

THE BOOK ON THE ASSIGNMENT OF BENEFITS

2 N D E D I T I O N

**THE KEY TO
RECOVERING
FAIR MARKET
VALUE FOR
RESTORATION
SERVICES**



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ED CROSS

THE RESTORATION LAWYER

THE BOOK ON THE
ASSIGNMENT
OF BENEFITS

2ND EDITION

ED CROSS

THE RESTORATION LAWYER

The Book on the Assignment of Benefits, 2nd Ed.

A Restoration Contractor's Guide with Forms & Instructions

By Ed Cross, The Restoration Lawyer

Publisher:



40-004 Cook Street, Suite 7

Palm Desert, CA 92211

TheRestorationLawyer.com

Cover art by Jeff T. Day

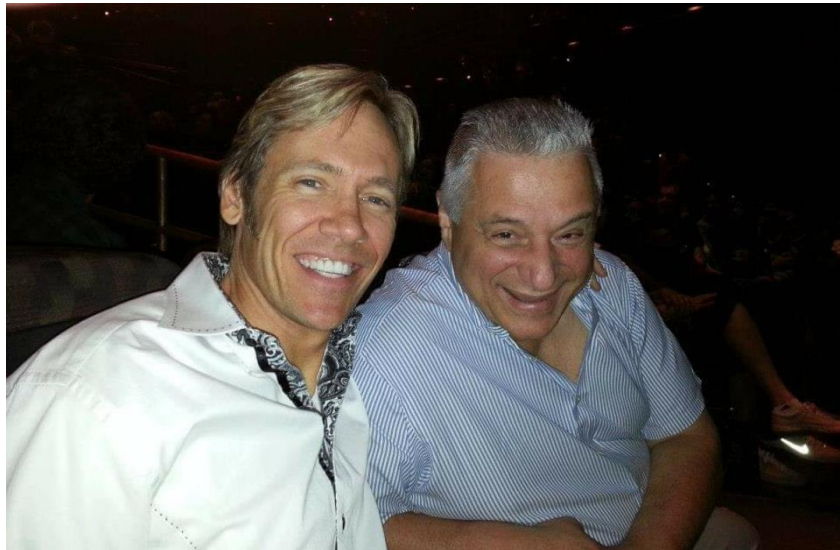
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Second Edition, June 11, 2021

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*For my consigliere, G. Pete Consigli, CR.
Thank you for your love, support and mentorship, my brother.*



About the Author



“The Restoration Lawyer,” Ed Cross, grew up in the Los Angeles suburbs, working in his father’s construction company for a decade, ultimately reaching the position of Operations Manager.

At age 12, Ed was loading trucks, sweeping floors, and hauling trash in his father’s warehouse. At age 14, his dad moved him into the office to sort brochures, stuff envelopes, and file accounting records. At age 15, his dad had him start making collection calls, which was an eye-opening experience. Little did Ed know that 18 years later, he would be making collection calls as the attorney for esteemed restoration contractors, large and small.

Since 1997, Ed and his team have recovered many tens of millions of dollars for cleaning and restoration companies across the country, defending them in court, drafting their contracts, and helping them develop practical risk management strategies. He has drafted many hundreds of customized contracts for insurance repairs, emergency mitigation, reconstruction, and contents restoration for many of the biggest names in the disaster recovery industry. Hundreds of companies sign many millions of dollars of contracts every week using his contracts, for everything from small carpet cleaning projects, to coronavirus disinfection, to major fire repairs. Restorers ultimately nicknamed him “The Restoration Lawyer.”

Ed has given hundreds of invited presentations to the cleaning and restoration industry across the country, and has authored many dozens of legal articles and treatises dealing with remediation and restoration, including *Litigation a la Mold*, a cover story of the Los Angeles Lawyer Magazine. He has been a columnist and feature writer for Restoration & Remediation Magazine, Cleaning & Restoration Magazine, CleanFax, Bio Recovery Today, and others.

Ed is a fervent supporter of the efforts of the Restoration Industry Association (RIA). In 2019, he was appointed to launch the RIA’s highly-publicized [Advocacy & Government Affairs Committee](#) (AGA), which seeks to level the playing field for restorers, particularly in property insurance claims settlements, among other things. He was the founding Chairman of the AGA, and was later retained to serve in the role of Restoration Advocate to lead a nationwide campaign for positions taken by the Association. The AGA has achieved significant wins and breakthroughs for restorers with respect to standardized pricing, third party consultants, and third party administrators. Ed is the Executive Producer and Host of the RIA’s [Face The Advocate](#), the talk show where restoration industry stakeholders respond to peer-reviewed positions taken by the RIA.

Before law school, “Eddie” Cross was the drummer for the million-selling hard rock group, *Autograph*. He played drums and sang on the band’s [Missing Pieces](#) album and its 1989 American tour, and he sang on Steve Plunkett’s solo album, [My Attitude](#). He performed publicly with many prominent rock musicians, including members of Poison, Quiet Riot, Ratt, and Cinderella.

In his leisure time, he enjoys cinematography, pickleball, scuba diving, traveling Asia with his sweetheart, Lisa, and playing with granddaughter, Eastan.

Acknowledgements

With great gratitude, the author acknowledges the support of the following key individuals who helped bring this publication to reality:

Jennifer K. Alfred

Alan R. Araujo, ACP

Eastan E. Atkins

Lily L. Atkins

Lisa L. Atkins

Cassia L. Choi

Jeff T. Day

Diana Enriquez

Glen L. Nesbitt

Meagan M. Smith

Brian M. Theis, Esq.

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Introduction

I believe God gave me a law license so I could help contractors like my father get paid a fair price for their work.

Since I was first given the privilege of representing restoration contractors during the Mold Rush in 1997, I have seen the industry undergo a very clear transformation from a defensive posture where restorers lived in constant fear of being sued for mold, to an offensive posture, having to fight to get paid fair value for an honest days' work. Their invoices frequently come under attack from an organized effort to radically reduce claims expenditures. Industry veterans tell me it is harder than ever to get paid now, and the problem has gotten continually worse in recent years.

Let me be clear on the record: I am not here to degrade the insurance industry. I respect insurance companies, and am not here to pick a fight with them. I only want what is fair. There are bad actors in every industry, including law, restoration, medicine, and even clergy.

But my job is to right the wrongs inflicted upon restorers who play by the rules. With increasing frequency, restorers report to me how they are vexed by adjuster tactics. Unfortunately, some adjusters seek to take advantage of the fact that small restoration companies often face financial peril when an adjuster delays a payment, particularly on a large loss. Sometimes, this gives the insurance company inappropriate leverage in settlement negotiations. Restorers report to me that they often feel disempowered because they are on the outside of the insurer-insured relationship, and the flow of money. Too frequently, they have to accept greatly reduced prices for their work, just to make payroll and keep the lights on. This was not happening on a widespread basis when I got into the business in 1997.

One of the things that makes the restoration industry unique is that payment for services is usually made by a third party: the insurance company, whereas payment for services provided by other industries is usually made by the recipient of the service. Insurance companies are legitimately entitled to minimize claims costs, within reason. Many of them work very hard to deny coverage in some cases. Restorers, however, answer to the policyholder. They owe a duty of due care and professionalism to the policyholder, whose goal is to receive prompt, highly quality service. Restorers often report to me that insurers want them to perform a much more limited scope of work than that to which the restorers believe the standard of care requires. Every day in every state, restorers find themselves stuck in this Catch 22. The restorer is bound to industry workmanship standards that continue to elevate, and operating expenses that continue to rise—yet standardized price lists often remain flat or in decline, and the insurance industry gets increasingly more creative in finding ways to pay less for restoration services. This is unsustainable and bold action must be taken to reverse the trend or we may all be in jeopardy of having a shortage of restoration services to come to our aid in our time of need.

My experience handling thousands of cases for restorers has shown that a carefully-crafted assignment is the key to unlock this puzzle. Handled properly, it can accelerate and maximize collections, making the operation of a restoration business simpler, more profitable, and more enjoyable.

The secret lies in the skillful use of three key documents, and this book includes one of each, carefully tailored to the law of every state, as well as the District of Columbia:

- 1. Assignment of Insurance Rights and Direction to Pay**
- 2. Insurance Information Release & Authorization**
- 3. Request for Information and Notice of Assignment**

I have included a separate set of instructions for each form and suggested ways to present assignments to policyholders. Download the fully-editable MS Word versions of all the forms, ready for your logo and customization here:

<https://spaces.hightail.com/receive/6b1K3oDKJt>

Those who master the use of those three documents enjoy significant financial and legal advantages, and many report to me that this system has been a game-changer for their businesses, and it almost never requires a lawsuit. Ninety-five percent of my clients who use assignments have spent less than \$500 in attorneys' fees relative to assignments. As I hope you will see below, by increasing the restorer's negotiating leverage and using attorney-drafted form letters in a structured, battle-tested system, restorers can *reduce* their legal expenses by using assignments. Many hundreds of hours of legal research and writing were required to create this book. Although this book is not intended as a substitute of the advice of an attorney, I believe it will accelerate and maximize collections, saving the restoration industry significant legal expense. The more restorers use assignments, the shorter the learning curve will be, the easier they will become to enforce. This will not happen overnight. It's a process, but I am confident it will be done.

I have longed for the opportunity to share the important nuances of this strategy with the restoration industry on a national level. My goal is to help restorers across the country unite to raise awareness and acceptance of this valuable key that will unlock many of the most vexing problems facing the modern restoration industry. The industry is fortunate to have a strong trade association in the [Restoration Industry Association](#) (RIA), which has been a vital force in promoting the advantages of assignments of insurance rights. In 2021, it released a 50-State Summary of the Law of Assignments of Benefits and Insurance Bad Faith, which I strongly recommend for all restorers who perform insurance repairs, whether they use assignments or not, because it includes extensive regulations dictating how adjusters are supposed to handle claims.

Open "Bookmarks" in Acrobat to help navigate through the book!

Chapter 1

What is an Assignment?

Many restorers falsely believe that their contracts contain assignments of benefits, when in fact, all they include is an unenforceable direction to the insurance company to name the restorer on checks. Insurers routinely ignore those requests. A “direction to pay” is not an assignment of legal rights and usually will not solve the many payment problems that plague the restoration industry.

An assignment is the transfer of ownership of a right from one party to another. In the American legal system, nearly every kind of right can be transferred to another party. I can transfer to you the right to receive my inheritance from my father’s estate. If you have health insurance, the forms you sign in your doctor’s waiting room usually say that you transfer to your doctor the right to the insurance payment. There is nothing nefarious about it. It is a convenience. Insurers don’t question it. It saves you from the trouble of having to chase the insurance company for money. The doctor’s office handles that, and you just pay a deductible and/or a co-pay. The doctor deserves payment in the most expeditious manner.

This is not a new concept. The latest edition of Black’s Law Dictionary defines “assignment” by reference to Alexander Burrill’s 1894 Treatise on Assignments for the Benefit of Creditors as “a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.”¹

The policyholder who makes the assignment may be referred to as the “assignor.” (To avoid confusion with animals of the horse family, you have the option to [pronounce the "g."](#)) The contractor who receives the assignment is the “assignee.” As the Texas Supreme Court has stated so eloquently:

When a right is assigned, the assignee “steps into the boots of the assignor.”

-Texas Supreme Court

¹ Black’s Law Dictionary (11th ed. 2019).

In the restoration context, this means that the contractor with a properly drafted assignment becomes the *legal owner* of a portion of the insurance claim, and the insurance company cannot slam the door in the contractor's face. The contractor essentially becomes "the insured." This is a game changer, and the reason most of my clients have broad assignments in all their contracts, unless they're forbidden by an agreement with a franchisor or TPA.

Assignments Do Not Allow Restorers to Make Repair Decisions

Insurance industry propaganda alleges that insurance assignments allow contractors to make repair decisions, which is funny because many insurance adjusters step out of bounds and make repair decisions. Assignments of insurance rights have nothing to do with repair decisions; they only deal with insurance rights. The only way property owners could lose the right to make repair decisions is if they affirmatively *relinquish* that right. Assignment simply do not function that way. I have personally reviewed thousands of restoration project files and have never seen an assignment that deprives an insured of decision making power over repairs. The "repair decisions" argument is a red herring.

Chapter 2

Why Have an Assignment?

When property insurance policyholders suffer property damage, they want the damage mitigated as quickly as possible. They hope that their insurance companies will pay the whole bill, aside from the deductible. Unfortunately, aggressive tactics from the insurance industry creates great uncertainty as to whether reasonable costs will be paid.

For example, despite urgings from the President of Xactware to the contrary, many insurance adjusters treat Xactimate prices as if they were the Ten Commandments.

“Xactimate prices are not intended to be global prices.”

Just keep saying that, over and over.

If a standardized price list is not current, a restoration business may not be able to remain viable using it. Vendors of standardized price lists must proactively and regularly conduct pricing surveys of restoration contractors in every market. Of course, restorers should report prices to companies that sell estimating programs, but the onus should not be on restoration industry to do their research for them. They are paid hundreds of millions of dollars in license fees annually to do that research and the economy relies on them to do it thoroughly. There is no other way to prevent suppression of prices to the extreme benefit of the

insurance industry. Combine that with fact that adjusters commonly say “My manager won’t allow me to pay anything more than Xactimate prices,” and the result is a dangerously unhealthy restoration ecosystem.

What’s worse, aggressive adjusters *weaponize* Xactimate against restorers. So if the policyholder cannot afford to pay for the work, and is not motivated to fight the insurer, the restorers might get stuck. They try hard to avoid recording mechanic’s liens and suing their customers, but if they do not have direct rights against the insurance company, the consumer may end up in collections if an insurance company is not complying with its obligations under the terms of the policy. Some insurers may take advantage of the fact that they are not under contract with the restorer.

An assignment is the best solution to this problem.

It is *security* that helps protect the restorer’s right to payment. A service provider has a legitimate right to seek security to protect the right to payment. Presenting an assignment to an insurance company is not an act of hostility. It is an assertion of a valid legal right. Doctors do it thousands of times every day.

Chapter 3

“AOBs” are now “AORs”

When an assignment only transfers the rights to “proceeds,” insurers take the position that the restorer has no rights against the insurer unless and until the insurer unilaterally decides to make a payment, even if it denies payment in bad faith.

To increase the chances of payment, as you will read in Chapter 9, you can obtain assignment of much more than just policy “benefits.” In 2019, I stopped calling my assignments “Assignments of Benefits.” As you will notice in the forms included in this book, I now call them “Assignments of Insurance Rights” or “AORs” for short. I propose that we remove “AOB” from our industry vocabulary, just as we are gradually doing away with the title “Work Authorization.”

I have two reasons to call them “Assignments of Insurance Rights,” rather than “Assignments of Benefits”:

1. An assignment of “insurance rights” is much broader.

After reading this book, you will likely conclude, as many of my clients have, that you should obtain *more* than just the right to insurance benefits. The Assignments I provide here convey not only the right to benefits, but also the right to appraisal, and the right to legal action against the carrier for breach of contract, and in some jurisdictions, bad faith. This is how the assignee truly steps into the shoes of the policyholder.

2. A new name will give it a new lease on life.

Thanks to the relentless efforts of the RIA, forces are in motion across the industry to raise awareness for assignments. Some adjusters are programmed to reject anything called “Assignment of Benefits.” The Assignments contained in this book are not your father’s AOBs. They are in their 25th edition.

I changed the title not only to make it more accurate but in hopes that it will cause insurers to take a fresh look, and send them to their legal departments for verification. Once they see the robust law we present in favor of enforceability, it should smooth the way forward.

Chapter 4

Don't Judge Assignments by What Happened in Florida

Under Florida's infamous "fee-shifting statute, a policyholder is entitled to compensation for attorneys' fees if the policyholder "***prevails***" in a lawsuit against an insurer.² The right is assignable to contractors. None of this is unusual.

What was unusual was that if an insurance company paid a claim in good faith after a lawsuit was filed, the Florida courts had a routine of treating that as a "confession of judgment" and often awarded the plaintiff with attorneys' fees incurred in the litigation. ***The courts handing out these awards routinely disregarded the word "prevails" in the statute, and the fact that many plaintiffs did not win a judgment on the merits of the claim.*** The extensive national research performed by me and my team revealed no such routine outside Florida.

The right to benefits arises the moment a loss occurs, but the way it was handled in Florida, the right to recover attorneys' fees did not require proof that the insurance company breached the contract of insurance or handled the claim in bad faith.

Unlike the law in any other state we know of, prior to 2019, under the Florida routine, an insurer was exposed to a claim for attorneys' fees if it was named in a lawsuit filed before benefits were paid. Just like that, insurers were liable for attorneys' fees ***even if*** they fully complied with terms of the contract of insurance, paid the claims promptly, and acted in the utmost good faith. This was in sharp contrast to other states where attorneys' fees are either: (a) not recoverable *at all*; or (b) the plaintiff has to actually "prevail" and win a judgment for breach of contract or bad faith.

"According to attorneys and experts interviewed by Law360, the surge in AOB actions was attributable in large part to Florida's "one-way" attorney fee rule, which required an insurance company to pay an assignee's costs to litigate a coverage suit, ***regardless of which side prevailed in court.***"³

This was a recipe for disaster because all the contractor had to do was get a complaint on file before the claim was paid, and the insurer would be responsible for the contractor's attorneys' fees. "Free lawsuits" created a race to the courthouse. There are reports that some contractors with AOBs were filing suit immediately after signing a contract with the

² [Section 627.428](#).

³ [National Association of Legal Fee Analysis \(NALFA\)](#), emphasis added.

policyholder. Bad! When hurricanes ravaged Florida, tens of *thousands* of lawsuits were filed by contractors with AOBs. The media reported that one lawyer filed 30,000 lawsuits in one year.

Something had to change. But instead of successfully convincing to courts to enforce the statutory requirement that the plaintiff “prevail” in order to recover attorneys’ fees, the insurance industry launched a huge smear campaign against AOBs.

In the name of “consumer protection,” insurance lobbyists proposed harsh legislation that essentially eliminated AOBs but punishing contractors who them so severely, that nearly all contractors would stop using them altogether.

The creative lobbyists argued that AOBs “allow” fraud. Give me a break. Fraud is never allowed, anywhere. Obviously, customers and insurers will always have the right to reject excessive prices, and contractors certainly don’t need AOBs to overcharge a job. I explore this in more depth in the section entitled *Assignments Do Not Create the Right to Charge Excessive Prices* in Chapter 7.

The insurance lobby used smoke and mirrors to convince the legislature and the governor to curtail AOBs so that “insurance premiums will go down,” and the lawsuits came to a screeching halt. They stopped excessive litigation, but did it the wrong way, and AOBs became the scapegoat.

The AOBs were not the problem; the courts’ disregard of the word “prevails” in attorney fee statute was the problem. AOBs got a bad rap because of the bizarre way they were treated in one (1) state. Florida went from one extreme to another. It is not representative of the situation in other states. If Florida had simply followed what the majority of states do, and awarded attorneys’ fees to plaintiffs only if they truly “prevail,” none of this would have happened.

The main goal of an AOR is collect *restorers’ fees*, rather than attorneys’ fees. If we unite under the new AOR model (and don’t go berserk filing lawsuits), the stigma caused by excessive litigation in Florida will dissolve and this issue will be a thing of the past.

Chapter 5

AORs Do Not Require Lawsuits

Some wonder if a lawsuit is required to enforce an assignment. The answer is “no.”

When discussing assignments, it behooves restorers to continually analogize to the assignments doctors obtain. When a doctor seeks collection for medical services from a health insurance company, no lawsuit is required. The same holds true for the typical AOR to a restorer. Litigation occurs only in very rare situations. “Assignment” is not synonymous with “lawsuit.” To the contrary, in the overwhelming majority of assignments, no lawyers ever get involved.

Assignments should be seen first as a collections tool, rather than a ticket to the courthouse. I frequently advise clients to try to stay out of the legal system. However, the fact that a party *can* file a lawsuit often creates significant leverage in settlement negotiations. The goal remains to settle claims quickly, and to keep them out of the system, if possible.

Let’s say I want to buy a 2020 Bass Tracker fishing boat for \$20,000, and that you want to buy my car for \$20,000. If you agree to pay me \$20,000 for my car on Tuesday, but on Monday, I ask you to deliver the payment to the seller of the boat, I have assigned the right to your payment to the seller of the boat. No big deal. You don’t care, because you’re getting the car for \$20,000, and you actually intend to honor your commitment to pay in full.

When I had law school student loans, I periodically received notices telling me that another company had taken over the loan. “Please send all future payments to XYZ Corp.” XYZ simply received an assignment of the loan, perhaps because they bought a collection of collection of loans. No lawyers got involved, and I did not see the notice as an act of hostility. It was merely a clerical detail. This is why most states allow the transfer of property damage claims, because a capitalist economy flourishes when assets can be freely transferred.

If insurance companies intend to honor their obligations and handle claims fairly (and most of them do), they should not care that certain rights have been transferred from one party to another.

Yet, certain ones resist. When that happens, ask yourself:

WHY?

Chapter 6

The Insurance Appraisal Process

Appraisal gets very little attention in the restoration industry, but I think it should be explored as an efficient claim resolution process, because it is fast and requires no attorneys' fees.

Most, if not all, property insurance policies include an appraisal provision which typically reads as follows:

Appraisal. If you and we fail to agree on the actual cash value, amount of loss, or cost of repair or replacement, either can make a written demand for appraisal. Each will then select a competent, independent, appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. 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 district court of a judicial district where the loss occurred. The two appraisers will then set the amount of loss, stating separately the actual cash value and loss to each item.

The purpose of appraisal is to quickly and economically resolve a dispute as to the amount of a loss. It works a lot like arbitration. The insurer and the insured each appoint an “independent” appraiser to determine the amount of the loss. The appraisers choose an umpire. If the appraisers don't agree on the amount of the loss, the umpire decides. The decision is binding. No one goes to court and no one incurs a dime in legal expenses. Obviously, the appraiser's thorough preparation and a good command of the facts are keys to success in appraisal.

However, since restorers are not original parties to the insurance policies, they have no right to appraisal, *unless that right is assigned to them*. This is why the AORs in this book include assignments of the right to appraisal. If, for some reason, you don't want that right, or your counsel advises that it is problematic in your jurisdiction, delete it from the form. You won't hurt my feelings. But my view is that appraisal may be a simple and less expensive option since the ultimate decision is made by a third party rather than an adjuster (or a jury, years later).

Appraisal and litigation are not mutually exclusive. For example, appraisal does not generally address coverage issues in most states. Appraisers cannot award punitive damages or attorneys' fees. They do not rule on legal liability for breach of the contract of insurance or insurance bad faith. In most states, all they can do is “set the amount of *the loss*.” Appraisal is only binding as to the amount of the loss, but does not preclude litigation on claims handling issues, payment delays, or carrier negligence. Those issues can be resolved in court, even though the parties have gone to appraisal.

If you want appraisal, get a copy of the policy and have the appraisal provision reviewed

by an attorney. Some states have special rules for the process of appraisal. The demand for appraisal must be timely, so move forward promptly.

Chapter 7

Is an AOR Right for You?

I have many clients who use assignments on every single job. Although I have personally witnessed many collection problems resolve as a result of assignments, assignments are not for everyone. This book gives an overview of the major issues to enable you to determine whether an assignment is suitable for your company, if so, what kind of assignment.

Never use an AOR if doing so would violate the terms of a contract you have with a franchisor, a TPA, or anyone else. However, if you have a contract like that, read it carefully to see *exactly* what is prohibited. For example, many franchise agreements allow the franchisee to obtain an assignment of “payment.” As explained in Chapter 9, you can pick several different features for your assignment, and delete the parts you don’t want to use.⁴ I believe that most restorers will benefit from having assignments available when the need arises.

If assignments are prohibited by a TPA agreement, that will not preclude the restorer from using them for jobs performed outside the program.

There are two simple reasons why restorers elect to obtain assignments:

1. They anticipate that insurance companies may underpay on the claim, or wrongfully deny coverage; and
2. They have a concern that the policyholder may misappropriate insurance proceeds.

If you don’t encounter either of those problems, then you probably don’t need an assignment!

Some restorers wonder if an assignment would be seen as an adversarial act by an insurance company. It need not be. It depends on ***how it is presented***. Restorers have no problem notifying insurance companies that the restorer’s name should be on the check. This is not that different, at least until the matter escalates and the restorer intimates that legal action may arise.

⁴ A few states require special language in assignments, as explained in the instructions under in the chapters for those states. Talk to a lawyer if you are uncertain.

Assignments Do Not Create a Right to Charge Excessive Prices

In *Security First Insurance Co. v. Florida Office of Insurance Regulation*, Florida's Fifth District Court of Appeals wrote:

“[T]he insurance industry argues that assignments of benefits allow contractors to unilaterally set the value of a claim and demand payment for fraudulent or inflated invoices [but] there is simply *insufficient evidence* in the record in this case—or in any of the related cases—to decide whether assignments of benefits are significantly increasing the risk to insurers.”⁵

This is another smokescreen. The value of an insurance claim has never been set by a contractor. Policies require carriers to pay fair market value. Thus, the value of a claim is set by a free and competitive restoration market, where contractors with reasonable prices succeed, and contractors with excessive prices fail. An AOB (or AOR) changes none of that.

Of course, no AOB has ever forced an adjuster to pay more than is due under a policy. If the bill is too high, the adjuster simply pays a lesser amount and moves on to the next file.

Some have criticized assignments as a tool for contractors to perform excessive repairs or charge excessive prices. This is an easy one. Just because someone *charges* an excessive price doesn't mean they are *paid* an excessive price. The policy controls. The insurance company should simply pay what the policy requires.

Every insurance policy has dozens of pages of provisions prepared by the insurer's lawyers to protect the insurers from having to pay excessive prices. My homeowners policy has two short paragraphs of coverage for and more than 300 paragraphs of exclusions and carrier-friendly limitations for them. They know how to maximize their benefit from every one of them.

Obviously, the carrier's power to adjust a claim doesn't magically disappear just because a restorer obtains an assignment. Policies obligate insurers to pay no more than “usual and customary,” or “reasonable” prices. Assignments don't change that. No insurance policy says: “we have to pay excessive prices if you assign your claim,” and no law says that.

Insurance companies are very good at adjusting invoices. Assignment or no assignment, if a price is too high, they simply pay less. In fact, we all know of many scenarios where they have paid less than the amount of an invoice that *wasn't* too high.

NOT ROCKET SCIENCE:

Assignment or no assignment, if a price is too high, the insurer does not pay it.

⁵ [*Sec. First Ins. Co. v. Fla. Office of Ins. Regulation*, 232 So. 3d 1157 \(Fla. Dist. Ct. App. 2017\)](#), emphasis added.

No service provider should perform excessive repairs or charge excessive prices, and restorers should not try to use assignments as a basis to raise prices. They jeopardize their goodwill by charging excessive prices, and leave themselves vulnerable to competition. But if they choose that path, an assignment will not aid them.

Let's be crystal clear:

An assignment has zero effect on the dollar amount a carrier is legally obligated to pay.

That duty is based on the policy and that law that interprets it. Period, full stop.

Chapter 8

When to Use an AOR

In the vast majority of states, the best practice is obtain an assignment on every property damage job. Although there is no deadline to execute an assignment, the best practice is get an assignment executed concurrently with the execution of the restoration contract. The sooner, the better, because an insurance company is not bound by an assignment of which it has no notice. Once the insurance company is on formal notice of an enforceable assignment, it must name the restorer on the check.⁶ If it fails to do so, it could be forced to pay twice if the policyholder runs off to Hawaii with the money.

⁶ Be mindful of the special rules of enforceability if you are working in Oregon, Texas, or Louisiana. The chapters dedicated to those states explain.

Chapter 9

What Should the Assignment Include?

In the olden days, assignments merely stated that the policyholder is assigning the right to “proceeds.” I ran up against insurance companies that breached their contract and committed insurance bad faith but claimed that the restorer had no rights against the insurance company because the assignment was limited to “proceeds,” and since the claim was denied, no proceeds were actually issued, so the assignment had no effect!

Those days are over.

The assignment included with this package assigns much more than just “proceeds.” It transfers legal ownership of all of the policyholder’s *rights* against the insurance company with respect to your scope of work. It explicitly includes the assignment of two rights that are not in the typical assignment:

1. The right to appraisal (see Chapter 6 - The Insurance Appraisal Process); and
2. The right to take legal action against the carrier (see Chapter 16 - How to Prosecute Rights Under and Assignment).

Either of those terms can be deleted from the form if they violate the terms of a franchise or TPA agreement, or you find them unsuitable for your business.

As worded in the AORs in this book, you have the right but not the obligation to compel the insurance company to submit the dispute to neutral “appraisal” to set the amount of the loss (see Chapter 6 on Appraisal).

If an insurer breaches the contract of insurance or mishandles the claim in bad faith as to the restorer’s scope of work, the AORs in this book generally give the restorer the right to pursue legal claims against the insurer for breach of insurance and bad faith.⁷ In those cases, many states allow either the recovery of attorneys’ fees or the recovery of punitive damages, or both. Please see the important discussion about punitive damages in Chapter 16 - *How to Prosecute Rights Under an Assignment*.

Finally, the AORs also includes a “direction to pay” which instructs the insurer to name the contractor on the check. Ideally, the restorer would be the only payee named on the check, but if the policyholder and/or a mortgagee are also named on the check, the restorer will usually get paid.⁸

⁷ Some states consider bad faith to be a tort claim and others consider it to be a contract claim. The distinction is rarely of any significance to a restorer with an assignment because the remedies are often the same, either way.

⁸ For important strategies to getting paid from a multi-party check, please see [*The Book on Restoration Collections*](#).

Chapter 10

Insurance Information Release & Authorization

Ignorance is not bliss in restoration. Restorers often don't get paid because they're out of the loop regarding the status of a claim. Many times you will hear adjusters and claims managers declare "the policy controls." This shows why it can be so helpful for a restorer to have a copy of the policy. I have seen dozens of cases where adjusters have misrepresented the terms and coverage under a policy but the restorers had no way to refute it because they did not have the policy.

Restorers are frequently unaware of coverage limits and policy exclusions that could greatly impact the amount of money available to pay for their services. Adjusters will make statements like: "We do not cover overhead and profit for mitigation or contents." Does the policy say that? The policy controls, right? But if you don't have the policy, you will be unable to **verify** what the adjuster says about the exclusions and limitations of the policy.

To address this, I developed the Insurance Information Release & Authorization (IIRA) form included in this chapter. It authorizes and instructs the insurer to deliver to the restorer obtain a certified copy of the policy, comparable estimates, adjuster estimates, claims correspondence, and other pertinent information about the status of the claim. It includes a waiver of the customer's right to privacy because some adjusters like to use "privacy" as a shield to avoid uncomfortable discussions about their adjusting practices. The IIRA is "irrevocable."

The IIRA is not married to the Assignment. A restorer could use one, the other, or both. They address different things. For the reasons explained in Chapter 7 (*Is an AOR Right for You?*), I don't recommend that *all* restoration companies adopt an AOR, but I *do* recommend that all restorers have an IIRA signed on day one of the job. Just because the policyholder signs the full IIRA does not mean you have to demand all of those documents from the carrier. Ask for what you need, and no more. If you don't think you need anything at the outset, get the IIRA signed anyway and keep it just in case an issue arises later.

The IIRA has another purpose too, which is to keep you in the middle of the action to try to prevent the adjuster from interfering with your contract, or damaging your relationship with your customer. Restorers frequently complain to me that adjusters steer customers to the competition. I can't begin to count how many times I have seen this story play out:

Adjuster to policyholder: "Mrs. Jones, that restoration company you hired is very expensive. We've had problems with them and I can't guarantee we will pay their bill, but if you hire *my guy*, we'll pay in full." (Spoken with a reassuring smile on his face.)

Policyholder to restorer: "Gee, Mac, I really like you. You do good work. But I'm afraid the insurance company may not pay your bill. I'm sorry, but I can't take that risk, so I hired *his guy*."

How do we prevent this problem? First, form a **strong alliance** with the policyholder from the very beginning. Share your observations of how the claims *adjusting* process works, and that it involves a lot of technical issues. The adjuster's job is to save the insurance company money, whereas your job as the restorer is to deliver top quality service. Share personal experiences about situations where policyholders got lost in the technicalities and ended up with inferior materials or something less than pre-loss condition.

If the customer trusts you and will allow you to be present at every inspection by the adjuster, you can be there explain the damage, explain the work, defend your scope, and prevent problems and misunderstandings that could lead to an unpaid restoration invoice and unnecessary attorneys' fees. This is no time to be shy. If you're on the outside of these events, it greatly increases the chances you will not be heard on key issues that impact your right to payment.

**STAY
VISIBLE.

STAY
INVOLVED.**

Do not offer policy interpretations or legal advice, but offer to participate in all the meetings and communications with the adjuster. When I say "all," I mean it literally: all the inspections, all the phone calls, all the email chains, so you can monitor what is happening and make sure that the project stays on track. "Let's make sure everyone is always on the same page." Explain that you are a contractor and not a public adjuster, and that your role is not to *represent* the policyholder, but to ensure that your company is allowed to do the job properly according to the industry standards of care, and that it is paid fair market value to do so. If you explicitly represent *yourself* in these meetings, and not the policyholder, you won't run afoul

of public adjusting licensing requirements. For more about that, see Chapter 13.

Try to get a seat at the table for all substantive discussions with the adjuster because when the proverbial cat is away, the mice will play. In your physical presence, adjusters and their consultants may be less comfortable criticizing you, and less likely to steer work away, and if they do, you will have a better chance to defend yourself. You might even be witness to tortious interference with your contract. Since you have a right to the claims documents, you can compel the adjuster to produce a written estimate from *his guy*, for comparison. You can have a real discussion about price and scope, line item by line item, resolve the differences, and keep the customer. The policyholders get what they deserve, you make money in the process, and the insurance company does not overpay. It is a WIN/WIN/WIN.

Another really important reason to get a signature on the IIRA is because it allows you to monitor the status of payments. You will significantly increase the chance of getting paid if you know exactly when a check is going to arrive. As industry influencer Annissa Coy says: "*Always know where the check is!*" If a check is to be sent to the insured, make an appointment to go to the property the day it arrives to pick it up. Without an IIRA, this is difficult, but *with* one, you have a right to this information at all times. This is a fair and just arrangement because if you don't get paid, you can't take back the work.

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

INSURANCE INFORMATION RELEASE AND AUTHORIZATION

Policyholder #1: _____	Claim Number: _____
Policyholder #2: _____	Policy Number: _____
Property _____	Date of Loss: _____
Address: _____	City/State/Zip: _____

The Policyholders named above hereby irrevocably direct and authorize their property insurance companies to immediately email to Contractor at the addresses below a complete certified copy of the policy packet (including declarations, policy provisions, and endorsements), all information and documentation regarding the property damage claims, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company, to “cc:” Contractor on all such future correspondence, and to immediately provide all other information that Contractor or its representatives may reasonably request. In this regard, the Policyholders knowingly and voluntarily waive any right of privacy that may apply to the requested information. The parties intend that this Authorization shall be legally enforceable, and that Contractor shall be entitled to legal and equitable relief, including an injunction to compel disclosure of the information and documents.

“Policyholder #1” (I read this Authorization and understand it.)

“Policyholder #2” (I read this Authorization and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder’s Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder’s Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative	Contractor Representative’s Signature
Contractor Email Address 1	Contractor Email Address 2

Chapter 11

How to Present an Assignment to the Customer

In most cases, the assignment should be part of the forms package confidentially presented to the customer in the ordinary course of business, without hesitation. Explain to the customer that, other than the deductible, you *hope* to collect payment in full from the insurance company. However, you have not seen the insurance policy and cannot give coverage advice. In exchange for your promise to work without immediate payment upon completion, you get an assignment of the rights against the insurance company for your scope of work, just as a doctor gets an assignment of the right to collect from the medical insurance company. Explain whether the customer will be ultimately responsible for any amount not paid by insurance. You will bill the customer and will send a courtesy copy of the bill to the insurance company. The Insurance Information Release & Authorization (IIRA) form provided with this book contains an authorization for the insurance company to communicate directly with you regarding the status of the insurance claim. In that regard, the customer waives the right to privacy. This is intended to keep the door of communications open so you can negotiate with the insurance company in hopes of not having to bother the customer with collection calls. Please see the IIRA section in Chapter 9 for a full discussion of the importance of maintaining these communications.

An assignment should not be used to hold a customer hostage in a restoration contract that has been breached by the restorer. I was recently told that some contractors in one state obtain assignments, fail to perform, and then try to prevent the customer from hiring a new contractor, claiming “you can’t fire me, I own the claim.” The AORs in this book have language explicitly prohibiting a contractor from doing that. That type conduct is extremely rare and is a misuse of the assignment. Perpetrators could face severe legal and financial ramifications, irreparable damage to their goodwill, and besides...it’s not fair.

If the customer wishes to replace contractors, and the differences are irreconcilable, it is time for a constructive discussion about the sums due for work performed. The termination of services should be documented in writing. However, when executing the termination document, restorers should use care to ensure that they do not inadvertently waive assigned rights for completed work. Consider those rights vested. Don’t rewrite history.

In other words, you can part ways with the policyholder before the job is finished, but hold onto all rights for the completed work. Naturally, we want to discourage revocation of assignments. Don’t give the policyholder the freedom to retroactively revoke an assignment. The Assignments included in this book state that they may only be revoked by written notice to the Contractor after the restoration service contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated. In other words, to terminate future rights under the assignment, the policyholder needs to find a new contractor. There may be other ways to address that challenge, but this is the best one I have come up with, so far.

If a customer breaches the restoration contract, some states allow contractors to recover the profit they would have earned if they had been permitted to complete the job, in addition to the value of the work performed. This may require proof that the contractor was wrongfully

ejected from the project. Seek legal advice on that question.

It bears reiterating that the assignment is given to the contractor as *security* and in consideration for contractor's agreement to perform services without immediate full payment from the policyholders upon completion of services. Focus the conversation on that point and things will go much more smoothly.

Know the Difference between Cancellation and Termination

Contractors can separate from customers without acrimony in most cases. Never talk about "canceling" your contract because that could be interpreted to mean that the entire contract is erased and that you have waived important rights in your contract, such as the right to recover collection costs, attorneys' fees, late fees, interest, and so on. Instead, the conversation should simply be about "terminating services." This can often be done in a change order with special termination language prepared by a licensed attorney.

The well-drafted restoration contract will contain a reservation of the right by the contractor to terminate services if the customer fails to timely pay. When the contractor terminates the contract, the goal is to simply *stop* work and collect payment for services rendered up to that point. If the contractor is not paid in full, the contractor fully intends to enforce the rights under the contract. That's because the contract has been terminated, rather than "canceled."

Chapter 12

Enforceability of Assignments

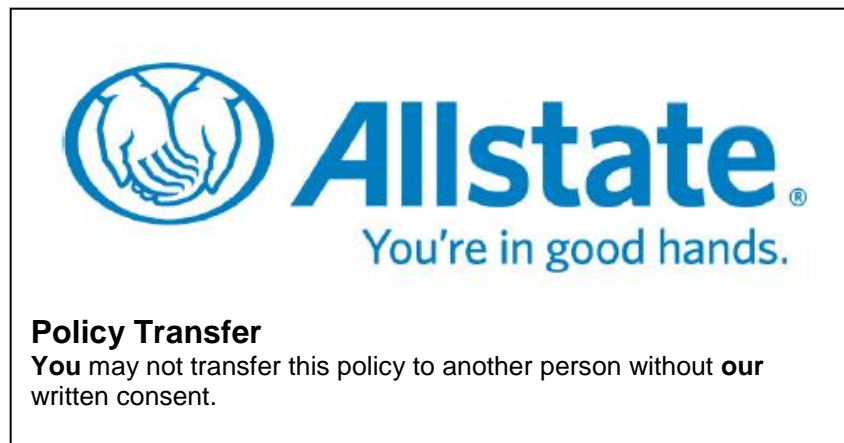
The Majority Rule: Post-Loss Assignments Are Enforceable!

One of the main reasons most courts across the country enforce post-loss assignments is because they do not expand the carriers' legal duties. In other words, the restorer with an assignment is not attempting to acquire rights greater than the policyholder's rights. It's no skin off the carrier's back. The restorer simply wants the carrier to fulfill its legal duties under the policy. Carriers don't consent to assignments, so assignments cannot expand the carrier's duties. Accordingly, there is no good basis for a carrier to reject a properly-prepared assignment. Despite extensive research, I have yet to see law in any state that prohibits the assignment of a claim for breach of an insurance contract. Don't forget to discuss that option with your lawyer.

Don't Be Afraid of "Anti-Assignment" Provisions!

The most important legal issue relating to assignments is whether the court in your jurisdiction will enforce the anti-assignment provision that is in virtually every policy. These provisions state that the insurance company's consent is required for an assignment to be made. Guess how often insurance companies give consent!

A recent Allstate policy puts it like this:



As explained above, "transfer" means "assign." Note how the Allstate policy only refers to "the policy" broadly. You can't transfer the policy. That's fine, we don't want "the policy." We want the proceeds from a vested claim, and only the proceeds that relate to our scope of work. We may also want the right to go to appraisal and the right to sue Allstate if it mishandles the claim. The provision in the Allstate policy, above, prohibits none of those things. It does not prohibit the transfer of a *claim* or "rights" under the policy.

A recent State Farm policy is much broader. It says:



So to get an enforceable assignment of rights against State Farm requires its consent right? Wrong. **Most states do not enforce these provisions against assignments of claims made after a loss has occurred.** These are called:

“POST-LOSS ASSIGNMENTS.”

Please remember that key phrase and use it often.

The question is whether the anti-assignment provision will be enforceable against a post-loss assignment of benefits. If an assignment is unenforceable, it is almost always due to an anti-assignment clause. After about a million hours of research, my team and I were only able to find three states that enforce “anti-assignment” provisions against post-loss assignments of benefits: Oregon, Texas, and Louisiana, and they only enforce them *under certain circumstances*.⁹ I’m not saying there aren’t any others, but we turned over a lot of stones and couldn’t find them. To the contrary, most states either definitively refuse to enforce those provisions or flat out declare them “void.” In California, they are void by statute!

But why? Two simple reasons:

- 1) Post-loss assignments do not increase the carrier’s risk; and**
- 2) Public policy demands free transfer of the right to collect money.**

The right to policy proceeds does not exist at the time the policy is issued. It is an outgrowth from the policy; a *new* right that arises only after a covered loss occurs. It is a personal property right, and almost everywhere, people can transfer that right as they please.

⁹ For more explanation, please see the chapters on each state.



A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a **proprietary right** to recover a debt, money, or thing.¹⁰

The transfer of rights is referred to as “alienation.” No, it has nothing to do with borders. The legal term “alienation” simply means a “conveyance or transfer of property to another.”¹¹ Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims.

The fight against restraints on alienation is not something new invented by restoration contractors in Florida, or anywhere else.

Sir Edward Coke of England is considered the greatest jurists of the Elizabethan and Jacobean eras. In 1628, he published a [*Commentary upon Littleton*](#), which has been widely recognized as a foundational document of the common law. It has been cited in over 70 cases decided by the Supreme Court of the

United States, including [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#), which states:

**Restraints on alienation are
“obnoxious to public policy.”**

-United States Supreme Court

The United States Supreme Court explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.”¹² This is a vitally important

¹⁰ Black’s Law Dictionary (11th ed. 2019).

¹¹ Black’s Law Dictionary (11th ed. 2019).

¹² Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

point, which is why it is quoted in the Notice of Assignment form letters contained in the back of this book. American courts work hard to avoid chilling commerce and economic activity.

One of the seminal cases on the law of post-loss assignments came from California in 2012: [*Fluor Corp. v. Superior Court*](#).¹³ The court explained that the right to a post-loss assignment exists once a “chose in action” arises, that is, when the claims have “been reduced to a sum of money due or to become due under the policy.”¹⁴

The court cited California Insurance Code section 520 which bars an insurer, “after a loss has happened,” from refusing to honor an insured’s assignment of the right to invoke the insurance policy’s coverage for such a loss.

The court explained that the rule embodied in section 520 is consistent with the “overwhelming majority of cases.” The principle reflected in those cases—precluding an insurer, after a loss has occurred, from refusing to honor an insured’s assignment of the right to invoke policy coverage for such a loss—has been described as “a venerable one, borne of experience and practice, facilitating the productive transformation of corporate entities, and thereby fostering economic activity.”

If the wording of the anti-assignment clause in a policy could reasonably be construed two different ways, one of which would prohibit post-loss assignments, and another of which would allow post-loss assignments, the assignment will be allowed. Power is greatly skewed between an insurance company and a policyholder, and ambiguities in contracts are construed against the party that drafted the contract.¹⁵

¹³ *Fluor Corp. v. Superior Court of Orange Cnty.*, 208 Cal.App.4th 1506, 146 Cal. Rptr. 3d 527, 12 Cal. Daily Op. Serv. 10209, 2012 Daily Journal D.A.R. 12345 (Cal. Ct. App. 2012).

¹⁴ *Fluor*, citing *Henkel Corp. vs. Hartford*, 29 Cal.4th at p. 944 (2003).

¹⁵ See, e.g., [*Allstate Ins. Co. v. Pruett*](#), 118 Haw. 174, 186 P.3d 609 (Haw. 2008).

Chapter 13

Assignments Don't Make You a Public Adjuster!

People get confused and think that the pursuit of rights under an assignment constitutes public adjusting. They're wrong. This is an easy one. A public adjuster is someone who acts *on behalf of* a policyholder. Restorers who hold assignments of benefits are acting on *their own behalves*. They're simply trying to get paid on a portion of the claim *they own*.

Public adjusters are representatives of policyholders, so special rules apply to them. Public adjusting requires a license in almost every state. Of course, contractors should not engage in illegal public adjusting. Some contractors hold public adjusting licenses. I am aware of no law that would prohibit someone from officially acting in the dual role of contractor and public adjuster. However, it still may create unnecessary complications or suspicions. That discussion is beyond the scope of this book. The point here is that public adjusting is irrelevant to the discussion about restorers obtaining assignments. You don't need a license to pursue rights under an assignment, any more than you need a law license to represent yourself in court.

The important point to remember here is that assignments don't make you a public adjuster for the very simple reason that you are not acting in the capacity of representative of the policyholder. You are simply pursuing money for yourself.

The legal definition of "public adjuster" in New York is virtually identical the definitions to most other states:

"Public adjuster" means any person, firm, association or corporation who, or which, for money, commission or any other thing of value, acts or aids in any manner ***on behalf of an insured*** in negotiating for, or effecting, the settlement of a claim or claims for loss or damage to property of the insured....¹⁶

The solution is simple: don't represent the policyholder. If an adjuster accuses you of public adjusting, don't waste time debating it. Simply say "No, I'm not acting on behalf of the policyholder, I'm acting on behalf of myself and I own the portion of the claim that relates to my scope of work." Then move on to the more important topics of scope and price, without looking back. When concerns about assignments arise, analogize to the doctor-patient example. When doctors pursue money from a health insurance company, they're not public adjusting.

¹⁶ [N.Y. Ins. Law § 2101\(g\)\(2\)](#), emphasis added.

Chapter 14

How to Present an Assignment to a Carrier

The Request for Insurance Information and Notice of Assignment (RFI/NOA) Form Letter

An insurance company is not bound by an assignment if it has no notice of the assignment. If a check is cut before the insurer is on notice of your rights, you don't own the check, and the policyholder can try to run off with your money, which may increase your legal expenses unnecessarily.

It is vitally important to call the insurance company's attention to your assignment! The best practice is to send a letter dedicated to the IIRA and the AOR. Remember, insurance companies are not generally bound by restoration service contracts, so there is often no need for them to spend much time reading them.

The form letter that follows this chapter is the cover letter to send to the carrier with a copy of the Restoration Work Authorization and Service Contract, the Insurance Information Release & Authorization (IIRA), and the Assignment of Insurance Rights (AOR). I used to call earlier versions of these letters by the formal name "tender of assignment," but "Notice of Assignment" is plainer English.

Formally notifying the carrier is an important legal act that should be well documented, ideally by email and certified mail. If the assignment is enforceable, any check cut after the tender is the property of the contractor.¹⁷

The form letter asks the carrier to send you a certified copy of the policy, and documents that relate to your scope of work. Don't ask for all of that unless you think you need it after reading the other chapters in this book. The point is, if we don't want the insurance industry to make busy work for us, we should not make busy work for them. Only ask for what you will need to expedite resolution of the claim. Feel free to omit parts of the letter, as appropriate, on a case-by-case basis.

Once the policyholder has signed the Insurance Information Release & Authorization (IIRA) *and/or* the Assignment of Insurance Rights (AOR), they must be sent to the carrier immediately.

The upcoming chapters that discuss each state have a template for this form letter customized for each state. Be reasonably patient, and try to stay on good terms with insurers and

¹⁷ Be careful with down payments. Some states, such as California, prohibit contractors from requesting or collecting payment for residential work that has not yet been performed. Speak to a lawyer for advice in that situation.

their partners. But if they fail to provide the insurance information, it may eventually be worthwhile to pester them until they provide it. Keep in mind, they are not yet accustomed to these requests from restorers. Working together, we can fix that. The RIA has published a 50-State Reference Guide to the Law of Assignments and Insurance Bad Faith, which you can find at www.RestorationIndustry.org. This will help to spread the word and raise awareness.

Although delays in producing the policies and claims communications may be frequent, I believe there is no legal or fair basis for an insurer to object to the release of that material. Stand your ground, politely but firmly. This could become second nature to the carriers if the industry unites and requests this information regularly. The benefits could be profound.

Chapter 15

Overcoming Carrier Objections

Oregon, Texas, and Louisiana handle assignments differently from other states. I outline special approaches for those states in the chapters dedicated on those states. The responses below are for all the *other* states, and the District of Columbia.

<u>CARRIER OBJECTION</u>	<u>RESTORER RESPONSE</u>
"The Assignment is just an agreement between you and the insured and we are not bound by it."	"No, I <i>own</i> the portion of the claim that relates to my scope of work. I stand in the shoes of the policyholder in a first party position. The policyholder exercised the right to transfer this part of the claim to me and your company is bound by it."
"The policy contains a 'no assignment' provision that prohibits assignments."	"As explained in our Notice of Assignment, that provision is not enforceable against a post-loss assignment of benefits. It is only enforceable against an assignment of the entire policy. We don't have an assignment of the policy; we only have an assignment of rights that arose from this claim. Once a loss occurs, a new right is created, and the carrier owes a debt. That debt is freely transferable because transferring it does not increase the carrier's risk or expense, and the law favors the transfer of assets between parties."
"You are public adjusting."	"Public adjusting is representation of a claimant. I am not representing the policyholder, so I'm not public adjusting. I own rights under the policy and can represent myself, just like I can represent myself in court without a law license. I'm not asking you to pay the policyholder, I'm asking you to pay me."
"If you own rights under the policy, then you owe us duties under the policy to provide documentation, and appear for an examination under oath."	"We were assigned limited rights, not the entire policy. We did not assume duties. The policyholder did not delegate duties to us. The assignment explicitly excludes delegation of duties. <i>However, we will be happy to cooperate and provide reasonable documentation of our work and support our charges so we can get this expeditiously resolved.</i> "

Chapter 16

How to Prosecute Rights under an Assignment

A Strategic Plan for Prudent Escalation

My cousin keeps a high-powered firearm under his bed “just in case.” He has no plans to use it. In fact, he *hopes* he will never have to use it. Think of filing lawsuits the same way.

Since I began representing restorers in 1997, I have been impressed with the sensible, measured approach they take toward collections and litigation. They seek amiable resolutions to payment issues without unnecessary escalation, and almost always make practical decisions.

Restorers Need Leverage in Dealing with Carriers

The existence of the assignment gives restorers much stronger leverage in price negotiations with the insurer because restorers have more energy, acumen, and resources to pursue the proper resolution of a claim than the typical consumer has. We do not execute assignments with a preconceived plan of going to court. But we have them in case we need them, just like my cousin’s gun. The fact that you have enforceable legal rights, and that you *can* take them to court often leads to a settlement without the need to incur attorneys’ fees. In the vast majority of cases, a fair invoice backed by a properly prepared and timely presented assignment is enough to settle a restorer’s invoice.

The Squeaky Wheel Gets the Grease

Why is that old receivables are so much harder to collect? Is it because the debtors never have the money? No. It’s often because they think they can get away with it, and if you ever let them think you’re not prepared to go the distance, it will be much harder to get paid. Out of sight, out of mind. Document, communicate, and follow up. Rinse and repeat.

Many restorers are so busy putting out fires that they don’t maintain consistent pressure on parties that owe money. Don’t be obnoxious, just be persistent. When an invoice is 30 days past due, and multiple follow-ups have been unproductive, it’s time to escalate.

When other means of resolution have failed, the restorer should seek legal counsel to discuss the risks and benefits of filing suit against the insurer in the restorer’s capacity as assignee. Depending on state law, causes of action against insurers may include breach of the contract of insurance, bad faith breach of contract and/or the tort of breach of the implied covenant of good faith and fair dealing, otherwise known as “insurance bad faith.”

Attorneys’ fees should be a central point in this discussion. Many states may allow restorers to recover of attorneys’ fees when they prevail in this type of case. Attorneys’ fees are

recoverable in Kansas, for example, if an insurer's denial of a claim was arbitrary, capricious, or made in bad faith.¹⁸ Some courts, such as those in California, have recognized that policy benefits should not be reduced by fees required to obtain them in a tort (bad faith) action. They allow for the recovery of attorneys' fees incurred in obtaining contract benefits that were withheld in bad faith. California and perhaps other states also hold that the right to attorneys' fees is assignable. This means that the contractor has a claim to the attorneys' fees incurred to secure policy benefits owned by the restorer under the assignment. Those are what I call "one-way" fees, meaning that they are awardable only to the party suing the insurance company; the insurance company cannot recover attorneys' fees if the insurance company prevails.¹⁹ This is another game changer.

Pursue the parts of the assignment that are enforceable, as determined by a detailed professional analysis of the policy and the current law.

Another important issue to consider is whether punitive damages are allowed in the jurisdiction, and if so, whether they can be assigned. Punitive damages do not compensate a plaintiff for actual losses; they serve only to punish and deter the defendant from engaging in the bad conduct again. Punitive damages need to be in an amount large enough to "hurt" the defendant in order to have the deterrent effect. Therefore, punitive damages awards against insurance companies are often enormous, sometimes in the tens of millions. This potential gives restorers leverage in negotiations with carriers engaged in unreasonable claims handling practices.

Some states allow punitive damages for bad faith breach of contract if the carrier acts with malice, wantonness, or oppression.²⁰ If it looks like adjusters are going out of their way to deny coverage, intentionally delay payments, or discounting restoration invoices with no colorable explanation, that will probably qualify. A small number of states prohibit punitive damages altogether.

California allows punitive damages and often awards them generously, but it does not allow them to be assigned. This means that a restorer with an assignment in California cannot collect punishment damage for a carrier's bad acts. However, California (and many other states) *would* allow a restorer to recover attorneys' fees where the carrier engages in unreasonable claims handling practices, which is called "bad faith" in California.

[*The Book on Restoration Collections*](#) includes a demand letter for each state with a synopsis of the law of bad faith in each state. For more important information about the law of bad faith and claims handling regulations, please see the RIA's [50-State Reference Guide to the Law of Assignments of Benefits and Insurance Bad Faith](#).

¹⁸ Similar rules exist in New Hampshire, Virginia, and others. Local counsel can advise you of the recoverability of fees.

¹⁹ In some instances, parties suing under assignments in the State of Florida may be liable for the insurance company's attorneys' fees. We advise against using assignments for Florida restoration projects.

²⁰ Virginia is one example. See [*A & E Supply Co. v. Nationwide Mut. Fire Ins. Co.*, 798 F.2d 669, 672 \(1986\)](#).

Chapter 17

The Vital Role of the Restoration Industry Association (RIA)

The RIA is the industry's oldest, largest, and best funded trade association and in 2021, it celebrated its Diamond Anniversary to mark 75 years in operation.



In 2019, the RIA formed the [Advocacy and Government Affairs \(AGA\) Committee](#). The AGA advocates for the interests of restorers and seeks to achieve a level playing field, legally and financially, for restorers across the United States. Its 50-State Reference Guide to the Law of Assignments and Insurance Bad Faith is an essential resource for restorers using assignments and their lawyers.

The RIA has effected significant change in the industry, especially since the AGA was launched. Every month, many dozens of AGA volunteers perform countless hours of research, analysis, and assessment to explore ways to make the industry better, and to form positions to advocate for the best interests of restorers. **I urge you to get involved.**

I urge all restorers to join the RIA. Membership provides instant access to one-of-a-kind videos, position papers, Xactimate information, TPA scorecards, and other valuable resources available nowhere else. An RIA membership more than pays for itself on day one and I urge everyone to join the movement at www.RestorationIndustry.org and to invest in the AGA here: <https://www.restorationindustry.org/invest-restoration-aga>. RIA is not seeking “donations.” The contributions are designed to yield financial returns, which is why they are referred to as “investments.” Contractors have recommended a guideline investment of \$100 per one million dollars in annual company revenue. In other words, a company with gross revenues of five million dollars would invest five hundred dollars, which should be affordable.

Investments will allow RIA to continue this important work so that restorers can get a fair shake in the insurance claims settlement process.

United we stand.

Chapter 18

Alabama

We have yet to find extensive law in Alabama that directly addresses assignments in the context of insurance claims. The key issue, as explained above, is whether the jurisdiction would enforce anti-assignment provisions in policies against post-loss assignments of benefits. In the *Alabama Farm Bureau* case cited in the Notice of Assignment form provided here, the court recognized the assignment, and another Alabama case held that policy limitations on assignments are not effective against post-loss assignments. Further, since nearly every state in the union does not enforce prohibitions of post-loss assignments, it seems that post-loss assignments will continue to have a good chance in Alabama.

Steps to Unlock Insurance Funds in the Yellowhammer State

Additional law regarding Alabama assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before *any* work begins. If there is more than one policyholder, have both of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!

6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps to collection in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

ALABAMA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Insured #1: _____	Claim Number: _____
Insured #2: _____	Policy Number: _____
Property _____	Date of Loss: _____
Address: _____	City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Insureds' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the insured(s) identified above ("Insureds") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Insureds' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Insureds' rights as a first-party insured under the Insureds' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by Alabama law and so that Contractor is deemed to stand in a first party position as to the policies. The Insureds shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation.

2. Exclusion: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses or the value of lost personal property. Nothing in this Assignment shall be construed as a delegation of the Policyholder's duties.

3. No Conditions: The Insureds agree and understand that this Assignment and each of its component parts are irrevocable. The Insureds expressly acknowledge that it is the Insureds' intent to assign the Insureds' insurance policy rights and benefits under the claims to the Contractor as explained above. The Insureds agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Insureds and the Insureds' insurance company.

4. Cooperation: The Insureds shall cooperate fully with Contractor's efforts to collect policy benefits and the Insureds agree to execute any and all documents presented by Contractor to the Insureds, which are reasonably required for the prosecution of Contractor's claims against the Insureds' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Insureds hereby authorize and instruct all insurance carriers who may be liable to the Insureds for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Insureds shall immediately notify Contractor, and return the check to the insurer with a written demand to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Insureds upon completion of services. The Insureds acknowledge the sufficiency of this consideration.

7. No Release: The Insureds remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Insureds from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Insureds' responsibility.

"Insured #1" (I read this Assignment and understand it.)

"Insured #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Insured; ☐ Insured's Agent

Signature. Check one: ☐ Insured; ☐ Insured's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Alabama Contractor Letterhead,
Address, Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT
OF INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

CONSULT AN ATTORNEY TO VERIFY THIS FORM'S FITNESS FOR YOUR PURPOSE

Please take notice that after the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor’s services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, *A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors* § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

Alabama recognizes the assignability of insurance claims. *Alabama Farm Bureau Ins. Co. v. McCurry*, 336 So. 2d 1109, 1112-13 (1976).

Generally, an assignment extinguishes the right of the assignor and transfers it to the assignee. *DuPont v. Yellow Cab Co. of Birmingham, Inc.*, 565 So. 2d 190 (Ala. 1990). The assignee then stands in the shoes of the assignor and succeeds to all the rights and remedies of the assignor. [*Kennamer v. Ford Motor Credit Co. LLC*, 153 So. 3d 752, 762 \(2014\)](#).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. Thank you.

////

////

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////

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 19

ALASKA

Steps to Unlock Insurance Funds in the Last Frontier

A synopsis of the law regarding Alaska assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)

TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

ALASKA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Alaska Contractor Letterhead,
Address, Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]
[Insurance Company Name]
[Street Address]
[City, State, Zip]

Re: Date of Loss:
Claim No.:
Insured:
Property
Address:
Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

If a check is issued to the policyholder, it will not fulfill the payment obligations under the policy. Now that we have provided notice of the assignment that reasonably identifies the rights assigned, payment must be issued to us. No consent to the assignment was required per Alaska Stat. § 45.29.406. <https://law.justia.com/codes/alaska/2019/title-45/chapter-29/article-4/section-45-29-406/>

Section 317(2) (b) of the Restatement (Second) of Contracts (1981) provides that a contractual right can be assigned so long as the assignment does not violate public policy. An assignment would be void as against public policy, if the assignee had knowledge that the assignment conflicted with a court order, for example, or if the assignee knew that the assignment was wrongful. Proceeds from fire insurance claims can be assigned. McKnight v. Rice, Hoppner, Brown Brunner, 678 P.2d 1330 (Alaska 1984). <https://casetext.com/case/mcknight-v-rice-hoppner-brown-brunner?resultsNav=false>

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 20

Arizona

Steps to Unlock Insurance Funds in the Grand Canyon State

A synopsis of the law regarding Arizona assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

ARIZONA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Arkansas Contractor Letterhead,
Address, Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]
[Insurance Company Name]
[Street Address]
[City, State, Zip]

Re: Date of Loss:
Claim No.:
Insured:
Property
Address:
Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

[Ark. Code Ann. § 4-58-102 \(1987\)](#) provides: All bonds, bills, notes, agreements, and contracts, in writing, for the payment of money or property, or for both money and property, shall be assignable.

As the Arkansas Supreme Court stated in *Wimberley Grocery Co. v. Border City Broom Co.*, 166 Ark. 570, 266 S.W. 679 (1924), no special form of words or language is required for an assignment to be valid, although the operative words of an assignment generally used are “sell, assign, and transfer.” Any language showing the intention of the owner of a right to transfer it, will be sufficient to vest title in the recipient of an assignment. 166 Ark. at 577, 266 S.W. at 682. [*N.W. Nat'l Bank v. Merrill Lynch, Pierce, Fenner, 25 Ark. App. 279, 757 S.W.2d 182 \(Ark. Ct. App. 1988\)*](#)

The right of action on an insurance policy is assignable in Arkansas, and clauses in the policy against assignment without consent of the company do not apply once money is owed for a claim. *Planters' Nat. Bank v. Lawrence County Bank*, 176 Ark. 228, 2 S.W.2d 704 (1928).

As assignee, we stand in the shoes of the policyholder in a first party position and we acquired rights of action. Furthermore, the assignment cannot be revoked without consent. *Block v. Walker*, 2 Ark. 4, 4 (1839).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 21

Arkansas

Steps to Unlock Insurance Funds in the Land of Opportunity

A synopsis of the law regarding Arkansas assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

ARKANSAS POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Arkansas Contractor Letterhead,
Address, Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]
[Insurance Company Name]
[Street Address]
[City, State, Zip]

Re: Date of Loss:
Claim No.:
Insured:
Property
Address:
Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:

By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

[Ark. Code Ann. § 4-58-102 \(1987\)](#) provides: All bonds, bills, notes, agreements, and contracts, in writing, for the payment of money or property, or for both money and property, shall be assignable.

As the Arkansas Supreme Court stated in *Wimberley Grocery Co. v. Border City Broom Co.*, 166 Ark. 570, 266 S.W. 679 (1924), no special form of words or language is required for an assignment to be valid, although the operative words of an assignment generally used are “sell, assign, and transfer.” Any language showing the intention of the owner of a right to transfer it, will be sufficient to vest title in the recipient of an assignment. 166 Ark. at 577, 266 S.W. at 682. [*N.W. Nat'l Bank v. Merrill Lynch, Pierce, Fenner, 25 Ark. App. 279, 757 S.W.2d 182 \(Ark. Ct. App. 1988\)*](#)

The right of action on an insurance policy is assignable in Arkansas, and clauses in the policy against assignment without consent of the company do not apply once money is owed for a claim. *Planters' Nat. Bank v. Lawrence County Bank*, 176 Ark. 228, 2 S.W.2d 704 (1928).

As assignee, we stand in the shoes of the policyholder in a first party position and we acquired rights of action. Furthermore, the assignment cannot be revoked without consent. *Block v. Walker*, 2 Ark. 4, 4 (1839).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 22

California

Steps to Unlock Insurance Funds in the Golden State

California is a very favorable forum for assignments. A synopsis of the law regarding California assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10.
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

CALIFORNIA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[California Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- A. A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- B. All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- C. "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:

By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security. Those rights were fully transferrable, pursuant to California [Civil Code Section 954](#), which states that a thing in action, arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner. An assignment is deemed perfected when the assignment is delivered to the transferee in writing, per [Civil Code Section 955.1](#).

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

Your company's consent to the assignment was not required, pursuant to [*Trubowitch v. Riverbank Canning Co.* \(1947\) 30 Cal.2d 335, 339](#), which stands for the proposition that an obligee's rights, in particular, the right to receive payment, can *always* be transferred without the obligor's consent.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a **post-loss assignment** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy. "In other words, after a covered loss occurs, the insured may assign his or her right to recover, even if the policy contains an anti-assignment provision." *Yazdi v. Aetna Life & Casualty (Bermuda) Ltd.* (C.D. Cal., Jan. 2, 2019, No. CV 18-08345-CJC(SSX)) 2019 WL 6720989, at 4.

Under California law, anti-assignment provisions in insurance policies are **void as post-loss assignments**, pursuant to [Insurance Code section 520](#), which states:

"An agreement not to transfer the claim of the insured against the insurer after a loss has happened, is void if made before the loss except as otherwise provided in Article 2 of Chapter 1 of Part 2 of Division 2 of this code."¹

In 2015, the California Supreme Court held that [section 520](#) bars an insurer from refusing to honor an insured's assignment of policy coverage regarding injuries that predate the assignment. [*Fluor Corp. v. Superior Court* \(2015\) 61 Cal.4th 1175, 1182](#) ["The principleprecluding an insurer, after a loss has occurred, from refusing to honor an insured's assignment of the right to invoke policy coverage for such a loss—has been described as a venerable one, borne of experience and practice, facilitating the productive transformation of corporate entities, and thereby fostering economic activity."]

In *Dameron Hospital Association v. State Farm Mutual Automobile Insurance Company* (E.D. Cal., Mar. 22, 2018, No. 2:15-CV-01823-MCE-AC) 2018 WL 1425981, at 3, the United States District Court for the Eastern District of California rejected State Farm's argument that benefits were not yet assignable because services had not been rendered and there was no fixed sum to assign at the time the insured signed the assignment.

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your

¹ Article 2 of Chapter 1 of Part 2 of Division 2 deals with life insurance and disability policies and is inapplicable.

obligations under the policy and may require double-payment, pursuant to [California Commercial Code section 9406](#), which states, in subpart (a):

[A]n account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

Accordingly, please immediately confirm in writing that you will cause all future payments relative to our scope of work to be made payable only to us and to delivered directly to us as follows:

[Contractor name]
[Contractor street address]
[Contractor city, state, & zip]

If you have any questions, please do not hesitate to call. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Information Release, and the Assignment!]

Chapter 23

Colorado

Steps to Unlock Insurance Funds in the Centennial State

The law regarding Colorado assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10.
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

COLORADO POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Colorado Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:

By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

"Assignment" is the voluntary transfer of some right or interest to another person. [*State Farm Fire & Cas. Co. v. Weiss*, 194 P.3d 1063 \(Colo. App. 2008\)](#). A policyholder with a covered claim holds a "right in action," sometimes referred to as a "chose in action," which is a proprietary right to recover a debt, money, or thing. [*Black's Law Dictionary* 234 \(11th ed. 2019\)](#).

Insurance companies attempt to *restrain* transfers of property from one to another when they try to enforce "anti-assignment" provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as "obnoxious to public policy." It explains that public policy is best served when there is "great freedom of traffic" for things to "pass from hand to hand." [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404-405](#).

Colorado law favors the assignability of contractual rights. [*Scott v. Fox Bros. Enterprises, Inc.*, 667 P.2d 773, 774 \(Colo.App.1983\)](#). Contract rights generally are assignable, except where assignment is prohibited by contract or by operation of law or where the contract involves a matter of personal trust or confidence. Where the contract in question specifically prohibits the assignment of rights or interests under the contract without the consent of one or more of the contracting parties, any purported assignment without such consent will not be enforced. [*Parrish Chiropractic Centers, P.C. v. Progressive Cas. Ins. Co.*, 874 P.2d 1049 \(Colo. 1994\)](#).

A distinction traditionally has been made, however, between an assignment of an insurance policy before a loss has occurred and the assignment of the benefits due to the insured after a loss. Non-assignment clauses are strictly enforced against attempted pre-loss transfers of the policy itself, because assignments before loss involve a transfer of a contractual relationship and, in most cases, would materially increase the risk to the insurer. By contrast, assignments of *post-loss* benefits are usually found to be valid regardless of any non-assignment clause in the policy. This rule is explained by the fact that (1) post-loss assignments of the benefits due under the policy are viewed as transfers of a chose in action and public policy favors the free transfer of choses in action, and (2) such assignments would not materially increase the insurer's risk or obligation under the policy. [*Parrish Chiropractic Centers, P.C. v. Progressive Cas. Ins. Co.*, 874 P.2d 1049 \(Colo. 1994\)](#).

In Colorado, an insurance policy may include clear and unambiguous language prohibiting assignment of a post-loss claim for benefits. The scope of any such provision is construed in accordance with the general law of contracts. As such, an ambiguity in the policy language is construed against the insurer as drafter of the policy. [*State Farm Mut. Auto Ins. Co. v. Stein*, 940 P.2d 384 \(Colo.1997\)](#). This is in line with other jurisdictions who have held that anti-assignment clauses may restrict post-loss assignments and that such provisions are construed under general rules of contract interpretation. [*Rooftop Roofing, Inc. v. Fire Ins. Exchange, No. 10CV243*. \(Elbert County, Colo. Dist. Ct. Apr. 8, 2011\)](#)

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 24

Connecticut

Steps to Unlock Insurance Funds in the Constitution State

The law regarding Connecticut assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10.
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

CONNECTICUT POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. **Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. **No Release:** The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Connecticut Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:

By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the policyholder's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the policyholder and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

Connecticut courts in the modern era have rejected traditional common-law restrictions on the alienability of contract rights in favor of free assignability of contracts, and they recognize the necessity of transferring contract rights. [Gurski v. Rosenblum & Filan, LLC, 276, 2005 Conn.](#)

When an assignment of a claim is made after a loss occurs, Connecticut courts disregard insurance policy provisions that require the insurer's consent to the assignment. [Giglio v. American Economy Ins. Co., 2005 Ct. Sup. 7388 \(Conn. Super. Ct. 2005\).](#)

"An assignment is a transfer of property or some other right from one person (the assignor) to another (the assignee), which confers a complete and present right in the subject matter to the assignee." Such assignment will be valid and enforceable against both the assignor and the assignee. "Succession by an assignee to exclusive ownership of all or part of the assignor's rights respecting the subject matter of the assignment, and a corresponding extinguishment of those rights in the assignor, is precisely the effect of a valid assignment." [Liberty Transp., Inc. v. Mass. Bay Ins. Co., AC 41553 \(Conn. App. Ct. Apr. 30, 2019\)](#) (citations omitted).

"No words of art are required to constitute an assignment; any words that fairly indicate an intention to make the assignee owner of a claim are sufficient . . ." *Sunset Gold Realty, LLC v. Premier Bldg. & Dev., Inc.*, supra, 133 Conn.App. 452-53.

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 25

Delaware

Steps to Unlock Insurance Funds in the Diamond State

The law regarding Delaware assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

DELAWARE POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Delaware Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:

By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

- 2. Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

An insurance policy may be assigned either by pledge or transfer of title by an assignment executed by the insured or owner alone and delivered to the insurer. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment until the insurer has received notification of termination. § 2720. Assignability. 18 Del. C. 1953, § 2720; 56 Del. Laws, c. 380, § 1; <https://delcode.delaware.gov/title18/c027/sc01/index.html>

An anti-assignment clause does not operate to prevent the assignment of a policy where the alleged loss occurred prior to the assignment. *CNH Am., LLC v. Am. Cas. Co. of Reading*, C.A. No. N12C-07-108 JTV (Del. Super. Ct. Apr. 29, 2014) <https://casetext.com/case/cnh-am-llc-v-am-cas-co-of-reading>

In Delaware, an anti-assignment provision "intends only to limit the assignability of an interest in the policy before the insured-against loss has occurred." Such a provision does not preclude an assignment if the assignment takes place after the loss has occurred. This approach "protect[s] the insurer from increased liability, and after events giving rise to the insurer's liability have occurred, the insurer's risk cannot be increased by a change in the insured's identity." *CNH Am., LLC v. Am. Cas. Co. of Reading*, C.A. No. N12C-07-108 JTV (Del. Super. Ct. Apr. 29, 2014) <https://casetext.com/case/cnh-am-llc-v-am-cas-co-of-reading>

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 26

District of Columbia

Claims can be assigned in the District of Columbia after a loss. D.C. recognizes a duty of good faith in every contract, and awards damages for its breach as part of a contract action. D.C. does not consider bad faith a tort, but allows recovery of punitive damages for bad faith breach of contract. In sum, it is a favorable forum for restorers with assignments! A synopsis of the supporting law is in the Notice of Assignment cover letter that follows in this chapter.

Steps to Unlock Insurance Funds in Capitol of the Free World

My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits & Bad Faith for more information.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

DISTRICT OF COLUMBIA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. **Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, bad faith, fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. **No Release:** The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[District of Columbia Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“District of Columbia law evinces a policy of free assignability of claims.” As stated in by DC courts:

In general, all contractual rights may be assigned, including the right to sue for enforcement of a claim. The right to assign is presumed, based upon principles of unhampered transferability of property rights and of business convenience. The effectiveness of an assignment does not normally depend upon the consent of the obligor unless the rights to be assigned involve the performance of unique personal services.

[*Antal's Restaurant v. Lumbermen's Mut*, 680 A.2d 1386 \(D.C. 1996\).](#)

“[A]fter the event has occurred by which liability ... is fastened upon the insurer, the policy or rights thereunder may be assigned with or without the consent of the insurer....” Consent by the insurer regarding assignment is no longer required after a loss because the relationship between the insured and the insurer mimics that of creditor and debtor. [*Antal's Restaurant v. Lumbermen's Mut*, 680 A.2d 1386 \(D.C. 1996\).](#)

Moreover, it has long been recognized that an assignee may pursue legal action predicated on rights arising from an assignment. The court has expressly noted that “a valid assignment confers upon the assignee standing to sue in [the] place of the assignor.” [*Brandenburger Davis v. Estate of Lewis*, 771 A.2d 984 \(D.C. 2001\).](#)

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 27

Florida

May 23, 2019: The Darkest Day in Restoration History

Mary King's death and the ThermaPure lawsuits were tragic and horrible events. But May 23, 2019 was the darkest day in restoration history. It was the day that Florida Governor Ron DeSantis, under extreme pressure from the insurance lobby, signed [HB 7065](#) into law, mercilessly stripping contractors of all their common law contract rights if they dare to obtain an assignment in Florida.²¹ For the extraordinary background of what happened in Florida, please see Chapter 4. **If there was ever a case demonstrating the dire need for the restoration industry to unite and support the AGA in opposing bad legislation, HB 7065 was it.**

No other state has assignment law that is so harshly and unjustifiably unfriendly to the restoration community. In Chapter 4, I explain the strange series of unfortunate events that led to the passage of this:

HOUSE BILL 7065

One who accepts an assignment and that parties' subcontractors *waives the right to collect or attempt to collect money from a policyholder*, take any legal action against a policyholder, claim a lien on the real property, or report a policyholder to a credit agency, *and this waiver remains in effect after the assignment agreement is rescinded by the assignor* or after a determination that the assignment agreement is invalid.

Like other states, Florida recognizes that an "assignee...stands in the shoes of the assignor and may enforce the contract against the original obligor in his own name."²² But under HB 7065, Florida assignments must comply with a long and ghastly list of complex rules that send a loud and clear message that the state was persuaded that many contractors were misbehaving. It is blatant on the face of the law that the insurance industry scored a major victory over contractors in Florida.

The list includes special notices that must be provided to the policyholder. In most states, consumer protection laws only apply to residential work, but these Florida rules apply to commercial, work as well. Assignments that do not comply with the technical requirements of [Florida Statute section 627.7152](#) will likely be invalid.²³ The Assignment form in this chapter

²¹ HB 7065 was the companion bill to [Senate Bill 122](#).

²² [Dove v. McCormick](#), 698 So. 2d 585 (Fla. Dist. Ct. App. 1997)

²³ See also [Senate Bill 76](#), effective July 1, 2021.

complies with that section, but study that section carefully to understand everything you're giving up before executing an assignment in Florida.

Florida has a typical statute that allows for assignments:

627.422 Assignment of policies or post-loss benefits.—A policy may be assignable, or not assignable, as provided by its terms. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment. [Florida Statute 627.422](#).

For more than 100 years, Florida courts have held that a claim can be assigned after a loss has occurred, even if the insurance policy prohibits assignments.²⁴ The 2019 statute allows Florida policyholders to cancel assignments. Although the policyholder is responsible for paying for contracted work performed before the assignment is canceled, cancellation could potentially leave a restorer without recovery if the policyholder misappropriates the insurance proceeds.

For emergency service work, contractors cannot receive an assignment of benefits in excess of \$3,000 or one percent of the Coverage A limit. What a joke. There are *hurricanes* in Florida. Big ones.

The holder of an assignment in Florida is not allowed to seek payment from the policyholder for any amount exceeding the deductible unless the policyholder has chosen to have work performed at the policyholder's expense.

The holder of an assignment in Florida can be forced into an examination under oath before the insurance company.

A restorer may be entitled to recover attorneys' fees in a legal action taken pursuant to an assignment, but only if the restorer achieves a substantial monetary victory. Otherwise, the restorer may be liable for the *insurance company's* attorneys' fees. I am aware of no other state that would ever require a policyholder or assignee to pay an insurance company's attorneys' fees. It's usually the other way around.

The 2019 Bill was promoted as something to help consumers but its passage put insurers in a much more favorable position than before its passage.

For these reasons and others that are too depressing to describe, it is a bad idea to seek an assignment of *benefits* in Florida. But there could be significant benefit in using the Insurance Information Release & Authorization (IIRA) in Chapter 9.

²⁴ [Security First Insurance Company v. Florida Office of Insurance Regulation, Case No. 5D16-3425 \(Fla. 5th DCA Dec. 1, 2017\)](#)

You may also wish to seek the advice from a qualified Florida attorney to explore whether you can obtain an enforceable assignment of the right to sue an insurer for breach of the insurance contract or insurance bad faith if a claim has been mishandled. That question is beyond the scope of this book.

With those warnings in mind, Florida restorers may consider the following approach:

1. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to ***get this form signed anyway.***
 - ❖ An Assignment of Rights (AOR) form is provided here for those who are comfortable with all the sacrifices it entails. Do not use it without consulting with a Florida lawyer first. To have it executed, give the policyholder a summary of the explanation in Chapter 11, and present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign. Follow all the applicable rules to the tee, including [Florida Statute section 627.7152](#).
2. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights, if any, and the Insurance Information Release on day one, following the instructions in Chapter 14.
3. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
4. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
5. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: FAX:
LICENSE #

(COMPANY LOGO)

FLORIDA ASSIGNMENT OF INSURANCE RIGHTS AND DIRECTION TO PAY FLORIDA

Insured #1: _____ Claim No: _____
Insured #2: _____ Date of Loss: _____
Property Address: _____ City/State/Zip: _____

1. **Irrevocable Assignment of Customer's Rights Against Insurance Company To Contractor:**

By execution of this Irrevocable Assignment of Benefits ("Assignment"), the insured ("Assignor") completely, irrevocably and fully assigns and transfers all legal right and title under any applicable insurance policy to Contractor ("Assignee") for services rendered by Contractor (referred to here as the "Assigned Benefits"). Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim unrelated to Contractor's scope of work, such as additional living expenses or the value of lost personal property. Nothing in this Assignment shall be construed as a delegation of duties.

2. **Right of Action:** Customer assigns to Contractor any and all of Customer's rights as a first-party insured under Customer's policy of insurance but only with respect to the Assigned Benefits specified above. This Assignment includes without limitation a transfer of the right to sue the insurance company for recovery of the Assigned Benefits specified above, including causes of action for breach of contract, insurance bad faith and negligence. This Assignment shall be construed to the fullest extent permitted by law.

3. **No Conditions:** Customer expressly acknowledges that it is Customer's intent to assign Customer's insurance policy benefits and claims to Contractor. Customer agrees and understands that this Irrevocable Assignment is unconditional and effective immediately upon execution of this Agreement, and that no further action needs to be taken for it to be valid, enforceable and binding upon Customer and Customer's Insurance Company. Customer agrees and understands that this assignment is irrevocable.

YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY TO A THIRD PARTY, WHICH MAY RESULT IN LITIGATION AGAINST YOUR INSURER. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING IT. YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT WITHOUT PENALTY WITHIN 14 DAYS AFTER THE DATE THIS AGREEMENT IS EXECUTED, AT LEAST 30 DAYS AFTER THE DATE WORK ON THE PROPERTY IS SCHEDULED TO COMMENCE IF THE ASSIGNEE HAS NOT SUBSTANTIALLY PERFORMED, OR AT LEAST 30 DAYS AFTER THE EXECUTION OF THE AGREEMENT IF THE AGREEMENT DOES NOT CONTAIN A COMMENCEMENT DATE AND THE ASSIGNEE HAS NOT BEGUN SUBSTANTIAL WORK ON THE PROPERTY. HOWEVER, YOU ARE OBLIGATED FOR PAYMENT OF ANY CONTRACTED WORK

PERFORMED BEFORE THE AGREEMENT IS RESCINDED. THIS AGREEMENT DOES NOT CHANGE YOUR OBLIGATION TO PERFORM THE DUTIES REQUIRED UNDER YOUR PROPERTY INSURANCE POLICY.

4. Indemnity of Customer by Contractor: The Contractor agrees and covenants to indemnify and hold harmless the Customer from all liabilities, damages, losses, and costs, including, but not limited to, attorney fees, should the policy subject to the assignment agreement prohibit, in whole or in part, the assignment of benefits.

5. Cooperation: Customer shall cooperate fully with Contractor's efforts to collect policy benefits and Customer agrees to execute any and all documents presented by Contractor to Customer, which are required for the prosecution of Contractor's claims against Customer's Insurance Company and or its agents with respect to the Assigned Benefits.

6. Notice to Insurer: Contractor agrees to provide a copy of the executed assignment agreement to the insurer within 3 business days after the date on which the assignment agreement is executed or the date on which work begins, whichever is earlier. Delivery of the copy of the assignment agreement to the insurer may be made:

- a. By personal service, overnight delivery, or electronic transmission, with evidence of delivery in the form of a receipt or other paper or electronic acknowledgment by the insurer; or
- b. To the location designated for receipt of such agreements as specified in the policy.

7. Direction to Pay: Customer hereby authorizes and instructs all insurance carriers who may be liable to Customer for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the Work hereby authorized, and to deliver said payments directly and exclusively to Contractor.

8. Consideration: This Assignment is provided as security in consideration for Contractor's agreement to perform services without immediate full payment from Customer upon completion of services. Customer acknowledges the sufficiency of this consideration.

9. No Release: This Assignment does not relieve Customer from the duty to compensate Contractor for any amount due to Contractor that was not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately Customer's responsibility.

"Insured" (I read this Assignment and understand it.)

"Insured" (I read this Assignment and understand it.)

Signature. Check one: ☐ Customer; ☐ Customer's Agent

Signature. Check one: ☐ Customer; ☐ Customer's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Florida Contractor Letterhead,
Address, Email Address, Phone Number & License Number]

DELETE THIS BOX BEFORE SENDING THE LETTER

**WARNING: THERE ARE SIGNIFICANT LEGAL AND
FINANCIAL SACRIFICES INVOLVED WITH CERTAIN
TYPES OF ASSIGNMENTS IN THE STATE OF FLORIDA.**

**DO NOT SEEK ASSIGNMENTS WITHOUT
CONSULTATION WITH A QUALIFIED FLORIDA
LAWYER.**

HOWEVER, THERE ARE SIGNIFICANT POTENTIAL
ADVANTAGES TO OBTAINING AN INSURANCE
INFORMATION RELEASE, ADDRESSED IN THE
BEGINNING OF THIS LETTER.

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT
OF INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);

- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) “CC:” us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Customer”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Benefits and Direction of Pay. Also enclosed is a copy of the contract executed by your insured.

Among other things, the Assignment states:

1. **Irrevocable Assignment of Customer’s Rights Against Insurance Company To Contractor:** By execution of this Irrevocable Assignment of Benefits (“Assignment”), Customer (“Assignor”) completely, irrevocably and fully assigns and transfers all legal right and title under any applicable insurance policy to Contractor (“Assignee”) for services rendered by Contractor (referred to here as the “Assigned Benefits”). Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim unrelated to Contractor’s scope of work, such as additional living expenses or the value of lost personal property. Nothing in this Assignment shall be construed as a delegation of duties.
2. **Right of Action:** Customer assigns to Contractor any and all of Customer’s rights as a first-party insured under Customer’s policy of insurance but only with respect to the Assigned Benefits specified above. This Assignment includes without limitation a transfer of the right to sue the insurance company for recovery of the Assigned Benefits specified above, including causes of action for breach of contract, insurance bad faith and negligence. This Assignment shall be construed to the fullest extent permitted by law.
3. **No Conditions:** Customer expressly acknowledges that it is Customer’s intent to assign Customer’s insurance policy benefits and claims to Contractor. Customer agrees and understands that this Irrevocable Assignment is unconditional and effective immediately upon execution of this Agreement, and that no further action needs to be taken for it to be valid, enforceable and binding upon Customer

and Customer's Insurance Company. Customer agrees and understands that this assignment is irrevocable.

* * *

7. **Direction of Pay:** Customer hereby authorizes and instructs all insurance carriers who may be liable to Customer for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the Work hereby authorized, and to deliver said payments directly and exclusively to Contractor.

* * *

[*Contractor name*] hereby tenders the insured's assignment of the Assigned Benefits, which was received as security. Those rights were fully transferrable pursuant to Florida law, including but not limited to § 627.7152, Fla. Stat. (2020).

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Benefits. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with coverage obligations for the contents portion of the claim are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

Please do not issue payment under the Assigned Benefits directly to the Customer. Doing so will not result in a credit toward the balance owed to us. Directly paying the Customer for the assigned portion of the claim will not discharge your obligations under the policy.

Therefore, please cause all future payments relative to our scope of work to be made payable only to us and to delivered directly to us as follows:

[*Contractor name*]
[*Contractor street address*]
[*Contractor city, state, & zip*]

If you have any questions, please do not hesitate to call. Thank you.

Very truly yours,
[**CONTRACTOR NAME**]

[*Contractor representative name*]

Encl.

[*Don't forget to enclose the Contract, the Assignment and the Insurance Information Release!*]

Chapter 28

Georgia

Steps to Unlock Insurance Funds in the Empire State of the South

The law regarding Georgia assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

GEORGIA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Georgia Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

A policy may be assignable or not assignable, as provided by its terms. Subject to its terms relating to assignability, any life or accident and sickness policy issued under the terms of which the beneficiary may be changed upon the sole request of the policy owner may be assigned either by pledge or by transfer of title by an assignment executed by the policy owner alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment until the insurer has received at its home office written notice of termination of the assignment or pledge or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment. [Ga. Code Ann., § 33-24-17.](#)

In *Mail Concepts v. Foote & Davies*, 200 Ga.App. 778, 409 S.E.2d 567 (1991), the Court of Appeals held that a non-assignment clause in a contract for services and labor was unenforceable. In so holding, the court observed that, with the exception of contracts requiring peculiar skills or services which are inherently not assignable: once a party to the contract performs its obligations thereunder so that the contract is no longer executory, its right to enforce the other party's liability under the contract may be assigned without the other party's consent even if the contract contains a non-assignment clause. *Id.* at 781, 409 S.E.2d 567. [Singer Asset Fin. Co. v. CGU Life Ins. Co., 567 S.E.2d 9, 10 \(Ga. 2002\)](#)

“After [a] loss, the claim of the insured, like any other chose in action, could be assigned without in any way affecting the insurer's liability. It has been held, rightly we think, that a condition in a policy of ... insurance prohibiting an assignment or transfer of the same after loss, without the consent of the insurer, is null and void, as inconsistent with the covenant of indemnity and contrary to public policy....No right of the insurer being affected by the assignments of the policies, it would be a mere act of caprice or bad faith for it to take advantage of the stipulation that the transfers were subject to its consent, by withholding such consent in order to defeat the claim of the assignee. The assignments being perfectly valid without the consent of the insurer, and its rights being in no way affected thereby, the condition in question was superfluous, and the law will not tolerate its enforcement against the assignee.” [Santiago v. Safeway Ins. Co., 396 S.E.2d 506, 507-08 \(Ga. Ct. App. 1990\).](#)

An assignment of the policy after loss, or in other words an assignment of the claim for the loss, is valid, and transfers to the assignee the right to the proceeds of the insurance. Such an assignment is valid, even though the policy provides that it shall be void if assigned, either before or after the loss, without the consent of insurer, for such an assignment relates to the cause of action and not to the policy. If insurer has notice of the assignment and, if insurer thereafter pays the proceeds to insured or his creditors, it does not discharge itself from liability to the assignee. 46 CJS Insurance § 1152 (1946). [Santiago v. Safeway Ins. Co., 396 S.E.2d 506, 507-08 \(Ga. Ct. App. 1990\)](#)

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment. This is pursuant to [Ga. Code § 11-9-406\(a\)](#) which states:

“[A]n account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.”

If you have any questions, please do not hesitate to call. Thank you.

Very truly yours,

[**CONTRACTOR NAME**]

[*Contractor representative name*]

Encl.

[*Don't forget to enclose the Contract, Request for Information, and the Assignment!*]

Chapter 29

Hawaii

Steps to Unlock Insurance Funds in the Aloha State

The law regarding Hawaii assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

HAWAII POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Hawaii Contractor Letterhead,
Address, Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]
[Insurance Company Name]
[Street Address]
[City, State, Zip]

Re: Date of Loss:
Claim No.:
Insured:
Property Address:
Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT
OF INSURANCE RIGHTS**

Dear [Adjuster Name],

[Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Please transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

CONSULT AN ATTORNEY TO VERIFY THIS FORM'S FITNESS FOR YOUR PURPOSE

Please take notice that after the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor’s services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is

merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy. We did not receive an assignment of the policy.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, *A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors* § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

Hawaii law allows the assignee of any nonnegotiable chose in action to pursue the assigned claims in the assignee's own name, subject to any setoffs existing in favor of obligor. [Haw. Rev. Stat. § 634-1](#).

In general, “[a]n assignment operates to place the assignee in the shoes of the assignor, and provides the assignee with *the same legal rights as the assignor* had before assignment.” [Fireman's Fund Ins. Co. v. AIG Hawai'i Ins. Co., Inc.](#), 109 Hawai'i 343, 349, 126 P.3d 386, 392 (2006).

In 2009, the United States District Court for the District of Hawaii refused to enforce an insurance policy provision prohibiting assignments. [Standard Mut. Ins. Co. v. Sullivan](#) (D. Hawaii, Dec. 9, 2009, No. CV 09-00015 DAE/LEK) 2009 WL 4798125.

The United States District Court for the District of Hawaii refused to enforce an anti-assignment provision again in 2016, in [American Automobile Insurance Company v. Hawaii Nut & Bolt, Inc.](#) (D. Hawaii, May 13, 2016, No. CV 15-00245 ACK-KJM) 2016 WL 10611393 2 (“*American Automobile*”). The court explained how Hawaii courts have interpreted “no assignment” clauses to prohibit only assignments of *policy* coverage—not assignments of an accrued cause of action. It noted that an “overwhelming number” of Courts have upheld the validity of assignments notwithstanding a “no assignment” clause in the policy. Further, courts routinely void clauses requiring consent from insurers in the context of post-loss assignments.

“Under present law an assignment passes the title to the assignee so that the assignee is the owner of any claim arising from the chose and should be treated as the real party in interest....” 6A Fed. Prac. & Proc. Civ. § 1545 (3d ed.), cited by *American Automobile, supra*.

The insurance policy that was the subject of the *American Automobile* stated that no assignments could be made without the consent of the insurer. The insurer cited *Del Monte Fresh Produce (Hawaii), Inc. v. Fireman's Fund Ins. Co.*, 117 Haw. 357, 370, 183 P.3d 734, 747 (2007) (“*Del Monte*”) in arguing that the assignment of a water damage *claim* was invalid as a matter of law because the insurer did not consent to it. The court disagreed, holding that *Del Monte* was distinguishable because it involved an assignment of *policies*, as opposed to an assignment of a *claim*.

"[B]ecause insurance policies are contracts of adhesion ... prepared by the insurer's attorneys, ... they must be construed liberally in favor of the insured and any ambiguities must be resolved against the insurer." [*Allstate Inc. Co. v. Pruett* 186 P.3d at 617 \(2008\)](#). See also [*Dairy Rd. Partners v. Island Ins. Co.*, 92 Hawai'i 398, 411–12, 992 P.2d 93, 106–07 \(2000\)](#).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim.

Mahalo.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 30

Idaho

Steps to Unlock Insurance Funds in the Gem State

The law regarding Idaho assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

IDAHO POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Idaho Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

A policy may be assignable or not assignable, as provided by its terms. An insurance policy may be assigned either by pledge or transfer of title, by an assignment executed by the insured or owner alone and delivered to the insurer. Any such assignment shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received notice of termination. Idaho Code ST § 41-1826. <https://legislature.idaho.gov/statutesrules/idstat/title41/t41ch18/sect41-1826/>

An assignment is a transfer of rights or property from one person to another. An assignment "confers a complete and present right in the subject matter to the assignee." "[A]n assignee takes the subject of the assignment with all the rights and remedies possessed by and available to the assignor." [*Foley v. Grigg*, 144 Idaho 530.](#)

An assignment does not fail merely because the rights assigned are not ripe at the time of assignment. Idaho courts have stated that "[A] right to future performance of an obligation may be assigned An assignment may properly relate to a conditional right which is adequately identified." [*Bonanza Motors, Inc. v. Webb*, 104 Idaho 234, 236, 657 P.2d 1102, 1104 \(Ct. App. 1983\).](#)

Notice of an assignment puts the obligor on guard. The obligor is liable to the assignee if the funds assigned are subsequently paid to the assignor in violation of the assignment. Once a valid assignment has been made, the assignor cannot cancel or modify the assignment by unilateral action without the assent of the assignee; nor may he defeat the rights of the assignee. After notice of the assignment has been given to the obligor, the assignor has no remaining power of release. [*Bonanza Motors v. Webb*, 104 Idaho 234, 236 \(1993\).](#)

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

///

///

///

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 31

Illinois

Steps to Unlock Insurance Funds in the Land of Lincoln

The law regarding Illinois assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

ILLINOIS POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Illinois Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]
[Insurance Company Name]
[Street Address]
[City, State, Zip]

Re: Date of Loss:
Claim No.:
Insured:
Property
Address:
Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:

By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” [Black's Law Dictionary \(11th ed. 2019\)](#). A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. [Black's Law Dictionary 234 \(11th ed. 2019\)](#).

All that is needed for a valid assignment is a document showing the intent of the assignor to vest ownership in the assignee of the “the whole or a part of some particular thing, debt, or chose in action” that is described with “sufficient particularity to render it capable of contract,” to the assignee. The assignee receives all the assignor's right, title or interest in the thing assigned. [Ill. Tool Works, Inc. v. Commerce & Indus. Ins. Co., 2011 IL App \(1st\) 093084](#).

“Alienation” is simply a “conveyance or transfer of property to another.” Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” [Dr. Miles Medical Co. v. John D. Park & Sons Co. \(1911\) 220 U.S. 373, 404–405](#).

The purpose of an anti-assignment clause is to prevent the increase of risk to an insurer without the insurer's consent. [National Discount Shoes, Inc. v. Royal Globe Insurance Co., 99 Ill. App. 3d 54, 58, 424 N.E.2d 1166, 54 Ill. Dec. 263 \(1981\)](#). The insurer has the right to the benefit it anticipates from the character, credit and substance of the party with which it contracted. However, once an insurance policy has been executed, those elements are no longer material and all that remains to be done under the policy is to pay the amount due, if any. [Ginsburg v. Bull Dog Auto Fire Insurance Ass'n of Chicago, 328 Ill. 571, 573, 160 N.E. 145 \(1928\)](#).

Under a first-party policy, the “amount due” or policy proceeds consist of what the insurer owes the insured directly for losses the insured suffered. The insurer had the opportunity to choose its insured, to choose the risks attendant to the insured's business operations that it wished to cover and to choose how much it wanted to charge for covering the risks. Once the policy is executed, the risks are set. Whether a named insured or an assignee claims coverage or defense for the occurrences/risks covered by the policy, those risks remain the same. [Ill. Tool Works, Inc. v. Commerce & Indus. Ins. Co., 2011 IL App \(1st\) 093084](#).

There is a difference between assignment of an insurance policy before loss and assignment of a claim for loss after the loss has occurred. An assignment of a policy after loss relates to the cause of action an insured has and not to the policy. Therefore, regardless

of the existence of an anti-assignment or consent provision, a policy may be assigned after a loss without notice to or consent of the insurer, unless such is required by statute. “An assignment after loss is not the assignment of the policy but the assignment of a claim or debt—a chose in action.” [*Ill. Tool Works, Inc. v. Commerce & Indus. Ins. Co.*, 2011 IL App \(1st\) 093084](#).

“An insurance policy that is assigned after a claim arises is an assignment of the policy proceeds; such a transaction results in an assignment of a chose in action which does not require the insurer's consent.” [*Young v. Chicago Federal Savings & Loan Ass'n*, 180 Ill.App.3d 280, 285, 129 Ill. Dec. 212, 535 N.E.2d 977 \(1989\)](#).

General stipulations in policies prohibiting assignments thereof except with consent of the insurer apply to assignments before loss only, and do not prevent an assignment after loss. This is because the assignment after loss is the transfer of a right to a money claim, rather than the transfer of a contractual relationship as is the case with assignments occurring before loss. [*Ill. Tool Works, Inc. v. Commerce & Indus. Ins. Co.*, 2011 IL App \(1st\) 093084](#).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 32

Indiana

Steps to Unlock Insurance Funds in Hoosier State

The law regarding Indiana assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)

TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

INDIANA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[*Indiana Contractor Letterhead, Address,
Email Address, Phone Number & License Number*]

[*Date*]

**VIA ELECTRONIC MAIL TO (*EMAIL ADDRESS*)
AND PRIORITY MAIL WITH TRACKING**

[*Adjuster Name*]

[*Insurance Company Name*]

[*Street Address*]

[*City, State, Zip*]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [*Adjuster Name*],

Please take notice that [*Contractor name*] was engaged to perform work at your insured's property on [*contract date*] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and

- (3) “CC:” us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses,

the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable

coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

When a covered loss occurs, the debt owed by the insurer to the policyholder is a “chose in action,” i.e., a “proprietary right *in personam*, such as a debt owed by another person ... or a claim for damages in tort ... [or a] right to bring an action to recover a debt, money, or thing.” Black’s Law Dictionary 258 (8th ed.2004). [*Midtown Chiropractic v. Illinois Farmers Ins. Co.*, 847 N.E.2d 942 \(Ind. 2006\)](#)

Personal property and choses in action to be acquired in the future under a valid contract may be assigned, and such assignments, when fairly made for a valuable consideration, are recognized and enforced in equity. *Pomeroy, Eq. Jur.* (3d Ed.) § 1288. A mere possibility is not the subject of assignment; it is essential that the thing assigned must have an actual or a potential existence. [*Aetna Trust & Savings Co. v. Nackenhorst*, 188 Ind. 621 \(1919\)](#)

Consent-to-assignment clauses are virtually boilerplate in most contracts of insurance. However, courts widely recognize an exception to the enforcement of consent-to-assignment clauses for assignments made after a loss has occurred. *Conrad Bros. v. John Deere Ins. Co.*, 640 N.W.2d 231 (Iowa 2001). See, e.g., *New v. German Ins. Co. of Freeport*, 5 Ind.App. 82, 85, 31 N.E. 475, 476 (Ind.Ct.App.1892) (“after a loss has occurred the policy becomes a chose in action, and is assignable as other choses in action are”). The post-loss exception is justified because:

Once a loss occurs, an assignment of the policyholder's rights regarding that loss in no way materially increases the risk to the insurer. After a loss occurs, the indemnity policy is no longer an executory contract of insurance. It is now a vested claim against the insurer and can be freely assigned or sold like any other chose in action or piece of property. Williston & Lord, *supra*, § 49:126 (footnotes omitted) [*Travelers Cas. & Sur. Co. v. United States Filter Corp.*, 895 N.E.2d 1172 \(Ind. 2008\)](#)

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 33

Iowa

Steps to Unlock Insurance Funds in Hawkeye State

1. **Assignment of Rights (AOR):** Using the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.

Residential Contractors

We have provided two different Assignment forms for Iowa: one for residential work that complies with special rules for residential work, and another for commercial work. We have also provided separate form letters to put carriers on notice of each type of assignment.

Per Iowa Code Ch. 49, 515.137A, residential contractors must follow specific rules for post-loss assignments for the assignment to be valid. Per §103A.71:

Residential contractor means a person in the business of contracting to repair or replace residential roof systems or perform any other exterior repair, exterior replacement, or exterior reconstruction work resulting from a catastrophe on residential real estate or a person offering to contract with an owner or possessor of residential real estate to carry out such work.

Iowa requires residential contractors to adhere to the rules laid out in 515.137A, or the assignment may be voided. An assignment of a residential claim must contain the following warning:

YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING. THE ITEMIZED DESCRIPTION OF THE WORK TO BE DONE SHOWN IN THIS ASSIGNMENT FORM HAS NOT BEEN AGREED TO BY THE INSURER. THE INSURER HAS THE RIGHT TO PAY ONLY FOR THE COST TO REPAIR OR REPLACE DAMAGED PROPERTY CAUSED BY A COVERED PERIL.

The residential contractor must deliver the executed Residential Assignment to the insurer within five (5) days. Along with the Assignment itself, the contractor must include an itemized description of all work to be performed, all materials, labors, and fees for the work to be performed, and a total itemized amount to be paid for the work to be performed.

Commercial Contractors

The special rules stated above only apply to residential contractors, so we have provided a separate AOR for non-residential work.

2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10.
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, available at TheRestorationLawyer.com.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

IOWA RESIDENTIAL POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____	Claim Number: _____
Policyholder #2: _____	Policy Number: _____
Property _____	Date of Loss: _____
Address: _____	City/State/Zip: _____

YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING. THE ITEMIZED DESCRIPTION OF THE WORK TO BE DONE SHOWN IN THIS ASSIGNMENT FORM HAS NOT BEEN AGREED TO BY THE INSURER. THE INSURER HAS THE RIGHT TO PAY ONLY FOR THE COST TO REPAIR OR REPLACE DAMAGED PROPERTY CAUSED BY A COVERED PERIL.

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

YOU MAY CANCEL THIS ASSIGNMENT WITHOUT PENALTY WITHIN FIVE (5) BUSINESS DAYS FROM THE LATER OF THE DATE THE ASSIGNMENT IS EXECUTED OR THE DATE ON WHICH YOU RECEIVE A COPY OF THE EXECUTED ASSIGNMENT. YOU MUST CANCEL THE ASSIGNMENT IN WRITING AND THE CANCELLATION MUST BE DELIVERED TO (**contractor name and address**). IF MAILED, THE CANCELLATION MUST BE POSTMARKED BEFORE THE FIVE (5) BUSINESS DAY DEADLINE. IF YOU CANCEL THIS ASSIGNMENT, THE RESIDENTIAL CONTRACTOR HAS UP TO TEN (10) BUSINESS DAYS TO RETURN ANY PAYMENTS OR DEPOSITS YOU HAVE MADE.

“Policyholder #1” (I read this Assignment and understand it.)

“Policyholder #2” (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder’s Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder’s Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative	Contractor Representative's Signature
---	---------------------------------------

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

IOWA COMMERCIAL POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY
[NOT FOR USE ON RESIDENTIAL PROJECTS]

Policyholder #1: _____	Claim Number: _____
Policyholder #2: _____	Policy Number: _____
Property _____	Date of Loss: _____
Address: _____	City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Iowa Contractor Letterhead,
Address, Email Address, Phone Number & License Number]

DELETE THIS BOX BEFORE SENDING THE LETTER

This letter is only for residential projects.
The Iowa chapter explains what is considered “residential.”
For commercial projects, use the commercial Notice of
Assignment.

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]
[Insurance Company Name]
[Street Address]
[City, State, Zip]

Re: Date of Loss:
Claim No.:
Insured:
Property
Address:
Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF RESIDENTIAL POST-LOSS
ASSIGNMENT OF INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured’s property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder’s right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);

- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) “CC:” us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

Please take notice that after the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:

By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is

permanently irrevocable as to work performed before the contract is terminated.

2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in the Assignment shall be construed as a delegation of duties.
3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[[Contractor name](#)] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a **post-loss assignment** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

An "assignment" occurs when an assignor transfers to its assignee the whole of any property or right in the property such that the assignee assumes the rights, remedies, and benefits of the assignor. [TSB Holdings, L.L.C. v. Bd. Of Adjustment for Iowa City, 913 N.W.2d 1, 15 \(Iowa 2018\)](#). A policyholder with a covered claim holds a "right in action," sometimes referred to as a "chose in action," which is a proprietary right to recover a debt, money, or thing. [Black's Law Dictionary 234 \(11th ed. 2019\)](#).

Here, certain rights under the claim have been alienated. "Alienation" is simply a "conveyance or transfer of property to another." Insurance companies attempt to *restrain* alienation when they try to enforce "anti-assignment" provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as "obnoxious to public policy." It explains that public policy is best served when there is "great freedom of traffic" for things to "pass from hand to hand." [Dr. Miles Medical Co. v. John D. Park & Sons Co. \(1911\) 220 U.S. 373, 404-405](#).

Our Assignment complies with the Iowa Homeowner's Protection Act of 2019. Iowa Code § 515.137A(3), (5)(a) (2019). [Carpenters Constr., Inc. v. State Farm Life & Cas. Co., No. 18-1354, 2020 WL 739074, at *6 \(Iowa Feb. 14, 2020\)](#)

The assignee, including a person who takes assignment for collection in the regular course of business, has a right of action on them in the assignee's own name, subject to any defense or counterclaim which the maker or debtor had against an assignor of the instrument before notice of the assignment. [Iowa Code section 539.1](#).

Insurers may impose conditions in the terms of the policy on an insured's ability to assign its rights under the insurance policy. One common condition imposed on insureds is the requirement to obtain the insurers' consent before granting an assignment. The primary reason for the prohibition of assignments prior to loss absent an insurer's consent is to protect the insurer against increased risks of loss resulting from an assignment of coverage to a new insured. The assignee may present a greater risk of loss to the insurer than the original insured. However, the need to protect the insurer no longer exists after the insured sustains the loss because the liability of the insurer is essentially fixed. [Conrad Brothers v. John Deere Ins. Co. \(Iowa 2001\) 640 N.W.2d 231](#).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

[Iowa Contractor Letterhead,
Address, Email Address, Phone Number & License Number]

DELETE THIS BOX BEFORE SENDING THE LETTER

This letter is only for commercial projects.
For residential projects, use the residential Notice of
Assignment, or it may be declared invalid.

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]
[Insurance Company Name]
[Street Address]
[City, State, Zip]

Re: Date of Loss:
Claim No.:
Insured:
Property
Address:
Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF COMMERCIAL POST-LOSS
ASSIGNMENT OF INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);

- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) “CC:” us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

Please take notice that after the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:

By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is

permanently irrevocable as to work performed before the contract is terminated.

2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in the Assignment shall be construed as a delegation of duties.
3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a **post-loss assignment** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

An "assignment" occurs when an assignor transfers to its assignee the whole of any property or right in the property such that the assignee assumes the rights, remedies, and benefits of the assignor. [*TSB Holdings, L.L.C. v. Bd. Of Adjustment for Iowa City*, 913 N.W.2d 1, 15 \(Iowa 2018\)](#). A policyholder with a covered claim holds a "right in action," sometimes referred to as a "chose in action," which is a proprietary right to recover a debt, money, or thing. [*Black's Law Dictionary* 234 \(11th ed. 2019\)](#).

Here, certain rights under the claim have been alienated. "Alienation" is simply a "conveyance or transfer of property to another." Insurance companies attempt to *restrain* alienation when they try to enforce "anti-assignment" provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as "obnoxious to public policy." It explains that public policy is best served when there is "great freedom of traffic" for things to "pass from hand to hand." [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404-405](#).

Since this is not a residential project, the rules in the Iowa Homeowner's Protection Act of 2019 (Iowa Code § 515.137A(3), (5)(a) (2019)) do not apply to this assignment. [*Carpenters Constr., Inc. v. State Farm Life & Cas. Co.*, No. 18-1354, 2020 WL 739074, at *6 \(Iowa Feb. 14, 2020\)](#).

The assignee, including a person who takes assignment for collection in the regular course of business, has a right of action on them in the assignee's own name, subject to any defense or counterclaim which the maker or debtor had against an assignor of the instrument before notice of the assignment. [*Iowa Code section 539.1*](#).

Insurers may impose conditions in the terms of the policy on an insured's ability to assign its rights under the insurance policy. One common condition imposed on insureds is the requirement to obtain the insurers' consent before granting an assignment. The primary reason for the prohibition of assignments prior to loss absent an insurer's consent is to protect the insurer against increased risks of loss resulting from an assignment of coverage to a new insured. The assignee may present a greater risk of loss to the insurer than the original insured. However, the need to protect the insurer no longer exists after the insured sustains the loss because the liability of the insurer is essentially fixed. [*Conrad Brothers v. John Deere Ins. Co.* \(Iowa 2001\) 640 N.W.2d 231](#).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 34

Kansas

Steps to Unlock Insurance Funds in the Sunflower State

A synopsis of the law regarding Kansas assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

KANSAS POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Kansas Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a right in action, sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019). A right in action can be transferred (assigned) to another party. This concept of assignability of choses in actions remains ingrained in the public policy of this state. [*Bolz v. State Farm Mut. Auto. Ins. Co.*, 274 Kan. 420, 52 P.3d 898 \(2002\).](#)

It has long been recognized in Kansas that all choses in action, except torts, are assignable. See *Alldritt v. Kansas Centennial Global Exposition*, 189 Kan. 649, 657, 371 P.2d 181 (1962). [*Bolz v. State Farm Mut. Auto. Ins. Co.*, 274 Kan. 420, 52 P.3d 898 \(2002\).](#)

“Free assignment of choses in action is considered to be a matter of public policy.” [*Bolz v. State Farm Mut. Auto. Ins. Co.*, 274 Kan. 420, 52 P.3d 898 \(2002\).](#)

The holder of an assignment holds all the assigned rights that the assignor possessed at the time the assignment became effective. [*Alldritt v. Kansas Centennial Global Exposition*, 189 Kan. 649, 657 \(1962\).](#)

As a general rule, a contract is not assignable where the nature or terms of the contract make it nonassignable. 6A C.J.S., Assignments § 30, p. 630. But, logically, if the parties are to be held to have agreed to make the contract or particular rights thereunder nonassignable, then it should have been a negotiated contract. This distinction is perhaps one of the major reasons that assignments of insurance benefits after loss are generally enforced despite contractual provisions precluding assignment. [*Bolz v. State Farm Mut. Auto. Ins. Co.*, 274 Kan. 420, 52 P.3d 898 \(2002\).](#)

An assignment may authorize a residential contractor to be named as a copayee for the payment of benefits under a property and casualty insurance policy insuring residential real estate. [Kan. Stat. Ann. § 50-6](#)

[Kan. Stat. § 40-440](#) acknowledges, declares and codifies the existing right of assignment of interests under individual and group life and accident and health insurance policies.

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly

paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 35

Kentucky

Steps to Unlock Insurance Funds in the Bluegrass State

A synopsis of the law regarding Kentucky assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to ***get this form signed anyway.***
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

KENTUCKY POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Kentucky Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

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5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, *A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors* § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is simply a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

In Kentucky, an insurance policy may be assigned either by pledge or transfer of title, by an assignment executed by the insured or owner alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any assignment of a policy which is otherwise lawful and of which the insurer has received notice, shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received notice of termination. [KRS § 304.14-250](#).

[U]nder Kentucky law, a clause in an insurance policy that requires the insured to obtain the insurer's prior written consent before assigning a claim for an insured loss under the policy is not enforceable or applicable to the assignment of a claim under the policy where the covered loss occurs before the assignment, and that such a clause would, under those circumstances, be **void** as against public policy. *Wehr Constructors, Inc. v. Assur. Co. of Am.*, 384 S.W.3d 680, 681 (2012). <https://law.justia.com/cases/kentucky/supreme-court/2012/2012-sc-000221-cl.html>

In summary, the majority rule holds that anti-assignment clauses are unenforceable once an insured occurrence takes place because at that point the insured is entitled to recovery under the policy; that right is a chose in action; a chose in action is a form of personal property; the anti-assignment provision amounts to a restraint upon the alienation of this property right; and, a restraint upon the alienation of property is in opposition to public policy. As further noted below, other public policy considerations likewise weigh

against the enforcement of an anti-assignment clause once a loss has occurred. *Wehr Constructors, Inc. v. Assur. Co. of Am.*, 384 S.W.3d 680, 681 (2012). <https://law.justia.com/cases/kentucky/supreme-court/2012/2012-sc-000221-cl.html>.

Although there is some authority to the contrary, the great majority of courts adhere to the rule that general stipulations in policies prohibiting assignments of the policy, except with the consent of the insurer, apply only to assignments before loss, and do not prevent an assignment after loss[.] 3 Couch on Ins. § 35:8. See also 5A John Alan Appleman & Jean Appleman, *Insurance Law & Practice* § 3458, at 408 (1970) ("A provision in a policy providing that the policy shall be void if assigned without the company's consent applies to assignment before loss. Such a clause restricting assignment does not in any way limit the right of assignment after the loss has occurred, and the rights of the parties become fixed thereby.") *Wehr Constructors, Inc. v. Assur. Co. of Am.*, 384 S.W.3d 680, 681 (2012). <https://law.justia.com/cases/kentucky/supreme-court/2012/2012-sc-000221-cl.html>

Thus, the rationale, for the majority view is that an anti-assignment clause ordinarily only prohibits the assignment of the policy itself, but does not apply to assignment of a claim arising under the policy. After an insured loss that gives rise to the insurer's liability, the insurer's risk cannot be increased by a change in the identity of the party to whom payment is to be made. An assignment of the policy, or rights under the policy, before the loss is incurred transfers the insurer's contractual relationship to a party with whom it never intended to contract, but an assignment after loss is simply the transfer of the right to a claim for money. The entity asserting the claim under those circumstances has no effect upon the insurer's duty under the policy. *Wehr Constructors, Inc. v. Assur. Co. of Am.*, 384 S.W.3d 680, 681 (2012). <https://law.justia.com/cases/kentucky/supreme-court/2012/2012-sc-000221-cl.html>

Kentucky courts hold the relevant public policy interests are best served by the adoption of the majority rule that a non-assignment clause in an insurance policy, while certainly enforceable prior to an occurrence a covered loss, is not enforceable for assignments made after the occurrence. *Wehr Constructors, Inc. v. Assur. Co. of Am.*, 384 S.W.3d 680, 681 (2012). <https://law.justia.com/cases/kentucky/supreme-court/2012/2012-sc-000221-cl.html>

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim.

Thank you.

//
//
//

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 36

Louisiana

Where There 's a Will, There 's a Way

Will a post-loss assignment of benefits be enforceable in Louisiana? The definitive answer is: **maybe**.

It depends on how the policy is worded.

As a general principle, assignments of contract rights are enforceable in Louisiana under [La. C.C. art. 2642](#), which reads: “All rights may be assigned, with the exception of those pertaining to obligations that are strictly personal. The assignee is subrogated to the rights of the assignor against the debtor.”

Once again, the question is whether the court will enforce an anti-assignment clause in an insurance policy, and if so, how?

In nearly every other state, courts hold that to enforce an anti-assignment provision against a post-loss assignment of benefits would violate the public policy that favors free trade. Unfortunately, the Louisiana Supreme Court has found is no public policy which precludes an anti-assignment clause from applying to post-loss assignments.

However, the language of the anti-assignment clause must *clearly and unambiguously* express that it applies to post-loss assignments, and thus it must be evaluated on a policy-by-policy basis. In the matter of *In re Katrina Canal Breaches Litigation*, the Louisiana Supreme Court held that a general and broadly-worded non-assignment clause was insufficient to prohibit post-loss assignments of contract rights.²⁵

The *Katrina* court wrote: “After the loss, the anti-assignment clause serves only to limit the free assignability of claims, which is not favored by the law, and such restrictions on an insured's right to assign its proceeds are generally rendered void,” citing 3 Couch on Insurance 3d, § 35:7 (2005) and 29 Williston on Contracts § 74:22 (4th ed.). *Id* at 961.

It is generally safe to assume that the customer's insurance policy contains some sort of an anti-assignment provision, but they come in many shapes and colors. Use the Louisiana Insurance Information Release & Authorization that follows to obtain a copy of the policy. Assess exactly what is prohibited (preferably with the input of legal counsel) to fine tune the strategy. Keep in mind that ambiguities in the language may likely be construed against the insurance company. As a general rule in most states, if a policy could reasonably be read two

²⁵ [In re Katrina Canal Breaches Litig., 63 So. 3d 955, 962-63 \(La. 2011\).](#)

different ways, one that allows coverage and one that disallows it, most courts will find in favor of coverage.

An assignment of benefits is very different from an assignment of a claim for breach of contract. Even if no assignment of benefits is available, a claim for breach of an insurance contract *may* be assignable in Louisiana despite a policy provision prohibiting an assignment of "the policy." If the policy prohibits assignment of "rights" under the policy, it should be reviewed by a Louisiana lawyer.

In some states that enforce the anti-assignment provisions, like Texas, for example, an assignment can still be enforced if the insurer fails to timely object to it. Texas courts consider it "waived" if not raised. If a restorer in Louisiana submits an assignment, and the insurer does not object, it is logical to conclude that the insurer has waived the objection. In Louisiana, a waiver of a contractual right occurs when there is: (1) an existing legal right; (2) knowledge of the existence of that right; and (3) either (a) an actual intention to relinquish the right, or (b) ***conduct so inconsistent with the intent to enforce the right so as to induce a reasonable belief that the right has been relinquished.***²⁶

The lingering question is whether to seek an assignment of benefits up front, or whether to wait until the policy is obtained and adjust the assignment to meet the policy. There is no perfect approach. I prefer the former. The worst that can happen is that the assignment is unenforceable. If we wait to get an assignment until we've reviewed the policy, checks could be issued in the interim, and the money could be in Hawaii before the insurance company is on notice of the assignment and your work could end up being a free gift to the policyholder.

In any event, keep in mind that it is normal for insurance companies to allege that an assignment is invalid. Don't let it discourage you. Just because they *say* it's invalid does not make it invalid. Often those comments are made out of ignorance of the nuances of the law and nuances of the assignment. You have rights, but they must be determined on a case-by-case basis, according to the Louisiana Supreme Court.

There is more than one way to skin this cat, but here is my...

Suggested Approach for Louisiana

1. Obtain policyholder signatures on the full version of the Assignment of Insurance Rights and the Insurance Information Release & Authorization on day one of the job and immediately send it to the insurance company with the "Request for Insurance Information" form letter that follows in this Chapter. We are aware of no grounds to object to the release.
2. Aggressively pursue copies of the policy and the relevant claims handling documents as specified in the Information Release.

²⁶ [*Arceneaux v. Amstar Corp.*, 969 So. 2d 755, 760 \(La. App. 2007\).](#)

3. Pursue the parts of the assignment that are enforceable, as determined by a detailed professional analysis of the policy and the current law. If the carrier violates its duties, see the sample Louisiana demand letter in *The Book on Restoration Collections*, available at TheRestorationLawyer.com. Follow the additional steps to prosecute the claim as set out in that book.

A More Conservative Approach

For those who don't have the stomach to present an assignment that could theoretically be unenforceable, and are willing to risk having their name left off the insurance drafts:

1. Get the "Insurance Information Release & Authorization" form signed by the policyholder on day one of the job and immediately send it to the insurance company with the "Request for Information" form letter that follows in this Chapter. We are aware of no grounds to object to the release.
2. If the policy *clearly and unambiguously* prohibits assignments, omit the assignment of "benefits" from the Assignment, and have the insured execute an Assignment of the right to sue the insurance company for breach of the insurance contract after the insurer has violated the terms of the policy or the law interpreting it.
3. Pursue the parts of the assignment that are enforceable, as determined by a detailed professional analysis of the policy and the current law. A demand letter is provided in the companion book, *The Book on Restoration Collections*, which includes a sample demand letter for each state. Follow the additional steps to prosecute the claim as set out in that book.

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

LOUISIANA ASSIGNMENT OF INSURANCE RIGHTS AND DIRECTION TO PAY

Policyholder #1: _____	Claim Number: _____
Policyholder #2: _____	Policy Number: _____
Property _____	Date of Loss: _____
Address: _____	City/State/Zip: _____

1. **Irrevocable Assignment of Policyholders' Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, fraud, and negligence per Louisiana Civil Code section 2642. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claims unrelated to Contractor's scope of work, such as additional living expenses or the value of lost personal property. Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Nothing in this Assignment shall be construed as a delegation of the Policyholders' duties under the policy.

3. **No Conditions:** Policyholders agree and understand that this Assignment is irrevocable. Policyholders expressly acknowledge that it is Policyholders' intent to assign certain insurance policy rights to the Contractor as explained above. Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon Policyholders or Policyholders' insurers.

4. **Cooperation:** Policyholders shall cooperate fully with Contractor's efforts to enforce this Assignment and Policyholders agree to execute any and all documents presented by Contractor to Policyholders, which are reasonably required for the prosecution of Contractor's claims against Policyholders' insurers and/or its agents with respect to the assigned rights.

5. **Direction to Pay:** Policyholders hereby authorize and instruct all insurers who may be liable to Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of Contractor's invoice.

6. **Consideration:** This Assignment is made in consideration for Contractor's agreement to perform services and to do so without immediate full payment from Policyholders upon completion of services. Policyholders acknowledge the sufficiency of this consideration.

7. **No Release:** The Policyholders remain primarily and ultimately responsible for payment. This Assignment does not relieve Policyholders from the duty to compensate Contractor for any amount due to Contractor that was not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholders' Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholders' Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Louisiana Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

DELETE THIS BOX BEFORE SENDING THE LETTER

Please read the “Suggested” and “More Conservative” approaches to Louisiana assignments in this chapter.

For situations where the more conservative approach is appropriate, and the goal is only to obtain the policy and claim information, delete the text highlighted in green before sending this letter.

When in doubt, speak to a qualified Louisiana lawyer for advice.

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:
Claim No.:
Insured:
Property
Address:
Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF ASSIGNMENT**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

CONSULT AN ATTORNEY TO VERIFY THIS FORM'S FITNESS FOR YOUR PURPOSE

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) “CC:” us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

Please take notice that after the loss occurred, the insured (“Policyholder”) also irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, fraud, and negligence Louisiana Civil Code section 2642. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to

the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.
3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[*Contractor name*] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

"An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected." Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, *A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors* § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a "right in action," sometimes referred to as a "chose in action," which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. "Alienation" is simply a "conveyance or transfer of property to another." Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to restrain alienation when they try to enforce "anti-assignment" provisions against post-loss assignments of claims. The United States Supreme Court describes restraints on alienation as "obnoxious to public policy." It explains that public policy is best served when there is "great freedom of traffic" for things to "pass from hand to hand." Lord Coke, in 2 Coke on Littleton, § 360 (1628). *Dr. Miles Medical Co. v. John D. Park & Sons Co.* (1911) 220 U.S. 373, 404–405 overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

Assignments of contract rights, including the right to payment under a contract of insurance, are enforceable under [La. C.C. art. 2642](#), which reads: "All rights may be assigned, with the exception of those pertaining to obligations that are strictly personal. The assignee is subrogated to the rights of the assignor against the debtor." The general and broadly worded non-assignment clause in most insurance policies has been held by the Supreme Court of Louisiana to be insufficient to prohibit post-loss assignments of contract rights. [In re Katrina Canal Breaches Litig., 63 So. 3d 955, 962-63 \(La. 2011\)](#).

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, we have valid and enforceable rights to policy benefits unless the policy *clearly and unambiguously* prohibits post-loss assignments of claims, per [In re Katrina Canal Breaches Litig., 63 So. 3d 955, 962-63 \(La. 2011\)](#). Otherwise, **we now stand in a first party position** as to this portion of the claim for our scope of work.

Even if the assignment of policy benefits is not enforceable, the Assignment directs you to name us payee on drafts, and gives us the right to pursue claims for breach of the contract of insurance. We want a cordial working relationship and trust that legal steps will not be needed.

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly

paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 37

Maine

Steps to Unlock Insurance Funds in the Pine Tree State

A synopsis of the law regarding Maine assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

MAINE POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. **Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. **No Release:** The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Maine Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]
[Insurance Company Name]
[Street Address]
[City, State, Zip]

Re: Date of Loss:
Claim No.:
Insured:
Property
Address:
Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

This assignment does not increase your company's burden or risk. Ordinary rights, including future rights, are freely assignable unless the assignment would materially change the duty of the obligor, materially increase the burden or risk imposed upon the obligor by his contract, impair the obligor's chance of obtaining return performance, or materially reduce the value of the return performance to the obligor, and unless the law restricts the assignability of the specific right involved. See Restatement (Second) Contracts § 317(2)(a) (1982). [*Herzog v. Irace*, 594 A.2d 1106, 1108-1109 \(1991\)](#).

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

An insurance policy may be assigned either by pledge or transfer of title, by an assignment executed by the insured or owner alone and delivered to the insurer. Any assignment of a policy which is otherwise lawful and of which the insurer has received notice, shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment. While the assignment is in effect, and whether made before or after, the insurer shall be entitled to deal with the assignee as the owner of such rights and benefits in accordance with the terms of the assignment; but without prejudice to the insurer on account of any lawful action taken or payment made by it prior to receipt by it at its home office of written notice of the assignment or of the termination thereof. [24-A M.R.S. § 2420](#).

Furthermore, under Maine law, a person claiming contractual rights as an assignee has the "the burden of proof on the issue of assignment." *DiMillo v. Travelers Prop. Cas. Co. of Am.*, 789 F. Supp. 2d 194, 205 (2011).

An assignment is an act or manifestation by the owner of a right (the assignor) indicating his intent to transfer that right to another person (the assignee). See *Shiro v. Drew*, 174 F. Supp. 495, 497 (D. Me. 1969). For an assignment to be valid and enforceable against the assignor's creditor (the obligor), the assignor must make clear his intent to relinquish the right to the assignee and must not retain any control over the right assigned or any power of revocation. *Id.* The assignment takes effect through the actions of the assignor and assignee and the obligor need not accept the assignment to render it valid. *Palmer v. Palmer*, 112 Me. 149, 153, 91 A. 281, 282 (1914). *Herzog v. Irace*, 594 A.2d 1106, 1108 (1991).

Your company is an obligor under this claim. Once an obligor has notice of an assignment, the fund is "from that time forward impressed with a trust; it is . . . impounded in the [obligor's] hands, and must be held by him not for the original creditor, the assignor, but for the substituted creditor, the assignee." After receiving notice of the assignment, an obligor cannot lawfully pay the amount assigned either to the assignor or to his other creditors and if the obligor does make such a payment, he or she does so at his or her peril because the assignee may enforce his rights against the obligor directly. *Herzog v. Irace*, 594 A.2d 1106, 1108 <https://casetext.com/case/herzog-v-irace>

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 38

Maryland

Steps to Unlock Insurance Funds in the Free State

A synopsis of the law regarding Maryland assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to ***get this form signed anyway.***
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

MARYLAND POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Maryland Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, *A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors* § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

Where the assured, after loss, assigns his right to recover that loss, such assignment, like that of any other chose in action, gives the assignee an equitable interest and a right to recover, in the name of the assignor, subject to set-off and all other equities. *Whiting v. Independent Mut. Ins. Co.*, 15 Md. 297, 309, 1860.

An assignment otherwise valid and enforceable as a claim against a fire insurance company is not rendered invalid because the amount of the claim has not yet been settled between the company and the insured. Such an assignment after loss 'stands on the same footing as the assignment of a debt or right to recover a sum of money actually due'. *Washington Fire Ins. Co. of Baltimore v. Kelly*, 32 Md. 421, 437. *See also Dickey v. Pocomoke City Nat. Bank*, 89 Md. 280, 299, 43 A. 33. [*Mich. Fire & Marine Ins. Co. v. Genie Craft Corp.*, 183 F. Supp. 533, 537 \(D. Md. 1960\).](#)

Despite policy language to the contrary, your company's consent to the assignment was not required because this is a post-loss assignment of benefits. A term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note. [Maryland Code, Commercial Law § 9-406 \(d\) \(1\) \(2020\)](#)

“[A]n account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.” [Maryland Code, Commercial Law § 9-406 \(d\) \(1\) \(2020\)](#)

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 39

Massachusetts

Great news, the State of Massachusetts does not apply anti-assignment provisions to post-loss assignments of insurance claims. *Whiting v. Burkhardt*, 178 Mass 535, 60 N.E. 1 (1901). Keep in touch with local counsel to stay abreast of current developments in the law.

In the event Massachusetts enforces anti-assignment provisions against assignments of claims, a restorer may still prevail under the doctrine of *waiver* if the restorer submits an assignment of benefits (in other words, assignment of the claim), and the insurer does not timely object. In Massachusetts, a waiver of a contractual right occurs when there is: (1) an express and affirmative act, or (2) where the party's conduct is consistent with and indicative of an *intent to relinquish voluntarily a particular right* such that no other reasonable explanation of the conduct is possible.²⁷

Steps to Unlock Insurance Funds in the Old Colony State

More law regarding Massachusetts assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).

²⁷ [*KACT, Inc. v. Rubin*, 62 Mass. App. Ct. 689, 695 \(2004\).](#)

5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

MASSACHUSETTS POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. **Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. **No Release:** The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Massachusetts Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor’s services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is

merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

After a loss, the rights and duties of the parties are changed. The policy is then a mere chose in action, and may be assigned, like any other chose in action, and a suit may be maintained thereon, for the benefit of the assignee, in the name of the insured. *Dadmun Mfg. Co. v. Worcester Mut. Fire Ins. Co.*, 52 Mass. 429, 11 Met. 429 (1846) <https://cite.case.law/mass/52/429/>

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

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Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 40

Michigan

Steps to Unlock Insurance Funds in the Wolverine State

A synopsis of the law regarding Michigan assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to ***get this form signed anyway.***
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

MICHIGAN POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Michigan Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]
[Insurance Company Name]
[Street Address]
[City, State, Zip]

Re: Date of Loss:
Claim No.:
Insured:
Property
Address:
Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, *A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors* § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

Although MCLS 500.3143 prohibits the assignment of future benefits, it is silent regarding agreements not to assign benefits. The reasonable implication of the Legislature's omission regarding agreements not to assign benefits is that parties are free to contract according to their wishes. [*Mich. Ambulatory Surgical Ctr. v. Farm Bureau Gen. Ins. Co.*, 2020 Mich. App. LEXIS 7790 \(Mich. Ct. App. Nov. 19, 2020\)](#).

The assignment having been made after the loss, does not require the consent of your company. The provision of the policy forfeiting it for an assignment without consent is invalid, so far as it applies to the transfer of an accrued cause of action. It is the absolute right of every person--secured in this State by statute--to assign such claims, and such a right cannot be thus prevented. It cannot concern the debtor, and it is against public policy. *Roger Williams Ins. Co. v. Carrington*, 43 Mich. 252, 254 (1880).

[I]t has been deemed controlling on this point of law in at least two relatively recent opinions of the United States District Court for the Western District of Michigan, *Century Indem. Co. v. Aero-Motive Co.*, 318 F Supp 2d 530, 539 (WD Mich, 2003) (relying on *Roger Williams* while explaining that under Michigan law, “an anti-assignment clause will not be enforced where a loss occurs before the assignment, because in that situation the assignment of the claim under the policy is viewed no differently than any other assignment of an accrued cause of action.”); *Action Auto Stores, Inc v United Capitol Ins Co*, 845 F Supp 417, 422-423 (WD Mich, 1993) (citing *Roger Williams* in support of the proposition that a

provision prohibiting assignment without consent of the insurer was invalid with respect to a post-loss assignment). [*Shah v. State Farm Mut. Auto. Ins. Co.*, 324 Mich. App. 182, 199 \(2018\)](#).

Courts concluded that enforcing the anti-assignment clause to prohibit the assignment of an accrued claim after the loss occurred is against Michigan public policy as stated by the Michigan Supreme Court. [*Shah v. State Farm Mut. Auto. Ins. Co.*, 324 Mich. App. 182, 199 \(2018\)](#).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 41

Minnesota

Good news for Minnesota restorers! The Minnesota Supreme Court has confirmed that anti-assignment provisions do not apply to post-loss assignments of claims.²⁸ It is advisable to get regular consultations with Minnesota counsel to stay abreast of new developments in the law.

In the event Minnesota enforces anti-assignment provisions to bar post-loss assignments, it seems possible the restorer may still prevail under the doctrine of *waiver* if the restorer submits an assignment of benefits (in other words, assignment of the claim), and the insurer does not timely object. In Minnesota, a waiver of a contractual right occurs when there is: (1) knowledge of the right; and (2) intent to waive the right. Waiver may be express or implied: knowledge may be actual or constructive and *the intent to waive may be inferred from conduct*.²⁹

Steps to Unlock Insurance Funds in the Land of 10,000 Lakes

A synopsis of the law regarding Minnesota assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).

²⁸ *Star Windshield Repair, Inc. v. Western Nat. Ins. Co.*, 768 N.W.2d 346, 350 n.6 (Minn. 2009).

²⁹ [*Finn v. Alliance Bank*, 838 N.W.2d 585 \(Minn. Ct. App. 2013\).](#)

5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

MINNESOTA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Minnesota Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a *post-loss assignment* of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, *A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors* § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

Contract rights are generally assignable in Minnesota. [*Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 273 \(Minn. 2004\)](#).

As a general rule, and in the absence of a contractual provision to the contrary, an obligor on a contract may assign all beneficial rights to another, without the consent of the obligee. The court did not require specific terms or magic words, but merely some indication that the parties intended that the contract not be assigned. [*Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 273 \(Minn. 2004\)](#)

The primary purpose of clauses prohibiting the assignment of contract rights is to protect the contracting party from dealing with parties he has not chosen to do business with. [*Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 273 \(Minn. 2004\)](#). The law of this state is that an assignment of a chose in action is valid and complete in itself upon the mutual assent of the assignor and assignee without notice to the debtor. [*Maslowski v. Prospect Funding Partners LLC*, No. A18-1906 \(Minn. June 3, 2020\) \(citing *Leuthold v. Redwood County*, 288 N.W. 165, 167 \(Minn. 1939\)](#)

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 42

Mississippi

Steps to Unlock Insurance Funds in the Hospitality State

A synopsis of the law regarding Mississippi assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, The Book on Restoration Collections, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

MISSISSIPPI POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Mississippi Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor’s services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is

merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, *A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors* § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

Assignment of contractual rights is permitted in Mississippi. [*Great S. Nat. Bank v. McCullough Env't Servs., Inc.*, 595 So. 2d 1282 \(Miss. 1992\)](#)

Numerous authorities identify the occurrence of a loss “as the key point in time for conversion of rights under an insurance policy to a claim for proceeds for assignment purposes.” *Edgewood Manor Apartment Homes LLC v. RSUI Indem. Co.*, 782 F.Supp.2d 716, 736 (E.D. Wis. 2011) (applying Mississippi law). As a general rule, post-loss assignments are not prohibited by anti-assignment provisions because “[a]fter a loss occurs, the indemnity policy is no longer an executory contract of insurance. It is now a vested claim against the insurer and can be freely assigned or sold like any other chose in action or piece of property.” 17 Williston on Contracts § 49:126 (4th ed.). [*Titan Exteriors, Inc. v. Certain Underwriters at Lloyd's, London*, 297 F. Supp. 3d 628 \(N.D. Miss. 2018\)](#)

Assigned contractual rights may be enforced by assignee, who essentially “stands in the shoes” of the assignor and who “takes no rights other than those” which assignor possessed. [*Great S. Nat. Bank v. McCullough Env't Servs., Inc.*, 595 So. 2d 1282 \(Miss. 1992\)](#)

On numerous occasions, the Supreme Court of Mississippi has said that the holder of an assignment stands in the shoes of the one who gave the assignment. [*Bd. of Trustees of State Institutions of Higher Learning v. Peoples Bank of Mississippi*, 538 So. 2d 361, 366 \(Miss. 1989\).](#)

First, treating post-loss assignments as vested claims does not contradict the purpose of anti-assignment clauses. Such clauses exist to “prevent an increase of risk for the insurer,” by forcing to the insurer to insure against risks it did not contemplate when it entered into the policy. *Edgewood*, 782 F.Supp.2d at 738; 3 Couch on Ins. § 35:4. Once a loss occurs, that justification goes away because “[w]hen the loss occurs before the transfer ... the characteristics of the [assignee] are of little importance: regardless of any transfer the insurer still covers only the risk it evaluated when it wrote the policy.” *N. Ins. Co. v. Allied Mut. Ins. Co.*, 955 F.2d 1353, 1358 (9th Cir. 1992). Second, once the loss has occurred: the insured is entitled to recovery under the policy; that right is a chose in action; a chose in action is a form of personal property; the anti-assignment provision amounts to a restraint upon the alienation of this property right; and, a restraint upon the alienation of property is in opposition to public policy. [*Titan Exteriors, Inc. v. Certain Underwriters at Lloyd's, London*, 297 F. Supp. 3d 628 \(N.D. Miss. 2018\)](#)

Under Mississippi law, anti-assignment provisions do not operate to prevent post-loss assignments; right to receive money due or to become due under an existing contract may be assigned even though the contract itself may not be assignable. [*Titan Exteriors, Inc. v. Certain Underwriters at Lloyd's, London*, 297 F. Supp. 3d 628 \(N.D. Miss. 2018\)](#)

Payment to the policyholder will not extinguish your company’s duties under the policy. The Supreme Court of Mississippi has declared that a person cannot escape liability to the holder of an assignment by delivering performance to a person who assigned away the right. [*Ewin Eng'g Corp. v. Deposit Guar. Bank & Tr. Co.*, 216 Miss. 410, 62 So. 2d 572 \(1953\).](#)

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 43

Missouri

Missouri allows assignment of insurance claims, as well as penalties for vexatious delay in insurance payments.³⁰ In the event Missouri enforces anti-assignment provisions against post-loss assignments, the restorer may still prevail under the doctrine of *waiver* if the restorer submits an assignment of benefits (in other words, assignment of the claim), and the insurer does not timely object. In Missouri, a waiver of a contractual right occurs when there is: (1) an existing contractual right; and (2) either (a) intentional relinquishment of the known right, or (b) *conduct that clearly and unequivocally shows a purpose to relinquish the right*.³¹

Steps to Unlock Insurance Funds in the Show Me State

A synopsis of the law regarding Missouri assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!

³⁰ [*Still v. Travelers Indemnity Company*, 374 S.W.2d 95, 103 \(Mo. 1964\).](#)

³¹ [*Scheck Indus. Corp. v. Tarlton Corp.*, 435 S.W.3d 705 \(Mo. Ct. App. 2014\).](#)

6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

MISSOURI POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Missouri Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, *A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors* § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

An assignment transfers to another all or part of one's property, interest, or rights. It is a right in the property itself. *Ford Motor Credit Co. v. Allstate Ins. Co.*, 2 S.W.3d 810, 812 (1999). <https://casetext.com/case/ford-motor-credit-co-v-allstate-ins-co>

“[An] assignment of a right or claim is the act of the parties to the assignment, dependent upon actual intention, and necessarily contemplating the continued existence of the debt or claim, the whole of which is assigned.” The assignment of an entire interest or claim vests legal title in the assignee, together with the right to maintain an action in his own name as the real party in interest. *Kroeker v. State Farm Mut. Auto. Ins. Co.*, 466 S.W.2d 105, 110 (1971). <https://law.justia.com/cases/missouri/court-of-appeals/1971/25464-0.html>

When there is an assignment of an entire claim there is a complete divestment of all rights from the assignor and a vesting of those same rights in the assignee. *Kroeker v. State Farm Mut. Auto. Ins. Co.*, 466 S.W.2d 105, 110. <https://law.justia.com/cases/missouri/court-of-appeals/1971/25464-0.html>

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 44

Montana

Steps to Unlock Insurance Funds in the Treasure State

A synopsis of the law regarding Montana assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to ***get this form signed anyway.***
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

MONTANA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[*Montana Contractor Letterhead, Address,
Email Address, Phone Number & License Number*]

[*Date*]

**VIA ELECTRONIC MAIL TO (*EMAIL ADDRESS*)
AND PRIORITY MAIL WITH TRACKING**

[*Adjuster Name*]

[*Insurance Company Name*]

[*Street Address*]

[*City, State, Zip*]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [*Adjuster Name*],

Please take notice that [*Contractor name*] was engaged to perform work at your insured's property on [*contract date*] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, *A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors* § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

A right arising out of an obligation is the property of the person to whom it is due and may be transferred as the property of that person. Unless otherwise provided by law, a transfer by written, oral, electronic, or other means creates a valid assignment upon the transfer. [28-1-1001, MCA](#).

While the rights to pursue claims for simple personal torts are generally held to be nonassignable in Montana, a distinction is made where the right of action grows out of a violation of property rights. That right of action is generally held to be assignable, and a right of action growing out of the violation of some purely personal right, as, for instance, a. *Caledonia Ins. Co. v. Northern Pac. Ry.*, (1905) 32 Mont. 46.

Montana law has long held that property damage claims are assignable. [*Youngblood v. American States Ins. Co.*, 262 Mont. 391, 396. \(1993\)](#).

[Section 33-15-414](#) of the Annotated Montana Code allows the transfer of insurance policy rights by an assignment executed by the insured and delivered to the insurer. An assignment valid under 33-15-414 may transfer to the assignee all the rights, privileges, and incidents of ownership of the assignor in the policy, including but not limited to the rights to designate beneficiaries. The assignment entitles the insurer to ***deal with the assignee as the owner of the policy*** in accordance with the terms of the assignment until the insurer has received notice of termination. In this case, the assignment is irrevocable as to our scope of

work. A Montana insurer may be required to pay a claim twice if it pays the original policyholder after it is on notice that the policyholder's rights have been transferred to a third party. In that case, payment to the policyholder named in the policy does not discharge the insurer's obligations under the policy. The obligations can only be satisfied by paying the holder of the assignment. [30-9A-406, MCA](#), [33-15-414, MCA](#).

Accordingly, please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 45

Nebraska

Steps to Unlock Insurance Funds in the Cornhusker State

A synopsis of the law regarding Nebraska assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

NEBRASKA RESIDENTIAL POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Insured #1:	_____	Claim Number:	_____
Insured #2:	_____	Policy Number:	_____
Property	_____	Date of Loss:	_____
Address:	_____	City/State/Zip:	_____

YOU ARE AGREEING TO ASSIGN CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY. WITH AN ASSIGNMENT, THE RESIDENTIAL CONTRACTOR SHALL BE ENTITLED TO PURSUE ANY RIGHTS OR REMEDIES THAT YOU, THE INSURED HOMEOWNER, HAVE UNDER YOUR INSURANCE POLICY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING.

THE INSURER MAY ONLY PAY FOR THE COST TO REPAIR OR REPLACE DAMAGED PROPERTY CAUSED BY A COVERED PERIL, SUBJECT TO THE TERMS OF THE POLICY.

1. Irrevocable Post-Loss Assignment of Insureds' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the insured(s) identified above ("Insureds") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Insureds' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Insureds' rights as a first-party insured under the Insureds' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by Nebraska law and so that Contractor is deemed to stand in a first party position as to the policies. The Insureds shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation.

2. Exclusion: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses or the value of lost personal property. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Insureds agree and understand that this Assignment and each of its component parts are irrevocable. The Insureds expressly acknowledge that it is the Insureds' intent to assign the Insureds' insurance policy rights and benefits under the claims to the Contractor as explained above. The Insureds agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Insureds and the Insureds' insurance company.

4. Cooperation: The Insureds shall cooperate fully with Contractor's efforts to collect policy benefits and the Insureds agree to execute any and all documents presented by Contractor to the Insureds, which are reasonably required for the prosecution of Contractor's claims against the Insureds' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Insureds hereby authorize and instruct all insurance carriers who may be liable to the Insureds for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Insureds shall immediately notify Contractor, and return the check to the insurer with a written demand to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Insureds upon completion of services. The Insureds acknowledge the sufficiency of this consideration.

7. No Release: The Insureds remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Insureds from the duty to compensate Contractor for any amount due to Contractor that is not paid.

by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Insureds' responsibility.

"Insured #1" (I read this Assignment and understand it.)

"Insured #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Insured; ☐ Insured's Agent

Signature. Check one: ☐ Insured; ☐ Insured's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative	Contractor Representative's Signature
---	---------------------------------------

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

NEBRASKA COMMERCIAL POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Insured #1: _____	Claim Number: _____
Insured #2: _____	Policy Number: _____
Property Address: _____	Date of Loss: _____
	City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Insureds' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the insured(s) identified above ("Insureds") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Insureds' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Insureds' rights as a first-party insured under the Insureds' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by Nebraska law and so that Contractor is deemed to stand in a first party position as to the policies. The Insureds shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation.

2. Exclusion: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses or the value of lost personal property. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Insureds agree and understand that this Assignment and each of its component parts are irrevocable. The Insureds expressly acknowledge that it is the Insureds' intent to assign the Insureds' insurance policy rights and benefits under the claims to the Contractor as explained above. The Insureds agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Insureds and the Insureds' insurance company.

4. Cooperation: The Insureds shall cooperate fully with Contractor's efforts to collect policy benefits and the Insureds agree to execute any and all documents presented by Contractor to the Insureds, which are reasonably required for the prosecution of Contractor's claims against the Insureds' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Insureds hereby authorize and instruct all insurance carriers who may be liable to the Insureds for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Insureds shall immediately notify Contractor, and return the check to the insurer with a written demand to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Insureds upon completion of services. The Insureds acknowledge the sufficiency of this consideration.

7. No Release: The Insureds remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Insureds from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Insureds' responsibility.

"Insured #1" (I read this Assignment and understand it.)

"Insured #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Insured; ☐ Insured's Agent

Signature. Check one: ☐ Insured; ☐ Insured's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Nebraska Residential Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS [RESIDENTIAL
PROJECT]**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

This Assignment complies with Neb. Rev. Stat. § 44-8605, which authorizes residential contractors to be named as copayee for payment of benefits, and requires certain notices to be included in assignments for residential contractors. This Assignment must be delivered to the insurer within five (5) business days after execution. [Neb. Rev. Stat. Ann. § 44-8605 \(2019\)](#).

An assignment is a transfer vesting in the assignee all of the assignor's rights in the property which is the subject of the assignment. "An assignment becomes effective when it is made" Additionally, notice of the assignment is not essential to the validity of the assignment. [Midwest Renewable Energy, LLC v. Am. Eng'g Testing, Inc., 296 Neb. 73, 894 N.W.2d 221 \(2017\)](#)

Anti-assignment clauses in insurance policies are strictly enforced against attempted transfers of the policy itself before a loss has occurred, because this type of assignment involves a transfer of the contractual relationship and, in most cases, would materially increase the risk to the insurer. Policy provisions that require the company's consent for an assignment of rights are generally enforceable only *before* a loss occurs, however. As a general principle, a clause restricting assignment does not in any way limit the policyholder's power to make an assignment of the rights under the policy—consisting of the right to receive the proceeds of the policy—*after* a loss has occurred. The reasoning is that once a loss occurs, an assignment of the policyholder's rights regarding that loss in no way materially increases the risk to the insurer. After a loss occurs, the indemnity policy is no longer an executory contract of insurance. It is now a vested claim against the insurer and can be freely assigned or sold like any other chose in action or piece of property. [Millard Gutter Co. v. Farm Bureau Prop. & Cas. Ins. Co., 295 Neb. 419 \(Neb. 2016\)](#).

Parties to an insurance contract may contract for any lawful coverage, and an insurer may limit its liability and impose restrictions and conditions upon its obligations under the contract if the restrictions and conditions are not inconsistent with public policy or statute. "While [the policy favoring free alienability of a chose in action] is significant and may reflect a public policy, it is not paramount and must be balanced against a very strong policy . . . favoring the freedom to contract. "But in some situations, contractual provisions may be void as against public policy. Our resolution turns on whether invalidating a post-loss assignment of insurance proceeds would be contrary to public policy. [Millard Gutter Co. v. Farm Bureau Prop. & Cas. Ins. Co., 295 Neb. 419 \(Neb. 2016\)](#). Based on these considerations, the Supreme Court of Nebraska has concluded that a post-loss assignment of a claim under a homeowner's insurance policy for the homeowner's property damage casualty loss is valid, despite the presence of a nonassignment clause in the insurance contract. [Id.](#)

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly

paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

[*Nebraska Commercial Contractor Letterhead, Address,
Email Address, Phone Number & License Number*]

[*Date*]

**VIA ELECTRONIC MAIL TO (*EMAIL ADDRESS*)
AND PRIORITY MAIL WITH TRACKING**

[*Adjuster Name*]

[*Insurance Company Name*]

[*Street Address*]

[*City, State, Zip*]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS [COMMERICAL
PROJECT]**

Dear [*Adjuster Name*],

Please take notice that [*Contractor name*] was engaged to perform work at your insured's property on [*contract date*] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

An assignment is a transfer vesting in the assignee all of the assignor's rights in the property which is the subject of the assignment. "An assignment becomes effective when it is made" Additionally, notice of the assignment is not essential to the validity of the assignment. [*Midwest Renewable Energy, LLC v. Am. Eng'g Testing, Inc.*, 296 Neb. 73, 894 N.W.2d 221 \(2017\)](#)

Anti-assignment clauses in insurance policies are strictly enforced against attempted transfers of the policy itself before a loss has occurred, because this type of assignment involves a transfer of the contractual relationship and, in most cases, would materially increase the risk to the insurer. Policy provisions that require the company's consent for an assignment of rights are generally enforceable only *before* a loss occurs, however. As a general principle, a clause restricting assignment does not in any way limit the policyholder's power to make an assignment of the rights under the policy—consisting of the right to receive the proceeds of the policy—*after* a loss has occurred. The reasoning is that once a loss occurs, an assignment of the policyholder's rights regarding that loss in no way materially increases the risk to the insurer. After a loss occurs, the indemnity policy is no longer an executory contract of insurance. It is now a vested claim against the insurer and can be freely assigned or sold like any other chose in action or piece of property. [*Millard Gutter Co. v. Farm Bureau Prop. & Cas. Ins. Co.*, 295 Neb. 419 \(Neb. 2016\)](#).

Parties to an insurance contract may contract for any lawful coverage, and an insurer may limit its liability and impose restrictions and conditions upon its obligations under the contract if the restrictions and conditions are not inconsistent with public policy or statute. "While [the policy favoring free alienability of a chose in action] is significant and may reflect a public policy, it is not paramount and must be balanced against a very strong policy . . . favoring the freedom to contract. "But in some situations, contractual provisions may be void as against public policy. Our resolution turns on whether invalidating a post-loss assignment of insurance proceeds would be contrary to public policy. [*Millard Gutter Co. v. Farm Bureau Prop. & Cas. Ins. Co.*, 295 Neb. 419 \(Neb. 2016\)](#). Based on these considerations, the Supreme Court of Nebraska has concluded that a post-loss assignment of a claim under a homeowner's insurance policy for the homeowner's property damage casualty loss is valid, despite the presence of a nonassignment clause in the insurance contract. [*Id.*](#)

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to

working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 46

Nevada

Steps to Unlock Insurance Funds in the Silver State

A synopsis of the law regarding Nevada assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to ***get this form signed anyway.***
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

NEVADA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Nevada Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]
[Insurance Company Name]
[Street Address]
[City, State, Zip]

Re: Date of Loss:
Claim No.:
Insured:
Property Address:
Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT
OF INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

Please take notice that after the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor’s services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is

merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, *A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors* § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chase in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

Under Nevada law, contract-based claims in action are generally assignable and thus “subject to execution in satisfaction of a judgment,” unless personal in nature. The general rule is that “unless an assignment would add to or materially alter the obligor's duty of risk,” the contract itself restricts assignability, or the assignment would violate a statute, “most rights under contracts are freely assignable.” 6 Am. Jur. 2d Assignments § 15 (2018) [*Reynolds v. Tufenkjian*, 136 Nev. 145, 148, 461 P.3d 147, 150 \(2020\).](#)

While we recognize the general rule that contracts are freely assignable in the absence of language to the contrary, an assignment that has the effect of increasing the nonassigning party's obligations or risks under the contract is prohibited. [*HD Supply Facilities Maint., Ltd. v. Bymoen*, 125 Nev. 200, 210 P.3d 183 \(2009\)](#) “A contractual right can be assigned unless . . . the substitution of a right of the assignee for the right of the assignor would materially change the duty of the obligor, or materially increase the burden or risk imposed on him by his contract” Restatement (Second) of Contracts § 317(2)(a) (1979). [*Ruiz v. City of N. Las Vegas*, 127 Nev. 254, 255 P.3d 216 \(2011\)](#)

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to

working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 47

New Hampshire

Although we have found no recent law that definitively addresses the effect of anti-assignment provisions in policies, *Manter v. Boston Fire Insurance* seems to indicate that the state will allow fire insurance claims to be assigned.³²

Steps to Unlock Insurance Funds in New Hampshire

Some of the law regarding New Hampshire assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the

³² [*Manter v. Boston Fire Insurance*, 93 H.H. 21 \(1943\).](#)

date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

NEW HAMPSHIRE POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. **Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. **No Release:** The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[New Hampshire Contractor Letterhead,
Address, Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]
[Insurance Company Name]
[Street Address]
[City, State, Zip]

Re: Date of Loss:
Claim No.:
Insured:
Property Address:
Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT
OF INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

CONSULT AN ATTORNEY TO VERIFY THIS FORM'S FITNESS FOR YOUR PURPOSE

Please take notice that after the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor’s services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is

merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, *A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors* § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

Assignments of claims from fire insurance are allowed in New Hampshire. [*Manter v. Boston Fire Insurance*, 93 H.H. 21 \(1943\)](#).

In New Hampshire, “an assignee obtains the rights of the assignor at the time of the assignment.” The assignee's rights are the same as those of the assignor at the time of the assignment. [*Stateline Steel Erectors, Inc. v. Shields*, 150 N.H. 332, 336-337 \(2003\)](#).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment. If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 48

New Jersey

Steps to Unlock Insurance Funds in the Garden State

A synopsis of the law regarding New Jersey assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

NEW JERSEY POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[*New Jersey Contractor Letterhead, Address,
Email Address, Phone Number & License Number*]

[*Date*]

**VIA ELECTRONIC MAIL TO (*EMAIL ADDRESS*)
AND PRIORITY MAIL WITH TRACKING**

[*Adjuster Name*]

[*Insurance Company Name*]

[*Street Address*]

[*City, State, Zip*]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [*Adjuster Name*],

Please take notice that [*Contractor name*] was engaged to perform work at your insured's property on [*contract date*] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

Please also take notice that after the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:

By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

- 2. Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, *A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors* § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

The anti-assignment clause in the policy is not a barrier to the post-loss assignment of a claim. *Givaudan Fragrances Corporation v. Aetna Casualty & Surety* 151 A.3d 576 (N.J. 2017) <https://law.justia.com/cases/new-jersey/supreme-court/2017/a-16-25.html>

Simply stated, that general rule recognizes that anti-assignment clauses in insurance contracts apply only to assignments before loss, and do not prevent an assignment after loss. Policy provisions that require the company's consent for an assignment of rights are generally enforceable only before a loss occurs. 17 Williston on Contracts 49:126 (4th ed. 2015). Such clauses merely prohibit the assignment of the policy, as distinguished from a claim arising under the policy. 3 Couch on Insurance 35:8. The distinction is that the assignment before loss involves a transfer of a contractual relationship while the assignment after loss is the transfer of the right to a money claim. Thus, post-loss assignments do not further the purpose of the anti-assignment clause, which is to protect the insurer from increased liability, because, after the events giving rise to the insurer's liability have occurred, the insurer's risk cannot be increased by a change in the insured's identity. *Givaudan Fragrances Corporation v. Aetna Casualty & Surety* 151 A.3d 576 (N.J. 2017) <https://law.justia.com/cases/new-jersey/supreme-court/2017/a-16-25.html>

Once an insured loss has occurred, an anti-assignment clause in an occurrence policy may not provide a basis for an insurer's declination of coverage based on the insured's assignment of the right to invoke policy coverage for that loss. *Givaudan Fragrances*

Corporation v. Aetna Casualty & Surety, A-2270-12T4 (N.J. Super. Ct. App. Div. 2015) <https://law.justia.com/cases/new-jersey/supreme-court/2017/a-16-25.html>

The majority rule in the United States is that a provision that prohibits the assignment of an insurance policy, or that requires the insurer's consent to such an assignment, is void as applied to an assignment made after a loss covered by the policy has occurred. *Givaudan Fragrances Corporation v. Aetna Casualty & Surety*, A-2270-12T4 (N.J. Super. Ct. App. Div. 2015) <https://law.justia.com/cases/new-jersey/supreme-court/2017/a-16-25.html>

The majority rule is an exception to the general principle that parties to a contract may freely limit assignment of their contractual rights. The principle underlying the rule is a deeply rooted public policy against allowing restraints on alienation of choses in action. *Givaudan Fragrances Corporation v. Aetna Casualty & Surety*, A-2270-12T4 (N.J. Super. Ct. App. Div. 2015) <https://law.justia.com/cases/new-jersey/supreme-court/2017/a-16-25.html>

New Jersey similarly recognizes choses in action as personal property and disfavors any attempt to restrict alienation of that property. *Givaudan Fragrances Corporation v. Aetna Casualty & Surety*, A-2270-12T4 (N.J. Super. Ct. App. Div. 2015) <https://law.justia.com/cases/new-jersey/supreme-court/2017/a-16-25.html>

The rule also embodies a recognition that “once a loss occurs, an assignment of the policyholder's rights regarding that loss in no way materially increases the risk to the insurer.” 17 Williston on Contracts § 49:126 (4th ed. 2016). *Givaudan Fragrances Corporation v. Aetna Casualty & Surety*, A-2270-12T4 (N.J. Super. Ct. App. Div. 2015) <https://law.justia.com/cases/new-jersey/supreme-court/2017/a-16-25.html>

Thus, post-loss assignments do not further the purpose of the anti-assignment clause, which “is to protect the insurer from increased liability,” because, after the “events giving rise to the insurer's liability have occurred, the insurer's risk cannot be increased by a change in the insured's identity.” *Givaudan Fragrances Corporation v. Aetna Casualty & Surety*, A-2270-12T4 (N.J. Super. Ct. App. Div. 2015) <https://law.justia.com/cases/new-jersey/supreme-court/2017/a-16-25.html>

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

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//

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 49

New Mexico

Steps to Unlock Insurance Funds in the Land of Enchantment

Some of the law regarding New Mexico assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

NEW MEXICO POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[New Mexico Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“An ‘assignment’ is a transfer of property or some other right from one person (the ‘assignor’) to another (the ‘assignee’)....” [6 Am.Jur.2d Assignments § 1 \(1999\)](#); see [Benton v. Albuquerque Nat'l Bank](#), 103 N.M. 5, 10, 701 P.2d 1025, 1030 (Ct.App.1985). A creditor can assign its interest in an existing debt owed to it. [6 Am.Jur.2d Assignments § 33 \(1999\)](#). The debtor, or obligor, must then pay the debt to the assignee, not the assignor. [6 Am.Jur.2d Assignments § 140 \(1999\)](#). This is routinely done with loans or credit card debt that is transferred from one bank to another. Generally, the consent of the obligor is not required. [6 Am.Jur.2d Assignments § 20 \(1999\)](#). An obligor with notice of an assignment is required to pay the assignee. [Romero v. Earl](#), 111 N.M. 789, 790, 810 P.2d 808, 809 (1991). After receiving notice of the assignment, the obligor cannot lawfully pay the amount assigned either to the assignor or to its other creditors, and if the obligor does make such a payment, it does so at its peril, because the assignee may enforce its rights against the obligor directly. [Quality Chiropractic, PC v. Farmers Ins. Co. of Arizona](#), 132 N.M. 518, 51 P.3d 1172 (Ct.App. 2002)

The assignee stands in the shoes of the assignor regarding a number of rights and privileges and restrictions, both express and implied, that exist in an assignment agreement. [Thweatt](#), 838 S.W.2d at 729. [Investment Co. of the Southwest v. Reese](#), 875 P.2d 1086 (N.M. 1994).

An assignment creates an equitable lien in favor of the assignee. [Quality Chiropractic, PC v. Farmers Ins. Co. of Arizona](#), 132 N.M. 518, 51 P.3d 1172 (Ct.App. 2002).

Once a valid assignment has been made, the assignor cannot cancel or modify the completed assignment by an unilateral action without the consent of the assignee, nor may the assignor defeat or impair the rights of the assignee in any other way. [Martinez v. Martinez](#), 1982-NMSC-097, ¶ 11, 98 N.M. 535, 538, 650 P.2d 819, 822.

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

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Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 50

New York

Steps to Unlock Insurance Funds in the Big Apple

A synopsis of the law regarding New York assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to ***get this form signed anyway.***
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

NEW YORK POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. **Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. **No Release:** The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[New York Contractor Letterhead,
Address, Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]
[Insurance Company Name]
[Street Address]
[City, State, Zip]

Re: Date of Loss:
Claim No.:
Insured:
Property
Address:
Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

Black's Law Dictionary 142 (10th ed. 2014) defines "assignment" as "[t]he transfer of rights or property." New York's statute on assignment uses the terminology of "transferred" claims. *N.Y. Gen. Oblig. Law* § 13-101. ("[T]he term 'transfer' includes...assignment..."). [*Digizip.com v. Verizon Services Corp.*, 2015 WL 1283676 at 3 \(S.D.N.Y. 2015\)](#).

Per [*NY Gen Oblig L § 13-101 \(2015\)*](#) ("Transfer of Claims"), other than personal injury claims and claims based on a grant, any claim or demand can be transferred, so long as the assignment does not violate public policy and is not expressly forbidden by statute.

An assignment is a completed transfer of the entire interest of the assignor in the particular subject matter. *Krauss v. Central Ins. Co. of Baltimore*, 40 N.Y.S.2d 736, 741 (Sup.Ct. 1943).

It has long been the doctrine of the State of New York that rights under a policy of insurance may be assigned after loss regardless of whether the policy contains a clause forbidding assignments. *Courtney v. New York City Insurance Company*, 28 Barb. 116. Provisions in insurance policies prohibiting a transfer of the insured's interest after a loss has occurred are illegal and void. [*Ardon Const. Corp. v. Firemen's Ins. Co. of Newark, N.J.*, 16 Misc. 2d 483, 488, 185 N.Y.S.2d 723, 729 \(Sup. Ct. 1959\)](#)

Upon the occurrence of a loss the claim of the assured is a right to payment -- a mere chose in action which may be assigned the same as any other chose in action. *Krauss v. Central Ins. Co. of Baltimore*, 40 N.Y.S.2d 736, 741 (Sup.Ct. 1943).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We look forward to working with you on this claim and to receiving the documents listed on page 1 of this letter. Thank you.

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Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the contract and the Assignment!]

Chapter 51

North Carolina

Steps to Unlock Insurance Funds in the Tar Heel State

A synopsis of the law regarding North Carolina assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

NORTH CAROLINA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. **Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. **No Release:** The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[North Carolina Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” [Black's Law Dictionary \(11th ed. 2019\)](#). A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chase in action,” which is a proprietary right to recover a debt, money, or thing. [Black's Law Dictionary 234 \(11th ed. 2019\)](#).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” [Dr. Miles Medical Co. v. John D. Park & Sons Co. \(1911\) 220 U.S. 373, 404–405](#).

The assignment of the mere right to payment after loss does not broaden the scope of the coverage of insurable risks provided by defendant's policy. Further, express prohibitions on assignments are regarded as generally ineffective when applied to assignments which occur after the loss has been incurred:

The great weight of authority supports the rule that general stipulations in policies prohibiting assignments thereof except with the consent of the insurer apply to assignments before loss only, and do not prevent an assignment after loss, for the obvious reason that the clause by its own terms ordinarily prohibits merely the assignment of the policy, as distinguished from a claim arising thereunder, and the assignment before loss involves a transfer of a contractual relationship while the assignment after loss is the transfer of a right to a money claim.

[First-Citizens Bank & Trust Co. v. Universal Underwriters Ins. Co., 113 N.C. App. 792, 796-797 \(1994\)](#).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 52

North Dakota

Steps to Unlock Insurance Funds in the Roughrider State

A synopsis of the law regarding North Dakota assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to ***get this form signed anyway.***
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

NORTH DAKOTA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

(CO. NAME & ADDRESS)

(COMPANY LOGO)

Job #: _____

[North Dakota Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

We hereby tender the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

“An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, *A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors* § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

Per [N.D. Cent. Code, § 9-11-01](#), a right arising out of an obligation is the property of the person to whom it is due and may be transferred as such. Per [N.D. Cent. Code § 9-11-03](#), the burden of an obligation may be transferred with the consent of the party entitled to its benefit.

The anti-assignment provision in the policy is **void** as to post-loss assignments of benefits, per North Dakota statutory law. An agreement made before a loss occurs that the insured will not transfer any claim that might arise on the insurance policy is void. [N.D. Cent. Code, § 26.1-30-09](#).

There is nothing personal in the right to receive money due under a contract. 5 C. J. 564. And there is no reason readily apparent why the parties should have contracted that the right to receive moneys due under the contracts should be nonassignable. An assignment of the right of such moneys results in no prejudice to the party who owes the money. By North Dakota statute an assignment is without prejudice to the rights to any set-off or other defense the obligor may have at the time or before notice of the assignment. Comp. Laws 1913, § 7396. [Dixon-Reo Co. v. Horton Motor Co.](#), 49 N.D. 304, 309 (1922).

A thing in action, arising out of the violation of a right of property or out of an obligation, may be transferred by the owner. [Dixon-Reo Co. v. Horton Motor Co.](#), 49 N.D. 304, 310 (1922).

While statutory provisions do not nullify stipulations against assignments contained in contracts, they evidence a clear intention on the part of the legislature to distinguish between the burden of an obligation and a right arising out of an obligation, as regards the right of a party to transfer the same. The legislature has specifically said that the restrictions which statutes places on the transfer of the burden of an obligation, shall not apply to the transfer of the right arising out of an obligation; that such right is the property of the person to whom it is due and may be transferred as such. The rule embodied in the statute is in harmony with that generally applied by the courts in dealing with contracts nonassignable in character. [*Dixon-Reo Co. v. Horton Motor Co.*, 49 N.D. 304, 310 \(1922\)](#).

In other words the stipulation prohibiting the assignment of the contracts and rights thereunder will not be construed as prohibiting the assignment of moneys which had been earned by the Dixon Motor Company, and which remained due to them, unless the language used evidenced a clear intention on the part of the contracting parties that it was to have that effect. [*Dixon-Reo Co. v. Horton Motor Co.*, 49 N.D. 304, 311 \(1922\)](#).

The mere assignment of moneys due or to become due, although the contract may not be assigned, is held not to be an assignment of the contract. [*Dixon-Reo Co. v. Horton Motor Co.*, 49 N.D. 304, 311 \(1922\)](#).

Accordingly, please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 53

Ohio

Steps to Unlock Insurance Funds in the Buckeye State

A synopsis of the law regarding Ohio assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to ***get this form signed anyway.***
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

OHIO POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Ohio Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

An assignment is a transfer of property or of some right or interest from one person to another that causes the property, right, or interest to vest in the other person. [*Ford Motor Credit Co. v. Ryan*, 2010-Ohio-4601, ¶ 89, 189 Ohio App. 3d 560, 598, 939 N.E.2d 891, 920](#)

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

A chose in action arises under an occurrence-based insurance policy at the time the loss occurred. [*Pilkington N. Am., Inc. v. Travelers Cas. & Sur. Co.*, 112 Ohio St.3d 482, 488-89 \(2006\)](#)

A chose in action is transferable despite the existence of an anti-assignment provision contained in the policy as to the duty to indemnify. [*Pilkington N. Am., Inc. v. Travelers Cas. & Sur. Co.*, 112 Ohio St.3d 482, 488-89 \(2006\)](#)

It is long-standing tradition in the common law that all contract rights may be assigned except under three conditions. 3 Restatement of the Law 2d, Contracts (1981), Section 317(2). First, if there is clear contractual language prohibiting assignment, an assignment will not be enforced. Second, an assignment must not materially change the duty of the obligor, materially increase the insurer's burden or risk under the contract, materially impair the insurer's chance of securing a return on performance, or materially reduce the contract's value. [*Pilkington N. Am., Inc. v. Travelers Cas. & Sur. Co.*, 112 Ohio St.3d 482, 488-89 \(2006\)](#)

An anti-assignment provision has an important role in an insurance policy: to minimize risk for the insurer. Insurance contracts receive unique treatment post-loss, however. Insurance policies are generally construed such that assignment of an interest is valid after the occurrence of the loss insured against, and the assignment is then regarded as a transfer of the chose in action, even in the face of an anti-assignment provision. [*Pilkington N. Am., Inc. v. Travelers Cas. & Sur. Co.*, 112 Ohio St.3d 482, 488-89 \(2006\)](#)

An assignee “stands in the shoes of the assignor” and “succeeds to all the rights and remedies of the latter.” [*Ford Motor Credit Co. v. Ryan*, 2010-Ohio-4601, ¶ 89, 189 Ohio App. 3d 560, 598, 939 N.E.2d 891, 920](#)

Accordingly, please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 54

Oklahoma

Steps to Unlock Insurance Funds in the Sooner State

A synopsis of the law regarding Oklahoma assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to ***get this form signed anyway.***
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

OKLAHOMA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Oklahoma Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT
OF INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

An assignment is the expressed intent of one party to pass rights owned to another. It realigns the parties to a contract. [*In re Kaufman*, 37 P.3d 845 \(2001\)](#). It is “is a transfer or setting over of property, or of some right or interest therein, from one person to another; the term denoting not only the act of transfer, but also the instrument by which it is effected.” Black's Law Dictionary (11th ed. 2019), citing Alexander M. Burrill, A Treatise on the Law and Practice of Voluntary Assignments for the Benefit of Creditors § 1, at 1 (James Avery Webb ed., 6th ed. 1894).

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

Absent clear, unambiguous language, the majority of courts generally will not honor attempts to restrict the right to assign freely. [*In re Kaufman*, 37 P.3d 845 \(2001\)](#)

Contractual rights are presumed to be assignable, but parties may expressly provide otherwise. Courts have observed that contractual language concerning assignment has been examined by courts to determine (1) if the language is clear and unambiguous, (2) the parties' intent, (3) if the language eliminates both the power and the right to assign, (4) the nature of any harm to the party obligated to perform by the mere assignment, (5) the nature of the benefit created by the assignment, (6) the public policy considerations applicable to the particular contract and (7) assignability of contractual rights. [*Johnson v. CSAA Gen. Ins. Co.*, 2020 OK 110, ¶ 33, 478 P.3d 422, 437, as corrected \(Dec. 18, 2020\)](#)

Generally, when an insurance policy is deemed to be a personal contract between insured and insurer, a policy provision requiring insurer's consent for an assignment will be enforced. However, Oklahoma courts have noted exceptions to this general rule. In *American Alliance Ins. Co. of N. Y. v. McCallie*, 1957 OK 312, 319 P.2d 295, it was noted that an exception occurs when the subject of the assignment is not the policy and its coverage, but a right to receive funds for a policy-covered loss and the assignment occurs after the loss. Once a loss occurs, the relationship between the insurer and the insured becomes simply that

of debtor and creditor; and that the chose in action, which the latter then has against the former, may be validly transferred to a third person, by assignment, without compliance with the policy's requirement that the insurer's consent thereto (by endorsement or otherwise) be obtained. [Johnson v. CSAA Gen. Ins. Co., 2020 OK 110, ¶ 33, 478 P.3d 422, 437, as corrected \(Dec. 18, 2020\)](#)

Courts adopting the majority position have relied on a long-recognized public policy against restraints on assigning a chose in action, and they have stated this policy supersedes or outweighs a public policy favoring contractual freedom to create such a restraint in a contract of insurance. [Johnson v. CSAA Gen. Ins. Co., 2020 OK 110, ¶ 33, 478 P.3d 422, 437, as corrected \(Dec. 18, 2020\)](#)

An assignment of a claim is not the assignment of the policy itself, but it is the assignment of a debt, or chose in action. The rule is stated in May on Insurance, § 386: “An assignment after loss does not violate the clause in the policy forbidding a transfer even if the clause reads before or after loss. The reason of the restriction is, that the company might be willing to write a risk for one person of known habits and character and not for another person of less integrity and prudence, but after loss this reason no longer exists.” [Johnson v. CSAA Gen. Ins. Co., 2020 OK 110, ¶ 33, 478 P.3d 422, 437, as corrected \(Dec. 18, 2020\)](#)

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 55

Oregon

People Who Think That Oregon Does Not Allow Assignments are Missing Important Nuances

In fact, the Oregon Supreme Court doesn't always show a lot of sympathy to insurance companies. However, Oregon is one of the few jurisdictions in the country that will enforce anti-assignment provisions against post-loss assignments of insurance claims but *only if* the policy unambiguously precludes assignments of post-loss claims, or clearly precludes assignments of "all rights" under the policy. Many policies simply prohibit assignment of "the policy." That sort of provision will probably not defeat a post-loss assignment of a claim in Oregon.³³

Whether the assignment of benefits is enforceable or not, the insurance company should still obey the policyholder's direction to pay in the Assignment that follows.

Even if the assignment of the insurance claim is precluded by the policy and the law, in many scenarios, Oregon *does* allow the assignment of a *legal claim* against the insurance company if it has engaged in wrongdoing. Depending on the circumstances of the case, these assignments may include the right to sue for breach of the contract of insurance and insurance bad faith. So if the insurance company rejects an assignment of policy benefits, all is not lost. If the restorer has an assignment of the right to sue the insurance company, and the insurance company steps out of line, the restorer may have a valuable legal claim against the insurance company. It's not that we want more lawsuits. We don't. But as explained above, the hard cold reality is that someone who holds a valuable right to sue gets a better shake in settlement negotiations. But in certain situations, the courthouse is an appropriate destination. Don't keep good options off the table.

Oregon acknowledges that an assignment of the right to sue, made in good faith for a sufficient consideration, and without intent to defraud creditors or subsequent purchasers, is complete upon the mutual assent of the assignor and assignee. *Meier v. Hess* (1893) 23 Or. 599, 603 [32 P. 755, 756].

For example, in *Groce v. Fidelity General Ins. Co.*, the policy contained a provision stating that an "[a]ssignment of interest under this policy shall not bind the company until its consent is endorsed hereon." The Oregon Supreme Court ruled that this provision did not prohibit the insured from assigning a *legal claim* against the insurance company for breach of the contract of insurance.³⁴ The court relied on the famous California Supreme Court case, [*Comunale v. Traders & General Ins. Co.*, 50 Cal 2d 654, 661-662, 328 P2d 198, 202, 68 ALR2d](#)

³³ [*Holloway v. Republic Indemnity Co. of America*, 201 Or. App. 376, 119 P.3d 239 \(Or. Ct. App. 2006\).](#)

³⁴ [*Groce v. Fidelity General Ins. Co.*, 252 Ore. 296, 306-307 \(1968\)](#)

[883 \(1958\)](#) in reaching its conclusion. *Comunale* states that it is “well settled” that such a provision does not preclude the transfer of a cause of action for damages for breach of a contract.

In the *Groce* case, Fidelity General Insurance argued that the assignment of claims in cases of this kind “breeds champerty.” It sounds so nefarious. “Champerty” is the intermeddling of a stranger in the litigation of another, for profit. The Supreme Court was unimpressed with that argument, noting that for many years at common law the bona fide assignee of a legal right has not been deemed guilty of champerty. The high court concluded that the plaintiff in that case could hardly be considered an “intermeddling stranger” because it was owed a debt by the party who made the assignment. The court allowed the assignment of the cause of action for bad faith.

Fidelity also argued that allowing a policyholder to assign a cause of action for insurance bad faith would foster collusion between the policyholder and the holder of the assignment. Further, it argued that assignments would discourage settlements. The Supreme Court rejected all of those arguments, dishing it back to the insurance company in a most unapologetic way:

“All an insurance company need do to avoid the evils of collusion is to exercise good faith with reference to the rights of its insured. As far as the encouraging or discouraging of settlements is concerned, it may not be unreasonable to suggest that insurers might prefer to avoid results of the kind appealed from in the cases at bar.”

-Supreme Court of Oregon

Stated more plainly, the high court essentially proclaimed that if insurance companies would simply do the right thing, there would be no problem! Words to live by.

If a restorer in Oregon submits an assignment of benefits (in other words, assignment of the claim), and the insurer does not timely object, it seems possible that the restorer could still enforce the assignment by arguing the insurer has waived the objection. In Oregon, a waiver of a contractual right occurs when there is: (1) knowledge of the existing right; (2) action that is inconsistent with the existing right; and (3) prejudice to the opposing party by such inconsistent acts.³⁵

³⁵ *Patterson v. Amundson*, 119 P.3d 264 (Or. Ct. App. 2005)

Suggested Approach for Oregon

1. Unless prohibited by your franchise or TPA agreements, get the “Insurance Information Release & Authorization” form signed by the policyholder on day one of the job and immediately send it to the insurance company with the “Request for Information” (“form letter 1 of 2”) that follows in this Chapter. We are aware of no grounds to object to the release.
2. Get the policy as soon as possible and assess whether an assignment of policy benefits is enforceable, or just an assignment of legal claims.
3. If only an assignment of legal claims is enforceable, wait until the insurance company mishandles the claim, and then get the Assignment executed by the policyholder and send it to the carrier with the “Notice of Assignment” (“form letter 2 of 2”).
4. Prosecute the Assignment, as explained in the Prosecution Chapter, and follow the collection steps in the companion book *The Book on Restoration Collections* which includes a sample demand letter for each state.

[Oregon Contractor Letterhead,
Address, Email Address, Phone Number & License Number]

DELETE THIS BOX BEFORE SENDING THE LETTER

Letter 1 of 2

This is the first of two letters. Since the policy may prohibit assignment of claims, send this request for information letter first to get a copy of policy. Wait to send this letter until you have confirmed that the policy does not clearly prohibit assignments of “all rights” under the policy or assignment of benefits. See the additional explanation in this chapter and seek legal advice from a qualified Oregon lawyer to determine the best strategy for you.

See also the instructions for Letter 2 of 2, that follows.

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property Address:

Subject:

REQUEST FOR INSURANCE INFORMATION

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);

- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) “CC:” us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed above.

We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim.

Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, and the Request for Information!]

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

OREGON ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Oregon Contractor Letterhead,
Address, Email Address, Phone Number & License Number]

DELETE THIS BOX BEFORE SENDING THE LETTER

Letter 2 of 2

This is the second of two letters. Since the policy may prohibit assignment of claims, if you want to minimize the chances of rejection, send the request for information letter (Letter 1 of 2) first to get a copy of policy. Then, it can be confirmed (preferably by a lawyer) that the policy does not clearly prohibit assignments of “all rights,” “claims,” or “benefits.” If it does prohibit those assignments, delete the section highlighted in green before sending. See the additional explanation in this chapter and seek legal advice from a qualified Oregon lawyer to determine the best strategy for you.

If you have already requested and obtained the policy and claims documents, delete the portion highlighted in blue.

Every area highlighted in yellow needs information entered. Delete that text before sending the letter. Call an attorney if you have questions.

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT
OF INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

Please take notice that after the loss occurred, the insured ("Policyholder") irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay ("Assignment"). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Assignment of Policyholders' Rights Against Insurance Company To Contractor:** By execution of this irrevocable Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholders identified above ("Policyholders") completely, irrevocably and fully assign and transfer the following rights to the Contractor: (a) all of Policyholders' rights to participate in appraisal of the property damage which is the subject of Contractor's Scope of Work; (b) Policyholders' rights as a first-party insured to prosecute claims directly against the insurers, such as breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), attorneys' fees, and negligence; and, unless unequivocally prohibited by the policy: (c) the policy benefits due for claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). This Assignment shall be liberally construed to the fullest extent permitted by Oregon law.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claims unrelated to Contractor's scope of work, such as additional living expenses or

the value of lost personal property. Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Nothing in this Assignment shall be construed as a delegation of the Policyholders' duties under the policy.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

A policyholder with a covered claim holds a “right in action,” sometimes referred to as a “chose in action,” which is a proprietary right to recover a debt, money, or thing. Black's Law Dictionary 234 (11th ed. 2019).

Here, certain rights under the claim have been alienated. “Alienation” is simply a “conveyance or transfer of property to another.” Black's Law Dictionary (11th ed. 2019). Insurance companies attempt to *restrain* alienation when they try to enforce “anti-assignment” provisions against *post-loss* assignments of claims. The United States Supreme Court describes restraints on alienation as “obnoxious to public policy.” It explains that public policy is best served when there is “great freedom of traffic” for things to “pass from hand to hand.” Lord Coke, in 2 Coke on Littleton, § 360 (1628). [*Dr. Miles Medical Co. v. John D. Park & Sons Co.* \(1911\) 220 U.S. 373, 404–405](#) overruled only as to vertical agreements to fix minimum resale prices by *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007) 551 U.S. 877.

It is long-standing tradition in the common law that all contract rights may be assigned except under three conditions. 3 Restatement of the Law 2d, Contracts (1981), Section 317(2). First, if there is clear contractual language prohibiting assignment, an assignment will not be enforced. Second, an assignment must not materially change the duty of the obligor, materially increase the insurer's burden or risk under the contract, materially impair the insurer's chance of securing a return on performance, or materially reduce the contract's value. [*Pilkington N. Am., Inc. v. Travelers Cas. & Sur. Co.*, 112 Ohio St.3d 482, 488-89 \(2006\)](#).

We are mindful that the policy contains a provision prohibiting assignments, but not the type of assignment we have here. Anti-assignment provisions are *only* enforced against post-loss assignments of insurance claims in Oregon if the policy unambiguously precludes assignments of post-loss claims, or clearly precludes assignments of “all rights” under the policy, which is not the case here. [[*Explain what the anti-assignment provision does prohibit and distinguish it.*](#)] [*Holloway v. Republic Indemnity Co. of America*, 201 Or. App. 376, 119 P.3d 239 \(Or. Ct. App. 2006\)](#).

Accordingly, please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 56

Pennsylvania

Steps to Unlock Insurance Funds in the Keystone State

A synopsis of the law regarding Pennsylvania assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to ***get this form signed anyway.***
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

PENNSYLVANIA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[*Pennsylvania Contractor Letterhead, Address,
Email Address, Phone Number & License Number*]

[*Date*]

**VIA ELECTRONIC MAIL TO (*EMAIL ADDRESS*)
AND PRIORITY MAIL WITH TRACKING**

[*Adjuster Name*]

[*Insurance Company Name*]

[*Street Address*]

[*City, State, Zip*]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [*Adjuster Name*],

Please take notice that [*Contractor name*] was engaged to perform work at your insured's property on [*contract date*] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

Contract rights may generally be assigned without the consent of the other party so long as it does not materially alter the other party's duties and responsibilities. *Walker v. Mason*, 272 Pa. 315, 318-19, 116 A. 305, 306 (1922); Restatement (Second) of Contracts §§ 317, 318, 323 cmt. a (1981).

As assignee, we stand in the shoes of the policyholder and assumes all of the Assigned Rights, per *Walker v. Mason*, above.

We are now the real party in interest as to this claim, and are entitled to any remedies to which the policyholder would be entitled. *Melnick v. Pennsylvania Company for Banking and Trusts*, 180 Pa. Super. 441, 119 A.2d 825 (1956). See generally *Black's Law Dictionary*, 1294 (6th ed. 1990) ("rights" includes remedies). [*Smith v. Cumberland Group, Ltd.*, 687 A.2d 1167, 1172 \(Pa. Super. Ct. 1997\)](#)

Pennsylvania law allows post-loss assignments of insurance policy rights in spite of a non-assignment clause because a post-loss assignment cannot increase the risk to the insurer. The insurer's payment obligation is already fixed. Because an insured's right to proceeds vests at the time of the loss, restrictions on the right to assign proceeds are generally rendered void. [*Egger*, 903 A.2d at 1226 \(citing *Continental Cas. Co. v. Diversified Indus., Inc.* 884 F.Supp. 937, 946 \(E.D. Pa. 1995\)\)](#).

Your payment to us will satisfy your obligations to pay the policyholder pursuant to [Pa. Cons. Stat. § 9-406\(a\)](#).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We look forward to receiving the documents and information listed on the first page of this letter. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Information Release, and the Assignment!]

Chapter 57

Rhode Island

Steps to Unlock Insurance Funds in the Ocean State

A synopsis of the law regarding Rhode Island assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to ***get this form signed anyway.***
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

RHODE ISLAND POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Rhode Island Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT
OF INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor’s services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is

merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

"This Court has held that an insurance company has a fiduciary obligation to act in the 'best interests of its insured in order to protect the insured from excess liability [and to] refrain from acts that demonstrate greater concern for the insurer's monetary interest than the financial risk attendant to the insured's situation." *Summit Ins. Co. v. Stricklett*, 199 A.3d 523, 528-529 (2019). <https://law.justia.com/cases/rhode-island/supreme-court/2019/17-185.html>

Rhode Island courts have clarified that an insurer's "fiduciary obligation extends not only to the insurance company's own insured, but also...to a party to whom the insureds have assigned their rights." *Summit Ins. Co. v. Stricklett*, 199 A.3d 523, 529 (2019). <https://law.justia.com/cases/rhode-island/supreme-court/2019/17-185.html>

"[A]n assignment of rights in a case such as this is 'a valuable means by which the insured may obtain protection from his insurance and by which the third party may obtain compensation.'" *DeMarco v. Travelers Ins. Co.*, 102 A.3d 616, 626 (2014). <https://law.justia.com/cases/rhode-island/supreme-court/2014/12-309.html>

Per [R.I. Gen. Laws § 6A-9-406](#), now that this notice has been given, your company will not fulfill its obligations under the policy by paying the Policyholder. Payment to the policyholder may require double payment if the policyholder does not pay us.

The provision in the policy requiring your company's consent to this assignment is ineffective per [R.I. Gen. Laws § 6A-9-406](#).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 58

South Carolina

Steps to Unlock Insurance Funds in the Palmetto State

A synopsis of the law regarding South Carolina assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to ***get this form signed anyway.***
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

SOUTH CAROLINA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. **Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. **No Release:** The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[*South Carolina Contractor Letterhead, Address,
Email Address, Phone Number & License Number*]

[*Date*]

**VIA ELECTRONIC MAIL TO (*EMAIL ADDRESS*)
AND PRIORITY MAIL WITH TRACKING**

[*Adjuster Name*]

[*Insurance Company Name*]

[*Street Address*]

[*City, State, Zip*]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [*Adjuster Name*],

Please take notice that [*Contractor name*] was engaged to perform work at your insured's property on [*contract date*] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:

By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

Three elements constitute an assignment: “(1) an assignor; (2) an assignee; and (3) transfer of control of the thing assigned from the assignor to the assignee.” An assignment of a right is the intentional transfer of rights by which the assignor's right to performance by the obligor is extinguished and the assignee acquires a right to such performance. [*Sanders v. Savannah Highway Auto. Co.*, 432 S.C. 328, 333, 852 S.E.2d 744, 746 \(Ct. App. 2020\), reh'g denied \(Jan. 21, 2021\).](#)

An assignee stands in the shoes of its assignor, meaning the assignee will have all the same rights and privileges as the assignor, including the right to sue. [*Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740 \(S.C. Ct. App. 2007\).](#) Anti-assignment clauses are generally only enforceable before a loss occurs. These clauses are not understood to prevent assignments *after* as loss has occurred. [*PCS Nitrogen, Inc. v. Cont'l Cas. Co.*, 429 S.C. 30, 837 S.E.2d 662 \(S.C. Ct. App. 2019\).](#)

An assignment after a loss has already occurred generally does not require an insurer's consent. [*PCS Nitrogen, Inc. v. Cont'l Cas. Co.*, 429 S.C. 30, 837 S.E.2d 662 \(S.C. Ct. App. 2019\).](#)

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 59

South Dakota

Steps to Unlock Insurance Funds in the Mount Rushmore State

A synopsis of the law regarding South Dakota assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to ***get this form signed anyway.***
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)

TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

SOUTH DAKOTA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[South Dakota Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

An assignment is defined as “the transfer of rights or property.” A transfer is defined as “any mode of disposing of or parting with an asset or an interest in an asset[.]” Thus, an assignment is understood to be the same as a transfer. [*In re Estate of Meland*, 712 N.W.2d 1 \(S.D. Sup. Ct 2006\).](#)

It is the substance of the assignment, rather than the form or the specific language, that is evaluated. Regardless of how it is made, an assignment must contain clear evidence of the intent to transfer rights, must describe the subject matter of the assignment, and must be noticed to the obligor. In reviewing the intent to assign it must be clear that the party intended a present transfer of rights and did not merely bind himself to make a future transfer. [*Northstream Invs., Inc. v. 1804 Country Store Co.*, 739 N.W.2d 44 \(S.D. 2005\).](#)

In regard to the type of notice that is due the obligor, no special form of notice is required; any notice is adequate, even if not formally given. The notice must reach the person to be notified in such a manner that a reasonable person would regard it as notice and be guided by it accordingly. Even though the obligor has no actual knowledge of an assignment, if he has knowledge of such facts that would put a reasonable person upon inquiry, the effect is the same as if actual notice had been given. [*Northstream Invs., Inc. v. 1804 Country Store Co.*, 739 N.W.2d 44 \(S.D. 2005\).](#)

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 60

Tennessee

Steps to Unlock Insurance Funds in the Volunteer State

A synopsis of the law regarding Tennessee assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to ***get this form signed anyway.***
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

TENNESSEE POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. **Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. **No Release:** The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Tennessee Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT
OF INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor’s services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is

merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

In Tennessee, an insured may assign an insurance policy after a loss has occurred, despite an anti-assignment clause purportedly prohibiting assignments without the consent of the insurer. The assignee of the policy "stands in the shoes" of the assignor. [*Manley v. Auto. Ins. Co.*, 169 S.W.3d 207, 214 \(2005\)](#).

There is a distinction between the assignment of a policy of insurance before loss and the assignment of a claim for loss after the loss has occurred. After a loss has occurred, the right of the insured or his successor in interest to the indemnity provided in the policy becomes a fixed right; it is an obligation or debt due from the insurer to the insured. [*Metropolitan Life Ins. Co. v. Brown*, 160 S.W.2d 434, 25 Tenn. App. 514, 519 \(1941\)](#). Thus, policies prohibiting assignment of rights have universally been held to apply only to assignments before loss, and accordingly noncompliance or nonconformity therewith does not prevent an assignment, after loss, of the claim or interest of the insured in the insurance money then due in respect to the loss. [*Metropolitan Life Ins. Co. v. Brown*, 160 S.W.2d 434, 25 Tenn. App. 514, 519 \(1941\)](#).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 61

Texas

Insurance claims may be assigned in Texas in the absence of a valid non-assignment clause,³⁶ but most insurance policies contain provisions stating that assignments are prohibited. See the important explanation in Chapter 12 about anti-assignment clauses.

Texas is one of the few states that generally enforces “no assignment” provisions as to post-loss assignments of benefits, **but** the insurer may be found to have waived that argument if it fails to timely raise it, or if it intentionally acts in any way inconsistent with it. Waiver is a worthwhile argument to discuss with your trusted Texas attorney.

SILENCE IS GOLDEN

Carrier silence *or inaction* is enough to prove a waiver of the “no assignment” provision in Texas if the silence or inaction continues long enough to reasonably show an intention to yield the right to invoke the “no assignment” provision.

Even if the carrier enforces the “no assignment” provision, the policyholder can assign the right to sue the insurance company as soon as the insurance company breaches the contract of insurance or acts in bad faith, because “no assignment” provisions are not applied to legal claims.

Assignments of contract rights, including the right to payment under a contract of insurance, are enforceable per [Texas Property Code section 12.014](#). [Southwestern Bell Telephone Co. v. Marketing on Hold, Inc.](#), 170 S.W.3d 814 (Tex. App. 2005) explains that causes of action, i.e., legal claims, can be assigned even if no lawsuit has been filed.

³⁶ *Keller Foundations Inc. v. Wausau Underwriters Ins. Co.*, 626 F.3d 871.

Steps to Unlock Insurance Funds in the Lone Star State

A synopsis of the law regarding Texas assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** After consultation with your lawyer, if the goal is to get the insurance company to waive the right to challenge the Assignment, present it to the policyholder for signature when the first contract is executed, i.e., before *any* work begins, using a short summary of the explanation in Chapter 11. Otherwise, consider presenting the AOR after the insurance company has breached the contract of insurance.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins, even if no assignment is executed.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment, if any, and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

TEXAS ASSIGNMENT OF INSURANCE RIGHTS AND DIRECTION TO PAY

Policyholder #1: _____	Claim Number: _____
Policyholder #2: _____	Policy Number: _____
Property _____	Date of Loss: _____
Address: _____	City/State/Zip: _____

1. Irrevocable Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholders identified above ("Policyholders") completely, irrevocably and fully assign and transfer the following rights to the Contractor: (a) all of Policyholders' rights to participate in appraisal of the property damage which is the subject of Contractor's Scope of Work; and (b) Policyholders' rights as a first-party insured to prosecute claims directly against the insurers, such as breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), attorneys' fees, and negligence, per Texas Property Code section 12.014(a). This Assignment shall be liberally construed to the fullest extent permitted by Texas law.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claims unrelated to Contractor's scope of work, such as additional living expenses or the value of lost personal property. Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Nothing in this Assignment shall be construed as a delegation of the Policyholders' duties under the policy.

3. No Conditions: Policyholders agree and understand that this Assignment is irrevocable. Policyholders expressly acknowledge that it is Policyholders' intent to assign certain insurance policy rights to the Contractor as explained above. Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon Policyholders or Policyholders' insurers.

4. Cooperation: Policyholders shall cooperate fully with Contractor's efforts to enforce this Assignment and Policyholders agree to execute any and all documents presented by Contractor to Policyholders, which are reasonably required for the prosecution of Contractor's claims against Policyholders' insurers and/or its agents with respect to the assigned rights.

5. Direction to Pay: Policyholders hereby authorize and instruct all insurers who may be liable to Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of Contractor's invoice.

6. Consideration: This Assignment is made in consideration for Contractor's agreement to perform services and to do so without immediate full payment from Policyholders upon completion of services. Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment. This Assignment does not relieve Policyholders from the duty to compensate Contractor for any amount due to Contractor that was not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholders' Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholders' Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Texas Contractor Letterhead,
Address, Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]
[Insurance Company Name]
[Street Address]
[City, State, Zip]

Re: Date of Loss:
Claim No.:
Insured:
Property Address:
Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT
OF INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

CONSULT AN ATTORNEY TO VERIFY THIS FORM'S FITNESS FOR YOUR PURPOSE

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us specified rights under the policy for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholders identified above (“Policyholders”) completely, irrevocably and fully assign and transfer the following rights to the Contractor: (a) all of Policyholders’ rights to participate in appraisal of the property damage which is the subject of Contractor’s Scope of Work; and (b) Policyholders’ rights as a first-party insured to prosecute claims directly against the insurers, such as breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), attorneys’ fees, and negligence, per Texas Property Code section 12.014(a). This Assignment shall be liberally construed to the fullest extent permitted by Texas law.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claims unrelated to Contractor’s scope of work, such as additional living expenses or the value of lost personal property. Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Nothing in this Assignment shall be construed as a delegation of the Policyholders’ duties under the policy.
3. **No Conditions:** Policyholders agree and understand that this Assignment is irrevocable. Policyholders expressly acknowledge that it is Policyholders’ intent to assign certain insurance policy rights to the Contractor as explained above. Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon Policyholders or Policyholders’ insurers.
4. **Cooperation:** Policyholders shall cooperate fully with Contractor's efforts to enforce this Assignment and Policyholders agree to execute any and all documents presented by Contractor to Policyholders, which are reasonably required for the prosecution of Contractor’s claims against Policyholders’ insurers and/or its agents with respect to the assigned rights.
5. **Direction to Pay:** Policyholders hereby authorize and instruct all insurers who may be liable to Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver

said payments directly and exclusively to Contractor within fifteen (15) calendar days of Contractor's invoice.

6. **Consideration:** This Assignment is made in consideration for Contractor's agreement to perform services and to do so without immediate full payment from Policyholders upon completion of services. Policyholders acknowledge the sufficiency of this consideration.

[*Contractor name*] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a **post-loss assignment** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

Assignments of contract rights, including the right to payment under a contract of insurance, are enforceable per [Texas Property Code section 12.014](#), and [Southwestern Bell Telephone Co. v. Marketing on Hold, Inc., 170 S.W.3d 814 \(Tex. App. 2005\)](#) explains that causes of action, i.e., legal claims, can be assigned even if no lawsuit has been filed.

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[*CONTRACTOR NAME*]

[*Contractor representative name*]

Encl.

[*Don't forget to enclose the Contract, the Request for Information, and the Assignment!*]

Chapter 62

Utah

Steps to Unlock Insurance Funds in the Beehive State

A synopsis of the law regarding Utah assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

UTAH POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Utah Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]
[Insurance Company Name]
[Street Address]
[City, State, Zip]

Re: Date of Loss:
Claim No.:
Insured:
Property
Address:
Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:

By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

An assignment is the transfer of rights, in contrast to a delegation, which is the transfer of duties. The delegation of duties is explicitly excluded from this Assignment in paragraph 2. Generally, all beneficial rights under an executory contract are assignable. [Winegar v. Froerer Corp., 813 P.2d 104, 107 \(Utah 1991\).](#) While it is correct that an assignee stands in the shoes of its assignor and cannot stand in a better position than its assignor, an assignee should nevertheless be given the chance to fully and fairly litigate the rights it claims to have acquired by assignment. The opportunity to litigate its own rights allows the assignee to demonstrate the rights of the assignor and defend against any limitations on the effect of the assignment alleged by the third-party obligor. [Sunridge Dev. Corp. v. RB & G Eng'g, Inc., 2010 UT 6, 230 P.3d 1000 \(Utah 2010\).](#)

A beneficiary of an insurance policy may assign the expected benefits of that policy to a third-party. Thus, it stands that an insured may assign the right to payment for services rendered. [Burns Chiropractic Clinic v. Allstate, 851 P.2d 1209 \(Utah Ct. App. 1993\).](#) There is not a temporal restriction on the damages an assignee may recover. [Sunridge Dev. Corp. v. RB & G Eng'g, Inc., 2010 UT 6, 230 P. 3d 1000 \(Utah 2010\).](#)

“Well-accepted rules of contract interpretation require that we examine the language of a contract to determine meaning and intent.” Courts will “also consider each contract provision in relation to all of the others, with a view toward giving effect to all and ignoring none.” [Timber Lakes Prop. Owners Ass'n v. Cowan, 451 P.3d 277, 2019 UT App. 160 \(Utah Ct. App. 2019\).](#)

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 63

Vermont

Steps to Unlock Insurance Funds in the Green Mountain State

A synopsis of the law regarding Vermont assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to ***get this form signed anyway.***
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

VERMONT POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Vermont Contractor Letterhead,
Address, Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]
[Insurance Company Name]
[Street Address]
[City, State, Zip]

Re: Date of Loss:
Claim No.:
Insured:
Property Address:
Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT
OF INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:

By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

This is not an assignment of “the contract” or of all the policyholder’s rights under the contract, and therefore, is not a delegation of his unperformed duties under the contract. [Kelly v. Lord, 173 Vt. 21, 34, 783 A.2d 974, 985 \(2001\).](#)

Post-loss assignment of payment under an insurance policy is not subject to a consent-to-assignment clause “for the obvious reason that the clause by its own terms ordinarily prohibits merely the assignment of the policy, as distinguished from a claim arising thereunder.” Although anti-assignment clauses in insurance policies are enforceable against “attempted transfers of the policy itself before a loss has occurred,” such a provision “does not in any way limit the policyholder's power to make an assignment of the rights under the policy — consisting of the right to receive the proceeds of the policy — after a loss has occurred.” The distinction between pre- and post-loss assignment is consistent with the purpose of the no-assignment clause in insurance contracts, which is “to protect the insurer from increased liability.” [In re Ambassador Group, Inc., Litigation, 879 F. Supp. 237 \(E.D.N.Y. 1994\).](#)

Once an event occurs that triggers an insurer's liability, “the insurer's risk cannot be increased by a change in the insured's identity.” [In re Ambassador Group, Inc., Litigation, 879 F. Supp. 237 \(E.D.N.Y. 1994\).](#) Prohibiting the assignment of “interests” in an insurance policy is generally interpreted to prohibit the pre-loss assignment of coverage under the policy, not the post-loss assignment of a claim. [Parker's Classic Auto Works, LTD. v. Nationwide Mut. Ins. Co., 2019 VT 46 \(Vt. July 12, 2019\)](#)

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 64

Virginia

Virginia allows the assignment of insurance claims. It does not consider bad faith a tort, but it allows the bad faith remedies ordinarily available in the jurisdictions that recognize bad faith: punitive damages and attorneys' fees, provided the insurance company breaches the contract in bad faith.

Steps to Unlock Insurance Funds in the Old Dominion

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

VIRGINIA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Virginia Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

Only those causes of action for damage to real or personal property, whether such damage be direct or indirect, and causes of action *ex contractu* are assignable. Any injured party or his estate shall not be prohibited from making a voluntary assignment of the proceeds or anticipated proceeds of any court award or settlement as security for new value given in consideration of such voluntary assignment. [Va. Code § 8.01-26](#). After the risk has terminated, the interest of the insured becomes assignable without asking permission of the insurance company. [Cincinnati Ins. Co. v. Ruch, 940 F.Supp.2d 338, 344-345 \(2013\)](#).

“A distinction traditionally has been made between an assignment of an insurance policy before a loss is sustained and an assignment of benefits after the loss occurs. Courts have enforced contractual provisions prohibiting pre-loss assignments because pre-loss assignments involve a transfer of a contractual relationship that in most cases would materially increase the risk to the insurer, are enforceable. By contrast, assignments of post-loss benefits usually are found to be valid regardless of any non-assignment clause in the policy. This rule is explained by the fact that post-loss assignments . . . would not materially increase the insurer's risk or obligation under the policy.” [Opinion No. 10-066, Office of the Attorney General, Commonwealth of Virginia, September 24, 2010](#).

After the event upon which liability under an indemnity or liability policy is fastened upon the insurer, the policy or rights thereunder may be assigned with or without the consent of the insurer. [Crothall Hosp. Servs. v. Barham, 1 Va.Cir.403, 406-407](#).

An assignee of a post-loss assignment has the right to sue, just as the contracting party would have. [Kelly Health Care, Inc. v. Prudential Ins. Co., 226 Va. 376, 379 \(1983\)](#).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

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Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 65

Washington

Steps to Unlock Insurance Funds in the Evergreen State

A synopsis of the law regarding Washington State assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

WASHINGTON POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Washington Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

Post-loss assignments may be made without the consent of the insurer, even when the policy prohibits assignments because such prohibitions do not apply to assignment made after the loss has occurred. The purpose of a no-assignment clause in an insurance contract is to protect the insurer from increased liability. However, after the events giving rise to the insurer's liability have occurred, the insurer's risk cannot be increased by a change in the insured's identity. [*Public Util. Dist. No. 1 v. Int'l Ins. Co.*, 124 Wn.2d 789, 800 \(1994\)](#).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 66

West Virginia

Steps to Unlock Insurance Funds in the Mountain State

A synopsis of the law regarding West Virginia assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

WEST VIRGINIA POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[West Virginia Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

An "assignment" of a right is an intentional transfer of such right, by which the assignor's right to performance by the obligor is extinguished and the assignee acquires a right to such performance. No formal words are necessary to make an assignment. Provisions in insurance policies purporting to make assignments void if assigned without the insurer's consent only apply to assignments made before a loss occurs. [*Smith v. Buege*, 182 W. Va. 204, 210-211 \(1989\)](#).

Whenever the proceeds of or payment under a policy of fire insurance covering property located in West Virginia becomes payable, and the insurer makes payment to the person or persons designated in the policy or contract, the person or persons being entitled thereto by virtue of such assignment, such payment shall fully discharge the insurer from all claims under the policy or contract. [W. Va. Code § 33-17-12](#).

The recognized reason for the prohibition of assignments without the consent of the insurer, specifically, to protect the insurer against an increased risk resulting from the assignment, is not applicable after a loss because the liability of the insurer was already fixed by the loss prior to the effective date of the assignment, such liability is assignable regardless of the conditions of the policy in question. [*Smith v. Buege*, 182 W. Va. 204, 210-211 \(1989\)](#).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 67

Wisconsin

Steps to Unlock Insurance Funds in the Badger State

A synopsis of the law regarding Wisconsin assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before *any* work begins.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

WISCONSIN POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Date of Loss: _____
Address: _____ City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[*Wisconsin Contractor Letterhead, Address,
Email Address, Phone Number & License Number*]

[*Date*]

**VIA ELECTRONIC MAIL TO (*EMAIL ADDRESS*)
AND PRIORITY MAIL WITH TRACKING**

[*Adjuster Name*]

[*Insurance Company Name*]

[*Street Address*]

[*City, State, Zip*]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [*Adjuster Name*],

Please take notice that [*Contractor name*] was engaged to perform work at your insured's property on [*contract date*] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

"As a general rule, a valid and unqualified assignment operates to transfer to the assignee all the right, title, or interest of the assignor in the thing assigned, but not to confer upon the assignee any greater right or interest than that possessed by the assignor. It passes the whole right of the assignor, nothing remaining in him capable of being assigned, and the assignor has no further interest in the subject matter of the assignment." [Gendelman v. Gollaz, Case No. 96- 3199 \(Wis. Ct. App. Apr. 30, 1997\).](#)

An assignment is generally enforceable. "[T]o reveal the intent necessary to preclude the power to assign, or cause an assignment violative of contractual provisions to be wholly void, such clause must contain express provisions that any assignment shall be void or invalid if not made in a certain specified way." [J.G. Wentworth SSC Ltd. Partnership v. Callahan, 256 Wis. 2d 807, 649 N.W.2d 694, 2002 WI App. 183 \(Wis. App. 2002\).](#)

A contractual right can be assigned unless the substitution of a right of the assignee for the right of the assignor would materially change the duty of the obligor, or materially increase the burden or risk imposed on him by his contract, or materially impair his chance of obtaining return performance, or materially reduce its value to him, or the assignment is forbidden by statute or is otherwise inoperative on grounds of public policy, or assignment is validly precluded by contract. [J.G. Wentworth SSC Ltd. Partnership v. Callahan, 256 Wis. 2d 807, 649 N.W.2d 694, 2002 WI App. 183 \(Wis. App. 2002\).](#)

If the terms of a contract are plain and unambiguous, the contract will be read as it stands and its literal meaning will be applied. However, if we determine that a contract provision is ambiguous, extrinsic evidence will be used to discern the contract's meaning. [J.G. Wentworth SSC Ltd. Partnership v. Callahan, 256 Wis. 2d 807, 649 N.W.2d 694, 2002 WI App. 183 \(Wis. App. 2002\).](#)

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

///

///

///

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 68

Wyoming

Steps to Unlock Insurance Funds in the Cowboy State

A synopsis of the law regarding Wyoming assignments is set forth in the form letter entitled Request for Information and Notice of Assignment in the following pages. My clients have enjoyed success following these steps:

1. **Assignment of Rights (AOR):** Using a short summary of the explanation in Chapter 11, present the AOR to the policyholder for signature when the first contract is executed, i.e., before any work begins. If there is more than one policyholder, have all of them sign.
2. **Insurance Information Release & Authorization (IIRA):** Using a short summary of the explanation in Chapter 9, present the IIRA to the policyholder for signature when the first contract is executed, again, before *any* work begins. If an Assignment is unwarranted, it may still behoove you to *get this form signed anyway*.
3. **Request for Information and Notice of Assignment form letter (RFI/NOA):** Send this to the carrier with the Assignment of Rights and the Insurance Information Release on day one, following the instructions in Chapter 14.
4. **Follow Up:** Following the steps in Chapter 16, aggressively pursue copies of the policy and the relevant claims handling documents as specified in the IIRA, if you have determined they will help you (and they probably will).
5. **Stay in the Loop:** Never miss a substantive communication with the adjuster. Learn why this is so important, and stay in the loop following the steps in Chapter 10. Always know where the check is!
6. **Prosecute:** Commence the process as explained in Chapter 16, and then follow the 10 steps in the companion publication, *The Book on Restoration Collections*, which includes a sample demand letter for each state.

The following forms are provided for general information purposes are not intended to be legal advice. To the best of our knowledge, the forms that follow comply with the law as of the date of this publication, but are not guaranteed. Maintain regular contact with a qualified lawyer to stay abreast of the law and have documents reviewed regularly. **Get the RIA's 50-State Reference Guide on the Law of Assignments of Benefits and Insurance Bad Faith at www.RestorationIndustry.org to learn more about the law.**

(CO. NAME & ADDRESS)
TEL: _____ EMAIL: _____
LICENSE # _____

(COMPANY LOGO)

Job #: _____

Date: _____, _____

WYOMING POST-LOSS ASSIGNMENT OF INSURANCE RIGHTS & DIRECTION TO PAY

Policyholder #1: _____ Claim Number: _____
Policyholder #2: _____ Policy Number: _____
Property Address: _____ Date of Loss: _____
City/State/Zip: _____

1. Irrevocable Post-Loss Assignment of Policyholders' Rights Against Insurance Company To Contractor: By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay ("Assignment"), the policyholder(s) identified above ("Policyholders") completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders' legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the "Assigned Rights"). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders' rights as a first-party insured under the Policyholders' policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer's investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.

2. Exclusions: Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor's scope of work, such as additional living expenses, the value of lost personal property, or services performed after Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. No Conditions: The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.

4. Cooperation: The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.

5. Direction to Pay: The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.

6. Security and Consideration: This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

7. No Release: The Policyholders remain primarily and ultimately responsible for payment for services rendered by Contractor. This Assignment does not relieve the Policyholders from the duty to compensate Contractor for any amount due to Contractor that is not paid by insurance, including the cost of the work, deductibles, betterments, depreciation and other amounts not paid by insurance, all of which are ultimately the Policyholders' responsibility.

"Policyholder #1" (I read this Assignment and understand it.)

"Policyholder #2" (I read this Assignment and understand it.)

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Signature. Check one: ☐ Policyholder; ☐ Policyholder's Agent

Print Name and Title

Print Name and Title

Print Name of Contractor Representative

Contractor Representative's Signature

[Wyoming Contractor Letterhead, Address,
Email Address, Phone Number & License Number]

[Date]

**VIA ELECTRONIC MAIL TO (EMAIL ADDRESS)
AND PRIORITY MAIL WITH TRACKING**

[Adjuster Name]

[Insurance Company Name]

[Street Address]

[City, State, Zip]

Re: Date of Loss:

Claim No.:

Insured:

Property

Address:

Subject:

**REQUEST FOR INSURANCE INFORMATION
AND NOTICE OF POST-LOSS ASSIGNMENT OF
INSURANCE RIGHTS**

Dear [Adjuster Name],

Please take notice that [Contractor name] was engaged to perform work at your insured's property on [contract date] to address the damage sustained in the above-referenced loss. Our scope of work is described in the enclosed contract.

Enclosed, please find an Insurance Information Release and Authorization executed by the policyholder. It includes a waiver of the policyholder's right to privacy as to the portion of the claim that relates to our scope of work and irrevocably directs you to release the following documents and information to us. Therefore, please immediately confirm in writing that you will:

- (1) A complete certified copy of the policy packet (including declarations, policy provisions, and endorsements);
- (2) All information and documentation regarding this property damage claim, including status reports, letters, emails, estimates, competitive bids, and correspondence from consultants and independent adjusters engaged by the insurance company; and
- (3) "CC:" us on all such future correspondence for the duration of the claim.

Transmit all documents by email to [address #1] and cc: [address #2, for redundancy].

After the loss occurred, the insured (“Policyholder”) irrevocably transferred and assigned to us all rights and policy benefits for claims for the damage we were hired to address, pursuant to the enclosed, fully-executed and enforceable post-loss Assignment of Insurance Rights and Direction to Pay (“Assignment”). Also enclosed is a copy of the Contract executed by your insured, and an irrevocable Information Release and Authorization.

In pertinent part, the Assignment states:

1. **Irrevocable Post-Loss Assignment of Policyholders’ Rights Against Insurance Company To Contractor:** By execution of this irrevocable Post-Loss Assignment of Insurance Rights and Direction of Pay (“Assignment”), the policyholder(s) identified above (“Policyholders”) completely, irrevocably, and fully assign and transfer to the Contractor named above all of the Policyholders’ legal and equitable rights, title, and interest under all insurance policies arising from claims for the damage Contractor was hired to address (collectively referred to as the “Assigned Rights”). The Assigned Rights include without limitation the rights to collect insurance policy benefits and proceeds, and the right but not the obligation to participate in appraisal of the loss or the portion of the loss in which Contractor is involved. The Assigned Rights include without limitation the Policyholders’ rights as a first-party insured under the Policyholders’ policy of insurance, the right to sue the insurance company to enforce the Assigned Rights, and to prosecute any applicable causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing (insurance bad faith), fraud, and negligence. This Assignment shall be liberally construed to the fullest extent permitted by law and so that Contractor is deemed to stand in a first party position as to the policies. The Policyholders shall remain obligated with respect to all duties and liabilities under the terms of the insurance policies, including the duty to properly document all claims and cooperate with the insurer’s investigation. Contractor owes none of those duties. This Assignment may only be revoked by written notice to the Contractor after the contract is terminated in writing, but is permanently irrevocable as to work performed before the contract is terminated.
2. **Exclusions:** Nothing in this Assignment shall be construed as an assignment of other parts of the insurance claim that are unrelated to Contractor’s scope of work, such as additional living expenses, the value of lost personal property, or services performed after

Contractor's services are terminated. Nothing in this Assignment shall be construed as a delegation of duties.

3. **No Conditions:** The Policyholders agree and understand that this Assignment and each of its component parts are irrevocable. The Policyholders expressly acknowledge that it is the Policyholders' intent to assign the Policyholders' insurance policy rights and benefits under the claims to the Contractor as explained above. The Policyholders agree and understand that this irrevocable Assignment is unconditional and effective immediately upon execution of this document, and that no further action needs to be taken to make it valid, enforceable, or binding upon the Policyholders and the Policyholders' insurance company.
4. **Cooperation:** The Policyholders shall cooperate fully with Contractor's efforts to enforce the Assigned rights, and to collect policy benefits. Policyholders agree to execute any and all documents presented by Contractor to the Policyholders, which are reasonably required for the prosecution of Contractor's claims against the Policyholders' insurance company and/or its agents with respect to the Assigned Rights.
5. **Direction to Pay:** The Policyholders hereby authorize and instruct all insurance carriers who may be liable to the Policyholders for this loss in whole or in part to pay directly to Contractor the amounts due or to become due in connection with the work Contractor has been authorized to perform, and to deliver said payments directly and exclusively to Contractor within fifteen (15) calendar days of the invoice. In the event an insurer fails to name Contractor on any check for the Work, the Policyholders shall immediately notify Contractor in writing, and return the check to the insurer with a written request to the insurer to issue a replacement check payable to Contractor.
6. **Security and Consideration:** This Assignment is given to Contractor as security and is made in consideration for Contractor's agreement to perform services without immediate full payment from the Policyholders upon completion of services. The Policyholders acknowledge the sufficiency of this consideration.

[**Contractor name**] hereby tenders the insured's assignment of the Assigned Rights, which we received as security.

As assignee of the policy benefits, we step into the shoes of the insured and hold legal title to all rights for policy benefits paid pursuant to the Assigned Rights. Since this is a post-loss assignment, it is valid and enforceable. Therefore, all insurers with applicable coverage are bound by the Assignment, and **we now stand in a first party position** as to this portion of the claim.

It is important to emphasize that this is not an assignment of the entire policy; it is merely a ***post-loss assignment*** of rights and benefits arising from a specific loss. The anti-assignment provision in the policy only applies to pre-loss assignments of the policy.

An assignment "is a contractual undertaking by one party of the rights and obligations of another, such that the second steps into the shoes of the first." [*Prancing Antelope I, LLC v. Saratoga Inn Overlook Homeowners Ass'n*, 2021 WY 3, P37 \(Wyo. 2021\)](#). As long as the intention to transfer the claim is clear, the assignment is effective. [*Winship v. Gem City Bone & Joint, P.C.*, 2008 WY 68, P21 \(Wyo. 2008\)](#).

After a notice of an assignment has been given to the obligor, the assignor has no remaining power of release. Thus, if a notice of the assignment has been given to the obligor, he or she must pay the assignee, and remains liable to the assignee if he or she pays the assignor instead. Similarly, when there is a valid assignment in place, performance under a contract runs to the assignee. Thus, when a creditor assigns its interest in an existing debt owed to it, the debtor must generally pay the debt to the assignee, not the original creditor. [*Winship v. Gem City Bone & Joint, P.C.*, 2008 WY 68, P21 \(Wyo. 2008\)](#).

Please do not issue payment under the Assigned Rights directly to the Policyholder. Doing so will not result in a credit toward the balance owed to us. Directly paying the Policyholder for the assigned portion of the claim will not discharge your obligations under the policy and may require double-payment.

If you have any questions, please do not hesitate to call. We thank you in advance for the documents and information listed on the first page of this letter. We look forward to working cooperatively with you for a smooth and expeditious resolution of this claim. Thank you.

Very truly yours,
[CONTRACTOR NAME]

[Contractor representative name]

Encl.

[Don't forget to enclose the Contract, the Request for Information, and the Assignment!]

Chapter 69

Final Thoughts

I see underpayment of restoration invoices as the biggest risk facing the industry, and my goal is to empower restorers with facts, law, and strategy to enable their businesses to flourish. Hopefully this book has convinced you that assignments can be a powerful tool, but it is only one small piece of a larger collections strategy. In [*The Book on Restoration Collections*](#), I lay out my collections strategy in 10 simple steps.

Again, if you are not already a member of the Restoration Industry Association, now is the time to become a member, and to join the movement being led by its Advocacy & Government Affairs (AGA) Committee. Visit RestorationIndustry.org to learn more.

I would be grateful for your candid assessment of this book, and for subjects for future books. Please email me at EdCross@EdCross.com and let me know how I can help.

Thank you for the honor of representing the great people in the property damage restoration industry.

With sincere gratitude,

A handwritten signature in blue ink, appearing to read 'Ed Cross', with a stylized flourish at the end.

Ed



ED CROSS

THE RESTORATION LAWYER

THE DEFINITIVE GUIDE TO THE RESTORER'S MOST POWERFUL COLLECTION DEVICE

"The Restoration Lawyer," Ed Cross, has been collecting money for restorers across the United States since 1997, representing everything from small sole proprietorships to the biggest corporate names in the restoration industry. He has recovered many tens of millions of dollars for restoration services, often without the need for litigation.

There is no greater way to empower a restorer to recover fair market value for restoration service than with a properly-drafted Assignment of Insurance Rights. Assignments allow restorers to cause insurance companies to pay a reasonable price for restoration service, and to pay a second time if the insurer sends the restorer's money to the policyholder.

Learn how to:

- Get EMPOWERED with an Assignment of Insurance Rights
- Present an assignment to the policyholder
- Present an assignment to the insurance company
- Overcome the use of standardized prices as global prices
- Enforce the right to fair market value for services rendered
- Cause the carrier to pay twice if it releases funds to the insured
- Receive the right to appraisal and legal action against the carrier
- Prosecute claims directly against the insurance company

The book includes:

- Super-charged "Assignment of Insurance Rights" (50 states + D.C.)
- Customizable "Notice of Assignment" form letters to send to carriers
- Detailed instructions on presenting and prosecuting assignments
- Script to overcome insurance company objections

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