complete, we will settle the loss as noted in **2.a.** ... above.
- e.** You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss to buildings on an actual cash value basis. You may then make claim for any additional liability according to the provisions of this Condition C. Loss Settlement, provided you notify us of you intent to do so within 180 days after the date of loss.

Holding the difference is supported by policy language, as well as a widely-accepted industry practice.

Unadhered Shingles

A relatively new issue in roof claims adjusting developed when the Texas Windstorm Insurance Association (TWIA) denied a number of Hurricane Ike claims involving lifted or unadhered or unsealed shingles.

The Haag Engineering “Damage Assessment Field Guide” explains: “Unsealed tabs are a fairly common occurrence on roofs, and may come from a variety of sources such as original installation, shingle material, sealant quality or quantity, fastener location and depth of penetration, thermal forces, decking movement, or weathering effects; and are not necessarily indicative of wind effects.”

According to our panel of independent adjusters, shingles can fail to seal properly if they are installed at a temperature less than 60°, or they may just be the result of faulty shingles or faulty installation; however, they also stated high winds can blow up good shingles, break the seal, and deposit debris under the shingles, making it impossible for them to re-seal.

One adjuster commented that an unsealed shingle lying relatively flat will protect the interior of the dwelling from the elements as long as there is no wind involved. With even moderately heavy winds, however, the unsealed shingle can lift and allow rain to penetrate the building. Unsealed shingles are more likely to crease, tear, or blow off when subjected to a windstorm.

On February 2, 2009, TWIA issued a Memorandum to Adjusting Firms and Adjusters and Internal File Examiners that stated in part:

Texas Windstorm Insurance Association intends to pay for the covered windstorm loss on every valid claim, including roofs. It is important to note that [TWIA] only cover[s] direct, physical, loss from windstorm. Direct means it happened during Ike or Dolly, physical means the damage to the property is clearly visible and there must be a loss (destruction or damage to property) involved. Shingles that show no signs of damage other than they are not sealed and can be raised with your hand are not considered windstorm damaged.

Starting on or about February 6, 2009, some TWIA insureds began receiving letters from TWIA denying claims, stating in part: “It is our position that unadhered shingles are not evidence of windstorm damage.”

The Texas Department of Insurance notified TWIA in August 2009 that this practice was unacceptable and called for a public hearing that could result in disciplinary action against TWIA. In the Notice of Public Hearing, TDI stated in part:

Previously sealed shingles that are no longer adhered constitute a physical loss to the property. A causation issue exists as to whether the physical loss was directly caused by a windstorm or hail, or in this instance, Hurricane Ike. A denial of coverage based on the position that unadhered, unsealed, or lifted shingles never constitute windstorm damage, without a determination that the unsealed shingle was not caused by a covered windstorm, is inappropriate under the policy.

In the TWIA response to the TDI Notice of Hearing, the underlying issue became more apparent: Who has the burden of proof? Is the policyholder required to prove that a windstorm unsealed the shingles, or is TWIA required to prove that the seals were already broken and the windstorm did not cause further damage? That is the question, and it is a question that has not been resolved.

TDI and TWIA took their arguments to trial before an Administrative Law Judge in May 2010. A final decision is not anticipated until August or September.

Multiple Overlays of Roofing Materials

The Texas Department of Insurance issued several bulletins in the 1990s to address claims settlement practices involving damage to roofs with multiple overlays of roof coverings.

According to our panel of independent adjusters, installing a new layer of shingles over another was a fairly common practice in the past. Such installations were sometimes initiated by the property owner in order to pocket part of the insurance proceeds after receiving a full replacement cost adjustment from the insurance company. In some cases, however, insurance company adjusters encouraged the property owner to overlay the roof and adjusted and paid the claim accordingly, resulting in lower claims payments for the insurance company.

This practice created a couple of problems. First, according to the Haag Engineering “Damage Assessment Field Guide,” composition shingles overlaying another composition shingle roof is “more prone to hail damage due to their uneven support conditions.” If an overlaid roof is damaged in a subsequent storm, it generally is not possible to install another layer of shingles on top of the two or more layers already installed, because the weight is too great for the support structure to safely hold.

If composition shingles are installed on top of wood shingles, the roof must be re-decked to allow installation of a new layer of shingles.

The cost to tear off multiple layers of roofing materials, and re-deck the roof if necessary, significantly increases the cost to replace a roof. The insurance company insuring the home at the time of the most recent storm would naturally object to the increased cost, especially if the property owner had pocketed the proceeds from a previous claim settlement or another insurance company had reaped the benefit of a lower claim payment.

Following a series of severe hail storms in the early 1990s, a number of policyholders filed complaints with TDI when insurance companies declined to pay the additional costs to remove old layers of roofing materials. TDI responded with a series of bulletins.

Our panel of adjusters indicated this issue rarely comes up any longer, but it is instructive for the purpose of this report to quote excerpts from the TDI bulletins outlining the official position regarding claims adjustments involving multiple overlays.

-- TDI Bulletin: June 11, 1993 --

Texas has recently experienced a number of severe storms that have caused extensive damage to property located throughout the State. The methods employed by some insurers in the settlement of claims for roof damage has come to the attention of the Texas Department of Insurance, and those claims settlement practices may be in direct conflict with policy provisions and be in violation of the Insurance Code and the rules and regulations of the State Board of Insurance.

The overlay of a shingle roof on a damaged roof does not satisfy the Loss Settlement conditions contained in residential property policies. Claims settled on an actual cash value basis must be based on the cost to repair or replace the damaged property with proper deduction for depreciation. In addition, the policies provide for the expense of the removal of debris of damaged property within the policy limits. Claims settled on a replacement cost basis require the damaged property to be repaired or replaced with material of like kind and quality without deduction for depreciation with policies also providing for the expense of the removal of debris

of damaged property within the policy limits. In both instances, the removal of damaged roof shingles falls within the meaning of debris removal.

-- TDI Bulletin: August 10, 1994 --

The purpose of this bulletin is to advise insurers regarding the settlement of claims for roof damage and specifically to address the settlement of claims involving damage to roofs that may have multiple overlays of roof coverings, including composition shingles overlaid on a wood shingle roof. A policy of insurance providing replacement cost coverage requires damaged property to be repaired or replaced with material of like kind and quality and includes the cost of removing any of the damaged property. The purpose of insurance coverage is to make an insured whole again after a loss. An insurance policy with replacement cost coverage is a betterment policy because it provides new replacement material for old material. A policy of insurance providing actual cash value coverage also includes the cost of removing any of the damaged property and the insured must be put in the same position as immediately prior to any loss.

In instances where roof damage occurs due to a covered cause of loss and there are multiple overlays of roof coverings, the cost to remove all layers of roof coverings is part of the covered loss, and in accordance with the valuation clause contained in the policy, the settlement of any claim for damage to a roof with multiple overlays of roof coverings should include the cost to remove those multiple layers of roof coverings. If composition shingles have been overlaid on wood shingles, the covered loss should include the cost of removing all layers of roof coverings, including the wood shingles, and the cost of redecking the roof to allow the application of a new layer of shingles.

The payment for overlaying one roof covering over another has been a practice of insurers in recent years. Whether the option to overlay was at the request of the insured or insurer, insurers enjoyed lower payments on covered losses through the use of overlays of roof coverings. It is unfortunate that a few insurers continue to refuse to pay for the cost to remove multiple layers of roof coverings that would otherwise have been covered as part of a loss had each covering been removed at the time each loss occurred. Insureds have a right to be treated fairly and to deny payment for the removal of all roof coverings at the time of a loss is unfair treatment of insureds and an unfair practice of insurers.

-- TDI Bulletin: September 29, 1994 --

The information in that bulletin [August 10, 1994]...does not in any manner alter the policy conditions of a residential property policy or the actual process necessary for the settlement of a loss. The loss settlement conditions, and other related conditions contained in a residential property policy, govern the payment of insured losses.

The replacement cost provisions outlined under the loss settlement conditions in a residential property policy specifically provide an insurer with the option to adjust a loss on an actual cash value basis at the time of a loss. The policyholder may make a further claim for the full replacement cost at the time the damaged property is actually repaired or replaced. An insurer may elect to pay replacement cost at the time the replacement of damaged property has been completed.

At least one company has secured TDI approval of a policy that avoids the TDI interpretations cited above. The Safeco "Texas Landlord Protection Policy" includes the following provision in the Loss Settlement condition:

(2) When more than one layer of siding, roofing or finished flooring exists, we will pay for the replacement of one layer only. The layer to be replaced will be at your option. The payment will be subject to all other policy conditions relating to loss payment.

Pre-Loss and Post-Loss Inspections

As should be evident by now, many roof claims issues could be alleviated if insurance companies inspected the roofs they insure before or shortly after issuing policies, as well as after losses have occurred. An inspection prior to issuing a policy might reveal:

- Prior unrepaired damage to the roof
- An old roof with obvious deterioration
- An improperly installed roof
- Multiple layers of roofing materials

The cancellation provision of the Texas Homeowners Policy permits insurers to cancel a policy that has been in effect for less than 60 days (not a renewal) under certain conditions. The policy language follows.

5. Cancellation

- a.** You may cancel this policy at any time by notifying us of the date cancellation is to take effect. We will send you any refund due when the policy is returned to us.
- b.** If this policy has been in effect for less than 60 days and is not a renewal policy we may cancel this policy if:
 - (1)** We identify a condition that:
 - (a)** creates an increased risk of hazard;.
 - (b)** was not disclosed in the application for insurance coverage; and
 - (c)** is not the subject of a prior claim; or
 - (2)** before the effective date of the policy, we have not accepted a copy of a required inspection report that:
 - (a)** was completed by an inspector licensed by the Texas Real Estate Commission or who is otherwise authorized to perform inspections; and
 - (b)** is dated not earlier than the 90th day before the effective date of the policy.

If an insurance company inspection reveals an unsatisfactory roof, the company can cancel the policy as long as the policy has not been in effect for 60 days, UNLESS the policyholder previously reported a claim involving the roof. If the policyholder reported a claim, the company had an opportunity to discover the prior claim through a consumer report or the application process prior to binding the coverage.

An inspection after a loss has been reported and paid for, especially when a policyholder claims the roof has been replaced and requests payment of the difference between ACV and replacement cost settlement, will confirm that the roof has actually been replaced. This post-loss inspection will prevent that company, or another company in the future, from paying again for the same damage after some future storm.

Insurance companies should not expect their agents to perform these pre-loss and post-loss inspections. Insurance agents are not generally qualified to observe the conditions that thorough inspections might reveal. Inspections should be performed by professional roofers or claims adjusters.

Conclusions and Recommendations

Based on the information presented in this publication and the suggestions offered by independent and public adjusters, we offer the following recommendations for agents to avoid or alleviate roof claims issues.

- Know your companies' practices regarding settlement of wind and hail claims as they relate to general customer satisfaction, and sell superior companies on that basis when possible.
- Encourage companies to perform inspections – including roof inspections – prior to binding coverage on property or within 60 days after binding.
- Read and understand policy provisions regarding covered causes of loss and loss settlement.
- Disclose cosmetic damage exclusions and other company-specific exclusions or limitations to policyholders with quotes and policy transmittals.
- Understand and be prepared to explain to policyholders that many factors determine the extent of covered damage to a roofing system, including: age; installation features; slope; size, shape and firmness of hail; and wind speed, and that not every home in a given neighborhood necessarily suffers the same degree of damage.
- Report all claims or inquiries about possible storm damage to the insurance company.
- Don't make promises regarding timelines for adjuster contact or claim settlement. Reassure policyholders that claim can be reopened later if there is a problem. Help adjusters prioritize claims.
- Explain to policyholders their right to have a roof inspected by a roofing contractor, and encourage them to cooperate with and trust the opinions of independent adjusters and roofing contractors.
- Refer the policyholder to the storms resource pages on the TDI website at:
www.tdi.state.tx.us/consumer/storms/
for storms resources and publications, including the publication “Repairing My Roof After a Storm,” available for downloading at:
www.tdi.state.tx.us/wind/documents/RepairingRoofAfterStorm.pdf
- For large or complex roofing structures, or difficult claims adjusting problems, tell the policyholder about the services offered by public adjusting firms. Refer them to the National Association of Public Insurance Adjusters (NAPIA) website for more information and a list of members. Texas law allows public adjusters to charge a fee of no more than 10 percent of the claim settlement amount.
www.napia.com/
- Encourage policyholders to use the appraisal process when the amount of damage is in dispute.
- Discourage the practice of overlaying shingles, whether suggested by the policyholder or recommended by an adjuster or roofer.
- Encourage policyholders to document repairs and replacements and keep documentation for possible future insurance claims.