



The Reservation of Rights Letter

The purpose of this procedure is to help claims adjusters mandated by an insurer who believe that a problem might arise with respect to insurance coverage. The procedure enables adjusters to inform the insured of the potential problem in a manner consistent with the adjuster's legal and ethical obligations. It recommends that a **Reservation of Rights Letter** be given to the insured to ensure that the insured is aware of the insurer's intentions.

The Reservation of Rights Letter is a letter by which the insurer, through his mandatary, the claims adjuster, notifies the insured (or a third party) that a more in-depth investigation into the circumstances of the loss is required, and that the insurer reserves the right to claim restrictions to, or exclusions from, the policy in order to refuse indemnification.

In the absence of such a letter, the insurer could be held liable to compensate the insured or the third party. As a result of the insurer's conduct or even its silence, it would be deemed to have waived its right to invoke an exclusion.

The Reservation of Rights Letter Procedure stems from the obligations provided for under sections 16, 19, 21 and 31 of the *Code of Ethics of claims adjusters*. This procedure is also intended to ensure compliance with articles 2139 and 2470 of the *Civil Code of Québec*. These sections and articles may be found at the end of this procedure.

DIFFERENCE BETWEEN THE RESERVATION OF RIGHTS LETTER AND THE NON-WAIVER AGREEMENT

The **Non-Waiver Agreement** is a document that resembles the Reservation of Rights Letter, and is used under the same circumstances; however, the purpose of the non-waiver agreement is to protect the insurer's interests by having the insured (or claimant) acknowledge that:

- he has been notified of a potential problem related to the admissibility of his insurance claim;
- he recognizes the insurer's right to continue investigating and understands that the extra time required does not mean that the insurer has agreed to the admissibility of the loss;
- he recognizes the insurer's right to potentially refuse compensation or even demand reimbursement of costs incurred up to that point.

The word **AGREEMENT** implies that a party recognizes the right of another party to do or not do something. On the other hand, a **LETTER** is a method of communicating information, a position, or a fact, without asking the other party to consent to or forfeit a right.

The insured is not obliged to sign the non-waiver agreement. If he refuses to sign it, he should be sent a reservation of rights letter. If this is the case, the claims adjuster must comply with his obligations with respect to the use of this letter (see the section entitled "THE CLAIMS ADJUSTER MUST" on the following page).



Please note: only claims adjusters are allowed to have someone sign a non-waiver agreement.¹ Those supplying services in the wake of a loss may not do so, nor are such suppliers allowed to give a reservation of rights letter.

CIRCUMSTANCES UNDER WHICH A RESERVATION OF RIGHTS LETTER IS USED

It is recommended, for example, if:

- the claims adjuster has doubts concerning the cause of the loss and further investigation is required;
- the claims adjuster has doubts concerning statements made by the insured or the claimant;
- the insured has delayed notifying the insurer of the loss;
- an aggravation of the risk has not been declared;
- the policy potentially excludes or limit the loss.

A **Reservation of Rights Letter** is not always appropriate. It is therefore not advisable to systematically prepare one, in order to present it during the first visit “just in case”.

Remember - the Reservation of Rights Letter:

- should not be used systematically for all claims;
- is not recommended if a policy exclusion clearly applies;
- should not be given upon first contact with the insured.

THE CLAIMS ADJUSTER MUST

1. Explain

- that his role is to investigate the loss on behalf of the insurer, and manage the claim;
- the possibility that the loss might not be admissible;
- the need for a more in-depth investigation;
- the estimated time required to carry out the investigation (and any changes or extensions to that estimate).

2. Communicate

- give a copy of the **Reservation of Rights Letter** to the insured or the interested party;
- obtain proof of delivery or transmission of the **Reservation of Rights Letter** (send by e-mail, registered mail or request an acknowledgement of receipt from the insured). It should be noted that proof of delivery does not signify agreement with the contents of the **Reservation of Rights Letter**.

¹ Guide to the Sharing of Roles and Responsibilities of the Chambre de l'assurance de dommages.



VERBAL OR IN WRITING?

The contents of the reservation of rights letter may be given verbally. However, if it is done verbally, the claims adjuster must not forget to scrupulously note in the record all the information given to the insured or the third party, in particular the date and the details of the initial conversation regarding the possibility that the insurer will want to reserve its rights. **A written document enables the claims adjuster to show proof** of communication with the insured, and facilitates record keeping. This best practice could also prove useful should the case come under review or dispute.

3. Follow-up

The claims adjuster's duty to inform continues beyond sending or giving the **Reservation of Rights Letter**. For example, the claims adjuster must keep the insured (or claimant) aware of developments in the investigation and/or the additional time needed to make the decision, and he must follow-up diligently and proactively.

The claims adjuster must remember to scrupulously note in the record all information provided and all follow-up regarding the insurer's reservation of rights.

IMPORTANT REMINDER

- The **Reservation of Rights Letter** must indicate the insurer's name, the policy number, and the event/loss in question.
- Without having to provide detailed reasons, the **Letter** must be specific enough to ensure that the insured or the third party clearly understands the situation, and in particular, that compensation might not be paid for the loss.
- The insured must also be informed of the potential consequences of the **Reservation of Rights Letter**: for example, he could have to reimburse sums already paid by the insurer.

The ChAD has created a model **Reservation of Rights Letter**, which is available at chad.ca.

LEGISLATIVE SOURCES

The **Reservation of Rights** procedure stems from the obligations provided for under sections 16, 19, 21 and 31 of the *Code of Ethics of claims adjusters*, as follows:

16. *No claims adjuster may, in any manner whatsoever, make any representations that are false, misleading or likely to be misleading.*



19. *Claims adjusters must notify the parties involved, as well as any person that they know has an interest in the compensation requested, of any refusals or any measures that the insurer intends to take regarding a claim.*
21. *Claims adjusters must provide the insured with the explanations necessary for them to understand the settlement of the claim and services rendered to them.*
31. *Claims adjusters must notify the client promptly of any information in their possession that could affect decisions regarding the settlement of a claim or reduce or compromise an entitlement to compensation, such as breaches of contract, fraud, misrepresentations and the forging of evidence.*

This procedure is also intended to ensure compliance with articles 2139 and 2470 of the *Civil Code of Québec*:

2139. *During the mandate, the mandatary is bound to inform the mandator, at his request or where circumstances warrant it, of the stage reached in the performance of the mandate.*

The mandatary shall inform the mandator without delay that he has fulfilled his mandate.

2470. *The insured shall notify the insurer of any loss which may give rise to an indemnity, as soon as he becomes aware of it. Any interested person may give such notice.*

An insurer who has not been so notified may, where he sustains injury therefrom, set up against the insured any clause of the policy providing for forfeiture of the right to indemnify in such a case.