

WHAT IS A SINKHOLE?

A sinkhole is a natural depression in the Earth's surface that starts with a hole in the rock below the surface. These holes are commonly known as voids, solution cavities, or caves. It can take hundreds or thousands of years to form these voids. The sinkhole occurs when soil, rock, and other material between the surface and the void falls into the void. As more material falls into the void and the surface can no longer support itself, it collapses forming the sinkhole.

HOW WATER CAUSES THE VOIDS.

Water dissolves rock in the ground leaving the voids. The voids can increase in size due to changing groundwater gradients caused by the introduction or removal of water to the hydrologic system. These hydrologic variations can occur due to seasonal changes in the groundwater table, freeze and thaw of the ground, extremes in precipitation (drought vs. heavy rain), and groundwater pumping for water supply and irrigation. The changes to the system can cause the surface to become unstable and lead to a sinkhole. Although this process develops naturally, human influences cause sinkholes to occur where they might not naturally have happened. Additionally, human influences may cause sinkholes to occur more abruptly causing significantly more damage than under natural conditions.



SINKHOLES

Field Adjuster's Handbook Preparing The Subrogation Case



COZEN O'CONNOR'S SINKHOLE TASK FORCE

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FIELD ADJUSTER'S CHECKLIST:

What to do if you have a loss involving a Sinkhole.

TYPICAL ACTIVITIES THAT LEAD TO SINKHOLES.

Sinkholes have been correlated to land-use practices, especially from ground-water pumping and from construction and development practices. Sinkholes can also form when natural water-drainage patterns are changed and new water-diversion systems are developed. Some sinkholes form when the land surface is changed, such as when industrial and runoff-storage ponds are created or when substantial weight of new construction is added to the land. The following are examples of activities that lead to sinkholes.

- Decline of water levels - excessive groundwater pumping (wells, quarries, mines)
- Increase of water levels - leaking water/sewer pipes, injection of water
- Disturbance of the soil - digging through soil layers, soil removal, drilling
- Concentration of water flow - stormwater drains, swales, etc.
- Water impoundments – construction of basins, ponds, dams
- Vibration - traffic, blasting
- Change of loads on the surface - structures, equipment



Sometimes several factors combine to cause a sinkhole. Additionally, a sinkhole left open may continue to grow and can contribute to the appearance of more sinkholes nearby.

SINKHOLES AND SUBROGATION.

For subrogation purposes, property damage caused by sinkholes may allow for a variety of claims. In pursuing a sinkhole subrogation claim, one should consider the following: (1) whether the entity had a duty under the relevant code requirements and industry standards to foresee the possibility of a sinkhole occurring; (2) whether the entity breached the duty; (3) whether the entity's acts or omissions caused or contributed to the sinkhole; and (4) what are the damages caused by the entity's acts or omissions.

ADJUSTER'S CHECKLIST:

What to do if you have a loss involving a Sinkhole:

Notify Cozen O'Connor to handle these tasks for you or take the following steps:

1. During your initial inspection and every subsequent inspection, make notes of the history of the property and surrounding area. Identify when problems associated with the property started. Take recorded statements of all those individuals who have information about the history of the property and surrounding area.
2. Photo document all evidence of the sinkhole and the damages it caused.
3. Obtain copies of all information and documentation regarding the damaged property, including purchase contracts, contact information and marketing materials for the builders, contractors, realtors, and property inspectors who were involved with the construction and sale of the property.
4. For all sinkhole claims, a geotechnical engineer or geologist will be required to determine whether a sinkhole actually exists. It is important that all carriers comply with Statutory requirements for confirming the existence of a sinkhole.
5. For all sinkhole claims, a structural/civil engineer will be required to determine the extent of the damage to the structure caused by the sinkhole.
6. Depending upon what caused the sinkhole, an expert will be required to identify whether the individual or entity that caused or contributed to the sinkhole had a duty by code or industry standard to identify the hazard and prevent it from occurring.
7. Preserve the scene to give potentially responsible parties ("PRPs") an opportunity to inspect. Generally, the PRPs involved with sinkhole claims include the developer of the property and surrounding area, general contractor, subcontractors, design professionals, engineers, and property inspectors. Other parties can include any individual or entity that may have affected the land where the sinkhole occurred.

8. Place the PRPs on notice of the loss. If the state where the loss occurred has enacted a construction defect notice statute, it is important to comply with the statute if the sinkhole was due to construction. Failing to comply with the statute can negatively affect the claims and litigation process.
9. Set-up a joint inspection of the loss location with your experts and the PRPs' experts. Coordinate all inspection activities with the PRPs so everyone is inspecting the same area and property at the same time. This will prevent spoliation issues as well as keep the inspection process moving forward in an efficient manner.
10. Obtain from the PRPs a written list of evidence they want preserved, if any. A written list prevents the PRPs from later claiming spoliation because of a failure to preserve critical evidence. It is within your rights to ask for contribution for storage costs if any of the PRPs' requests are excessive or unreasonable.
11. Preserve critical evidence requested by your experts as well as the PRPs' experts. Preserve and document not only the evidence you will need to prove your case, but any evidence that eliminates other potential causes of the damages.
12. After conducting a joint scene examination with all the PRPs and preserving the necessary evidence, advise all PRPs that the property will be released for repair and renovation and that it will no longer be available for inspection.
13. Schedule a joint laboratory examination of the retained evidence with the PRPs if necessary. Ask the PRPs to submit suggested protocols. Your expert can then incorporate the suggested protocols into a final protocol to ensure the laboratory examination meets everyone's needs and is conducted in an efficient manner.
14. Identify potentially applicable time bars, including statute of limitations and repose. Also, consider the potential applicability of legal defenses, such as the economic loss rule and contractual suit limitations.

Should you have questions about the process and procedures mentioned in this pamphlet or would like assistance, contact Cozen O'Connor's Sinkhole Task Force.