CONTENTS

About the Author .......................................................... ix

CHAPTER 1
What Is Insurance? ..................................................... 1
What Is a Contract? ..................................................... 1
Insurable Interest Must Exist to Acquire Insurance ...................... 1
How Does a Person Obtain an Offer of Insurance? .................... 4
The Use of an Insurance Agent ......................................... 7
The Offers Made by the Proposal ....................................... 9
Important Claims Information ......................................... 10
The Use of an Insurance Broker ....................................... 11
The Use of Insurers Admitted to Do Business in the Location
  Where the Property Is Located ................................... 11
The Premium Finance Agreement ..................................... 15
Determining the Amount of Insurance to Acquire ..................... 18
What Is Actual Cash Value? .......................................... 18
What Is Replacement Cost Value? .................................... 24
What Is a Guaranteed Replacement Cost Provision? .................. 25
What Is a Valued Policy? ............................................ 28
What Is an Open Policy? ............................................ 30

CHAPTER 2
The Rules of Construction of a Policy of Commercial
  Property Insurance .................................................. 33

CHAPTER 3
The Commercial First Party Property Insurance Policy ............. 41
How Can a Lay Person Read an Insurance Policy? .................... 41
The Formation of the Insurance Contract ............................ 42
CHAPTER 4
The Different Types of Property Losses .......................... 63
Defining “Risk” and “Cause” ........................................ 63

CHAPTER 5
Conditions and Limitations ........................................ 75
Coinsurance or Average Clauses .................................... 75
How Coinsurance Is Calculated .................................... 76
Commercial Property ............................................. 77
Waiver of Inventory ............................................... 78
Reporting Endorsements .......................................... 78
Deductibles ....................................................... 80
Self-Insured Retentions .......................................... 80

CHAPTER 6
Specific and Blanket Coverages ................................. 83
Specific Coverage .................................................. 83
Blanket Coverage .................................................. 84

CHAPTER 7
Mortgage Clauses .................................................. 87
The Standard Mortgage Clause ................................... 87
The Loss Payable Clause ......................................... 88
The Insuring Agreement ........................................... 90
Unnamed Mortgagees ............................................. 91
Effects of the Mortgagor’s Conduct on the Rights of the Mortgagee ................................. 91
Limitations on Mortgagee’s Recovery .............................. 93
The Simple Loss Payable Clause ................................... 94

CHAPTER 8
The Need for a Prompt Notice of Claim ....................... 97
The Notice-Prejudice Rule ........................................... 97
How to Avoid the Late Notice Situation ......................... 102

CHAPTER 9
The Commercial Property Claim .............................. 103
What Is an Insurance Adjuster? ................................... 103
The Duties and Obligations of the Property Adjuster .......... 105
How the Adjuster Analyzes the Policy Wordings ............. 106
The First Meeting with the Adjuster ............................. 108
The Proof of Loss ................................................... 109
Dealing with the Public Insurance Adjuster .................. 114
Regulation of Public Adjusters .................................. 118
Contents

Obtain Relevant Documents ........................................ 124
Claims Inventories or Other Documents ............................. 125
Establish the Amount of the Loss and Claim ....................... 126

CHAPTER 10
Adjusting the Commercial Property Loss ......................... 131
Investigation of a Claim ............................................ 132
The Examination under Oath: A Tool Available to Insurers
  to Thoroughly Investigate Claims ............................... 133

CHAPTER 11
The Sworn Statement in Proof of Loss ............................. 145
The Proof of Loss When Insured and Insurer Cannot Agree ......... 147
The Danger of a False Statement in a Proof of Loss ............... 148

CHAPTER 12
The Adjustment of the Commercial Property Loss ................. 151
The Commercial Property Loss ...................................... 152
Working with Public Adjusters ...................................... 152
Establish a Complete Scope of Loss ................................ 154
Calculate Actual Cash Value ...................................... 154
Prepare a Statement of Loss ....................................... 154
Obtain Detailed, Itemized Estimates from Contractors .......... 155
Perform Arithmetic Calculations with Care ........................ 155
Only the Insured Can Authorize Repairs .......................... 155
Properly Interpret Coverage ....................................... 156
Apply the Deductible .............................................. 156
Apply the Average Clause or Coinsurance Clause ................. 156
Leased Property .................................................. 157
Previous Unrepaired Damage ..................................... 157
Secure Salvage .................................................... 157
Subrogation ...................................................... 158
Complete a Thorough Investigation ................................. 158
Exercise Claims Judgment ......................................... 158
Clarify the Final Details of the Loss ............................... 159
Negotiating Settlement ............................................. 159

CHAPTER 13
Subrogation and Salvage ............................................ 161
Cases with Subrogation Potential ................................... 161
The Fire Case as a Basis for Subrogation ......................... 161
Leases as a Basis for Subrogation .................................. 162
Statutory Rights ................................................... 165
Retaining an Attorney ............................................. 166
Standing in Subrogation Actions .................................... 168
Waiver of Subrogation ............................................. 168
Salvage .......................................................... 170
Equitable Salvage ................................................. 171
Priority of Rights to Salvage ........................................ 172

CHAPTER 14
Common Law Bad Faith ............................................. 175
Punitive Damages Test. ............................................. 182
Reasonableness of Conduct. ........................................ 183

APPENDIX A
A Form of Proof of Loss ............................................. 187

APPENDIX B
Nonwaiver Agreements ............................................. 191

APPENDIX C
Form Letter: Advising of Right to Appraisal .................... 195

APPENDIX D
California Actual Cash Value Statute ............................ 197

APPENDIX E
Subrogation and Salvage Agreement: Contents ................ 199

Table of Cases .................................................... 201
Index .......................................................... 209

The forms in the Appendixes may be found as downloadable PDFs at ambar.org/CommPropInsForms