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Insurance Policyholders Beware! The One-Year Anniversary of Katrina Approaches!



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The one-year anniversary of Hurricane Katrina quickly approaches. This August 29th anniversary may carry serious implications for insurance policyholders with hurricane-related claims. There are many different types of insurance policies, such as commercial property (with or without business interruption coverage), homeowners', flood, and automobile. Many, but not all, of these may be affected by the one-year anniversary.

The anniversary date of the hurricane is important because the date of the occurrence of the claim under the policy usually governs the amount of time that a policyholder has to resolve any claim under the policy with the insurance company. When the policy does not contain any express language setting forth the time within which suit against the insurer regarding a claim must be brought, under Louisiana law, an insured generally has ten years from the loss to sue on the policy. However, many commercial property, homeowners', and automobile insurance policies contain contractual provisions that limit the right of an insured to file suit on a claim to a specific date following the date of the loss, and often this is a one or two year period. It is important to read the policy on this point. Flood insurance policies under the National Flood Insurance Program ("NFIP") are [governed by federal legislation](#) and are not subject to prescriptive periods under Louisiana state law. Also, the standard NFIP flood insurance policy dwelling form provides that suit must be brought within one year after the written denial of all or part of the claim (not one year from the date of the loss).

Recently, both the Louisiana Legislature and the Louisiana Commissioner of Insurance have addressed these one-year contractual time limitations. However, these legislative and agency actions may not be enforceable and may not provide protection to policyholders, and it would be unwise to ignore an impending one-year deadline in reliance upon the new legislation or Department of Insurance directives.

The Louisiana Legislature enacted a bill which purports to "interrupt prescription" for all Hurricane Katrina and Hurricane Rita insurance claims ([2006 La. Acts 802](#)). The constitutionality of this bill is uncertain, but will likely be challenged under an expedited review procedure. Similarly, Commissioner of Insurance James Donelson first requested that insurers voluntarily issue endorsements or stipulations with the Department of Insurance that would extend any one-year limitation periods to file suit to two years ([Advisory Letter 06-04](#)). Commissioner Donelson subsequently issued [Directive 199](#), which orders insurance companies to "voluntarily" issue these endorsements or stipulations. However, again, there are questions regarding the legality and constitutionality of this directive. So far, only [a few insurers](#) have granted these voluntary extensions.

With the one-year anniversary quickly approaching, policyholders should immediately review their insurance policies to determine if there are any time limitations on the right to file suit. If the policy limits the insured's right to file suit to one year from the date of the loss, the policyholder should take immediate action to make sure that any claim is preserved. It would be wise for policyholders facing the one-year deadline to contact their attorney well in advance of the deadline.

The policyholder may have to file suit before the August 29, 2006 deadline to preserve his or her legal rights if the claim remains unresolved at that time. Another option may be to individually request that the insurer extend the time limitation through an endorsement to the policy or a separate agreement, extending the deadline.

Insureds may have claims against parties other than their insurer, such as claims against adjusters for improperly handling the insurance claim, or claims against insurance brokers or agents. These types of claims generally must be filed within one year.

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