

**Florida
Insurance
Roundup**



From Lisa Miller & Associates

Excerpted 'Direction to Pay' and 'Letter of Protection'

Here is a portion of the language regarding the **Direction to Pay** agreement, including holding the proceeds in trust:

Proceeds Held in Trust. Owner understands and agrees that any and all payments of insurance proceeds or other such sums to Owner for or on account of the Services provided herein shall be held in trust by Owner for the sole use and exclusive benefit of the Contractor until all sums due Contractor have been paid in full. Owner understands and agrees that Owner shall act as a fiduciary with respect to all such sums received by Owner and shall be liable to Contractor for any misuse or loss of such funds prior to Contractor's receipt of all amounts due to Contractor. In the event a legal proceeding is commenced to enforce Contractor's rights hereunder, Contractor shall be entitled to recover Contractor's costs and other expenses, including but not limited to attorneys' fees, incurred during or as a result of the legal proceeding. Irrespective of any Assignment of Benefits or Direction to Pay, the Owner is still responsible for full payment in compliance with the payment terms outlined herein.

Permission, Direction to Pay, and Assignment: If an insurance claim has been filed, Owner hereby authorizes and directs insurance company, adjusters, mortgage company/lenders, and all agents/underwriters and third party insurance companies to issue payment solely and directly to (Contractor's Name) such sums as may be due and owing for services performed by Contractor and to include Contractor as the sole payee on the check. Failure to list Contractor on any check issued for the Claim or loss is a violation of this Agreement and may subject the Owner's Insurance Company and/or Owner to litigation. Payment is due to Contractor upon issuance of a coverage determination and/or upon initial payment of the Claim by the Owner's Insurance Company, and/or upon payment of any additional supplements and/or additional payments in accordance to Paragraph 8 of this Agreement. Owner agrees and understands that Owner is obligated to cooperate with insurance company in processing the claim for benefits. Owner acknowledges that it/he/she shall cooperate and comply with their insurance company pursuant to the terms and conditions of the subject insurance policy. This includes, but is not limited to, immediately notifying the insurance company of the loss, making the property accessible, providing documentation requested, or submitting to an Examination Under Oath. Owner also agrees to cooperate with Contractor to obtain payment when the payments are not made directly to Contractor, endorse any and all checks, and notify Contractor within five (5) business days of receipt of payment. If payment from the Insurance Company is not made to Contractor, Owner agrees cooperate with Contractor in either having the claim payment re-issued in accordance with this Direction of Payment, and/or issue a check to Contractor for said payment amount. Owner agrees that it shall be liable to Contractor for any portion of insurance proceeds withheld by Insurance Company and/or mortgage company and/or lienholder due to actions of the Owner. Owner understands and agrees it/he/she is responsible for complete payment to Contractor for all services rendered and materials supplied.

Authorization & Consent to Release: Owner hereby authorizes it/his/her insurance company, adjusters, mortgage company/lenders, and all agents/underwriters that are involved with Owner's claim to speak

directly with Contractor regarding the status/payments/disbursement of funds related to the Claim, loss and this project.

Here is a sample **Letter of Protection** agreement:

Letter of Protection for Construction Services

Client/Property Owner ("Owner"): _____

Construction Services Contractor ("Contractor"): _____

Property Address: _____

Date of Loss: _____

Claim No. : _____

Insurance Company: _____

Necessity for this Letter of Protection:

This Letter of Protection is used when our Owner does not have the financial resources available to pay the upfront costs, payments, and/or retainer fee associated with the construction services necessary to return the Owner's property to its pre-loss condition. The term "construction services," as used in the previous sentence, includes but is not limited to: tear down, demolition, construction, repairing, replacing, rebuilding, refurbishing, finishing, mitigating, remediating, designing, painting, plumbing, moving, electrical work, storage, pack-out, tarping, cleaning, permitting, and any other cost or labor expense associated with returning the Owner's property to its pre-loss condition.

Protection of Outstanding Charges:

This Letter or Protection serves as a lien on any monetary proceeds, including but not limited to insurance proceeds related to the above-referenced claim. In consideration for Contractor's agreement to forego the fees and payment for services normally required to hire Contractor to perform the necessary construction services at Owner's Property, Owner agrees to use any monetary recovery made from any party, including its/his/her insurance company, whether it is through court judgment, post-suit settlement, and/or or pre-suit settlement, to pay Contractor, in full, for all construction services rendered and/or to be rendered by Contractor at the Property. Owner understands that if there is no monetary recovery made by Owner, then Owner shall be fully responsible to pay, in full, for any construction services rendered by Contractor, in accordance with the terms and conditions of the Agreement, attached hereto as Exhibit A.

Owner:

Signature: _____

Date: _____

Print: _____

Contractor:

Signature: _____

Date: _____

Print: _____