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A Flood of Calls Regarding Flood Damage

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With the record breaking rainfall this past spring, our firm received numerous inquiries regarding storm water damage. In fact, we, too, were victim to the terrible rainfall; the basement of our historic building had water pouring in through the foundation for days! Like most residential and commercial property owners, our insurance likely will not provide coverage.

Most homeowner and commercial policies state the insurance company shall not be responsible for any damages arising from flood, surface water, waves, overflow of body of water, backup of sewer or drain, underground water flowing or seeping through building, side walk, foundation, swimming pool or other structures. However, some policies will allow coverage if the sump pump system breaks or is defective. If it doesn't, the policy would also provide that water damage from a sump pump or related equipment may be excluded. If your property has a sump pump, check your policy to find out whether water damage caused from a defective sump pump or sump system is covered.

Flood insurance is available and required with respect to certain properties. In 1973, the federal government enacted the Flood Disaster Protection Act which requires mandatory purchase of flood insurance for properties located in certain flood zones. Because flood insurance through private insurers can be very expensive, congress created the National Flood Insurance Program to help. This program allows property owners to buy the insurance from the federal government at a more reasonable cost. Flood insurance is required and must be maintained during the life of a federally secured loan when the property is located within a flood plain area. Many people attempt to dispute the location of property and/or seek changes to the flood plain map in order to avoid having to pay for this more expensive flood insurance. Regardless, if your property falls within designated flood plains (as identified in municipal flood maps), flood insurance must be purchased.

We've also received calls regarding damage caused by sewer backup. These claims regarding sewage backup damage have been a source of municipal litigation for years. Most municipalities defended such claims under the area of "governmental immunity" which means the government is immune from liability for certain acts of negligence. In 2006, the Michigan legislature created an exception to the government immunity for damages resulting from sewage backup damage stating "the property owner has limited relief should property owners suffer damage as a result of a sewage disposal system event." In order to recover from such an "event", the property owner must show that a governmental agency knew of defective conditions, failed to take reasonable steps in a reasonable amount of time to remedy the defect, and the defect caused damage to the property owner's real and/or personal property. If unable to prove these elements, the governmental agency is immune from liability and successful recovery is unlikely.