



**FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)  
FEDERAL INSURANCE MITIGATION ADMINISTRATION (FIMA)  
APPEAL DECISION**

*FEMA Flood Insurance Appeal Decision #D3*

## **SUMMARY**

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The policyholder appeals the flood insurance carrier's (hereinafter "insurer") denial of a claim under the Standard Flood Insurance Policy (SFIP)<sup>1</sup> for damages to their property arising in September 2022.

The policyholder files this appeal under 44 C.F.R. § 62.20. The appeals process is available after the insurer issues a written denial, in whole or in part, of the policyholder's claim.<sup>2</sup>

After reviewing the issues, evidence, and relevant authorities, FEMA affirms the insurer's decision.

## **BACKGROUND**

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### **COVERAGE**

The policyholder insures property under the SFIP Dwelling Form. At the time of loss, the policyholder had \$100,000 of personal property coverage with a \$5,000 deductible.

### **EVENT AND CLAIM FACTS**

Hurricane Ian produced torrential rain, storm surge, and widespread flooding in Florida.<sup>3</sup>

Following the flood event, the policyholder filed a claim for damages with the insurer and the insurer assigned an adjuster to inspect the property. The insured building is a two-story, single-family condominium unit built on a slab-on-grade foundation.

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<sup>1</sup> See 44 C.F.R. § 61.13 (2021); Dwelling Form available at 44 C.F.R. pt. 61 App. A(1) [hereinafter "SFIP"].

<sup>2</sup> The policyholder's appeal and related documents concerning the appeal, claim, or policy are on file with FEMA, Federal Insurance and Mitigation Administration, Federal Insurance Directorate, Policyholder Services Division, Appeals Branch [hereinafter "Appeal File"].

<sup>3</sup> See FEMA Bulletin W-22015 (Oct. 14, 2022) (setting Sept. 26 – Oct. 12, 2022, as event dates of loss).

In October 2022, an adjuster inspected the property and documented 37-inch exterior waterline and a one-inch interior waterline in the condominium unit. The adjuster noted the Residential Condominium Building Association Policy (RCBAP) would be the primary policy to cover building damages.

The adjuster prepared an estimate for covered personal property damages including allowances for wool rugs, rug runners, and cleaning wicker chair legs. The adjuster's estimate for covered damages totaled \$3,848.37, less than the policy's \$5,000 deductible. Therefore, the adjuster recommended the insurer deny the policyholder's claim.

In a letter to the policyholder dated December 2022, the insurer denied the claim because the covered personal property damages did not exceed the \$5,000 deductible.

In a letter to the policyholder dated February 2023, the insurer denied coverage for building damages, stating the RCBAP policy precludes the policyholder from collecting under their dwelling policy.

The policyholder appeals the insurer's denial and states the damages in their kitchen, including drywall tear out, removal, and wallpaper, were not covered under the RCBAP claim. In support of their appeal, the policyholder provides the estimate from the RCBAP claim, a photograph of the kitchen showing the missing drywall, an e-mail from a restoration company, various invoices with proof of payment, a copy of their policy Declarations Page, and a copy of the condominium association by-laws.

## ISSUES

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The policyholder appeals the insurer's denial for building damages, including drywall and wallpaper.

## RULES

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The insurer agrees to pay the policyholder for direct physical loss by or from flood to covered property, provided the policyholder complies with all terms and conditions of the SFIP.<sup>4</sup>

If there is other insurance issued under the Act in the name of the condominium association covering the same property insured by this policy, then this policy will be in excess over the other insurance.<sup>5</sup>

## ANALYSIS

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The policyholder appeals the insurer's denial for building damages, including drywall and wallpaper.

The insurer agrees to pay the policyholder for direct physical loss by or from flood to covered property. If there is other insurance issued under the Act in the name of the condominium association covering the same property insured by this policy, then this policy will be in excess over the other insurance.

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<sup>4</sup> See SFIP (I), (II)(C)(14).

<sup>5</sup> See SFIP (VII)(B)(2).

Because the condominium association insures the condominium building under a RCBAP, building damages to the policyholder's unit would be covered under the RCBAP, and the RCBAP will pay for the building damages before a claim can be considered under the SFIP Dwelling Form.

If the condominium association's RCBAP qualifies for replacement cost coverage, 100% of the building damages to the policyholder's unit would be eligible under the condominium association's claim. If the condominium association's claim exceeds the RCBAP's limits of coverage, the unpaid building damage to the policyholder's unit, along with any assessment for covered common property, are eligible for coverage under the SFIP Dwelling Form. Under this scenario, the SFIP Dwelling Form acts as excess insurance.

If the condominium association's RCBAP does not qualify for replacement cost coverage and "co-insurance" applies to the condominium association's claim, the building damages to the policyholder's unit are eligible under the SFIP Dwelling Form. However, a claim payment under the SFIP Dwelling Form is not possible until the condominium association's insurance company accepts and pays the condominium association's claim. At that time, the condominium association will notify of the eligible dollar amount the policyholder may claim under the SFIP Dwelling Form. Under this scenario, the SFIP Dwelling Form acts as secondary insurance.

In either scenario, as the unit-owner, the policyholder should submit all evidence of building damages and details for repairs to their condominium association for consideration under their RCBAP claim. If there are any disputes related to the scope of flood damages, such as the drywall and wallpaper in this case, these disputes must be submitted and reviewed under the RCBAP claim.

Based on the information presented, FEMA agrees with the insurer's decision to deny coverage for building damages under the policyholder's SFIP Dwelling policy. The policyholder should continue to work with their association to provide the documentation necessary to document their loss under the RCBAP claim.

## **CONCLUSION**

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Based on the facts and analysis above, FEMA concurs with the insurer's decision to deny coverage for building damages.