

## Insurance Bad Faith in California

California law requires your insurance company to investigate, process, and pay your claim fully, promptly and in **good faith** and **deal fairly with you** at all times. CA Ins. Code 790.03, 10 Cal Code of Regs 2695.9. “Bad faith” conduct is “unreasonable” conduct. When you’ve suffered a loss, and an insurance company is being unreasonable in handling the claim you filed for compensation for that loss, they are acting in “bad faith.” The questions for most people who’ve been victimized by bad faith are: What harm did the insurer’s unreasonable conduct cause and is it practical to pursue a lawsuit to remedy the conduct.

California has more laws to protect insurance policyholders than any other state in the country. These laws tell insurers what they must, can and cannot do. These laws are found in court decisions (“case law”), the California Insurance Code and the California Code of Regulations.

There are many laws that tell companies and their representatives how they must behave when insured property is damaged and a policyholder files a claim. Although insurance companies are required to know and abide by these laws, some companies and adjusters routinely ignore or violate these laws when handling claims. It is often up to you – the consumer – to remind them of your rights and insist they meet their obligations to investigate and pay your claim fairly, fully and timely.

If you arm yourself with basic knowledge about the laws that protect you and have a good paper trail on the history of how your claim has been handled, you can speed up your settlement and improve your odds of getting paid what you’re owed. If your efforts to get your insurer to be reasonable are not successful, and you find a qualified attorney to prosecute a lawsuit on your behalf, that lawsuit can state that the insurer breached the covenant of good faith and fair dealing and owes you compensation

At the end of these tips, we tell you how to get free copies of the laws that protect homeowners in California. Your insurer was supposed to give them to you 15 days or less after you filed your claim. (CA. Ins. Code sec. 790.034 (b)) Just in case they didn’t, here’s a review of the ones that may help you settle and get back home. *There are many more laws than the ones we list here:*

For specifics on claim rules, deadlines and what you're owed, you'll want to know about California's Fair Claim Handling Regulations. They spell out:

- Deadlines for responding to letters and phone calls
- Deadlines for your insurer to pay or deny
- Deadlines for submitting paperwork to prove your loss
- What information your insurance company must give you
- What information you must give your insurance company

### **“GOOD FAITH”**

You are legally entitled to be treated in “good faith” by your insurance company and its representatives at all times. This means your insurer must be considerate of your needs. It must communicate fully and honestly with you about the policy it sold you and about rights and duties relating to your claim. In turn, you are legally obligated to be honest and to cooperate with reasonable requests for information relevant to your claim. Cal. Insurance Code sec. 790.03 (h) is the main place to read these requirements. They're also included in portions of Cal. Insurance Code sec. 2071.

All representatives of your insurance company are **legally required** to tell you the truth. This includes in-person conversations and all communication by phone, letters, emails and all advertising and printed materials. This means they must be honest about what they sell you, what you've paid for, and what you're entitled to if you file a claim. An insurer “shall not cause to be issued, circulated or used, any statement that is known, or should be known, to be a misrepresentation” of the benefits or privileges of the policy or future dividends payable under the policy. [Cal Ins Code 780] No insurer shall misrepresent to a “claimant pertinent facts or insurance policy provisions relating to any coverages at issue”. [Cal Ins Code 790.03(h)(1)]

No insurer shall discriminate in its claim settlement practices because of a claimant's age, race, gender, income, religion, language, sexual orientation, ancestry, national origin, physical disability, or upon the territory of the property or person insured. [Cal Code of Regs 2695.7]

You are entitled to a “good faith” settlement. Every insurer must attempt “in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear”. [Cal Ins Code 790.03 (h)(5)] An insurer cannot make an “unreasonably low” offer, that is, attempting to settle a claim “for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of the application”. [Cal Ins Code 790.03]

Your insurer must conduct a reasonable investigation on its own **and** consider all evidence you have submitted (such as your inventory lists, photographs, blueprints, independent scopes of loss, repair estimates, and appraisals on antiques, art or jewelry) in making the settlement offer. [Cal Code of Regulations 2695.7 and 2695.9] Depreciation/Actual Cash Value holdbacks must be reasonable and not excessive.

## **PROMPT, HONEST & COMPLETE COMMUNICATIONS**

You are entitled to prompt, timely communications from your insurer. The company (and all its representatives) must respond to your communications “immediately, but in no event more than 15 calendar days” with “a complete response based on the facts then known.” Any question you ask, and any request you make must be responded to by the insurer within 15 calendar days.

You should get in the habit of sending your insurer letters or emails, so there is a record of who said what and when. That doesn’t mean you should stop talking to your adjuster, but if you discuss something important on the phone, immediately follow up with an email confirming the conversation. If you request copies of your current policy and policy history, including previous policies, policy upgrades, notices of changes, etc. (something UP highly recommends you request in writing); your insurer must respond to your request within 15 calendar days. [Cal Code of Regs 2695]

Your insurer must tell you about all deadlines that apply to your claim and the fact that there is a deadline for filing a lawsuit against them. [ Cal Ins. Code 2071 and Cal Code of Regs 2695.7] Once that deadline passes you lose the right to sue them, even if they have handled your claim in violation of the law. That deadline is called a “statute of limitations” and its purpose is to provide finality and keep

things moving forward. There is one deadline for suing an insurance agent and a different one for suing an insurance company, but to find out exactly what yours is – you’ll need to consult with an attorney before the one-year anniversary of your loss. Why? Because in the state of California it’s tricky. There’s something called “tolling”. Your deadline is “tolled” (postponed) while your claim is still being processed, but once they deny it – the clock starts again. An insurer cannot mislead you about this but it’s a common source of confusion. [Cal. Ins. Code 790.03]

## **FAIR CLAIMS PROCESS**

You do not have to use the exact forms provided by your insurer to do your contents list. A legible list with approximate values and ages of each item must be accepted by your insurer. An insurer cannot ask for unreasonable “proofs of loss” or secondary proofs. For example, if you provide photographs or video of items in your home, you cannot then be compelled to provide receipts as well if they contain essentially the same information. [Cal. Ins. Code 790.03]

You have a right to receive a copy of certain claim-related documents contained in your file. An insurer shall “notify every claimant that they may obtain, upon request, copies of claim-related documents...” including construction estimates, photographs and the documentation backing up their estimates and “all other valuation”. This includes information about how your contents and construction estimates may have been depreciated. [See “Requirements in case loss occurs” in Cal Ins Code 2071.][1] The only thing you are not entitled to receive is attorney-client privileged communications and their attorney’s work. This means valuations, photographs, measurements, adjustor notes and reports, contents depreciation schedules, construction depreciation schedules, materials estimates, etc. are all part of your claims process, and you are entitled to receive *complete* copies of these so you can review them.

## **COOPERATIVE INVESTIGATION**

Keep in mind, the insurer has a responsibility to gather as much information as *needed* to fulfill their end of the claims process and you have a responsibility to cooperate in their investigation. You do not have a

responsibility to cooperate with **unreasonable** requests for information or harassing tactics, but you **are** obligated to answer *claim-related* questions *about your loss*. If you're asked to do a telephone interview after you've already given a recorded statement, you may ask for written questions to be sent to you so you can answer them in writing. United Policyholders publishes separate tips on Examinations Under Oath. Visit [www.uphelp.org](http://www.uphelp.org) and search for that term, if you are asked to sit for an Examination Under Oath.

## **ADDITIONAL/TEMPORARY LIVING EXPENSES/LOSS OF USE**

If your insurer threatens to cut off or terminates payments for your temporary housing expenses before you're able to move back into a safe and habitable home, that may be unreasonable conduct/bad faith. If your insurer won't pay for housing of a comparable size/quality to what you lost, that also may qualify as bad faith.

## **ADJUSTING AND PAYING YOUR DWELLING CLAIM**

**No lowballing:** An insurer may not offer or force you to accept a settlement offer that is “unreasonably low”. Your insurer owes you the amount that will restore the damaged property to *no less than its condition before the loss*, in a manner of good workmanship and industry standards, and the rebuilding costs are accurate and representative of the costs in the local market area up to policy limits, including all extended coverages, endorsements, etc. An insurer cannot substitute cheaper materials or workmanship in estimating or having your home rebuilt. For example, an adjuster cannot put down laminate counters if you had marble, shave off ten feet from the length of a room, or estimate for single-paned windows when you had double-paned windows. [Cal Code of Regs 2695.9]

**Independent estimates:** If the scope of loss, repair or replacement estimates prepared by the insurer seems unreasonably low, you have the right to get an independent reconstruction estimate (preferably

from a forensic construction company with experience in estimating re-building, rather than new construction, as disaster-loss sites have their own set of issues, etc.) and submit it to the insurance company. (The estimate may be reimbursed under your policy as a claim-related expense, so check.) What happens next? Your insurer can 1) pay the difference between their estimate and yours; 2) at your request, recommend a contractor who can rebuild your home in the same materials and workmanship to return it to a “pre-loss condition” for the insurance company’s price, or 3) the insurer can “reasonably adjust” your contractor’s estimate. [Cal Code of Regs 2695.9]

**Settling on the replacement cost of your original home and using those funds to buy elsewhere:** CA. Ins. Code 2051.5(c) allows a total loss claimant to use replacement cost funds to rebuild elsewhere, or buy a replacement home instead of rebuilding. Because it is a fairly new law, your adjuster/insurer may not be aware of it and there may be disagreements and confusion. If you want to use this option, we strongly recommend that you get an independent estimate to document the cost to replace the home you had – ***even though you don’t want to replace it at the old location***. Once you agree upon the amount owed, you can then use that amount to buy a replacement home instead of rebuilding.

New construction and disaster re-construction costs in many areas are often much higher than the purchase price of another home in the area. Additionally, homes in other areas, even other states, are often less expensive, so it may make economic sense to purchase a replacement home, rather than rebuild.

## CONTRACTORS

Your insurer cannot require you to have your property repaired or rebuilt by a specific contractor or repair firm. Only if you *expressly* request referrals can an insurer provide them and they must inform you in writing that you have the right to choose a repair individual or entity. If you choose the one recommended by the insurer, the individual or entity must restore your damaged property back to its *pre-loss condition* in a manner of good workmanship, acceptable trade standards and at no additional

cost to the claimant than stated in the policy or allowed by California law. [Cal Code of Regs 2695.9]

## **FAIR DEPRECIATION**

An insurer can only apply depreciation to things that normally wear out. They cannot reduce your benefits by depreciating things that would normally not be replaced over the useful life of the property such as framing, the foundation and the expense of labor to repair your property. You have the right to know how the depreciation was calculated, what it was based upon, and how they reached their settlement amounts. [Cal Ins Code 2071 and Cal Code of Regs 2695.9]

## **RULE OF THUMB**

If your insurer refuses to make a payment you believe you are entitled to, ask them to show you where in your policy it states you are *not* entitled to it. Also, if your insurer quotes some strange reason for depreciation (such as the California community fence “rule”), ask them to provide you with a written copy of the law. Any type of depreciation or rejection of **any** part of your claim must be backed up by the insurer with verifiable dollar-valued documentation, not just because they said so. Ask for that documentation. Sometimes insurance companies assert policy provisions or claim rules that are illegal and cannot be enforced.

## **EXAMINATION UNDER OATH**

If you are asked to provide an “Examination Under Oath”, an insurer may only ask you questions that are “relevant” to processing your claim. You are entitled to a copy of the transcript and tape (if recorded) and have the right to clarify or rectify the answers you gave under oath. You may also ask for the questions they are going to ask in advance, however your insurance company is not legally obligated to give them to you. [Cal Ins. Code 2071]

## **COMPLAINTS, ATTORNEYS & LITIGATION**

An insurer cannot retaliate against you for making complaint to the California Department of Insurance, threaten or withhold payments until the complaint is withdrawn, nor can they threaten or intimidate you to try to keep you from making a complaint. [Cal Code of Regs 2695.7] An insurer cannot directly advise you against obtaining the services of an attorney. It is against the law for your insurer to unreasonably deny a claim, which in turn forces you to have to sue to recover benefits owed. [Cal Ins Code 790.03]

### **HOW TO GET COPIES OF LAWS AND REGULATIONS:**

- 1) Request them from your insurance company. They are required by law to give them to you upon request, OR;
- 2) Read them online or print them out by going to [www.insurance.ca.gov](http://www.insurance.ca.gov). To find them, go to the “Insurers” section, “Legal Information”, OR;
- 3) Go to [www.uphelp.org](http://www.uphelp.org). Enter “Fair Claims” or “790.03” in search box.
- 4) Email [info@uphelp.org](mailto:info@uphelp.org) if you can’t find them

REFERENCES: *California Insurance Code, Section 790, 2051.5, 2071, California Code of Regulations, Title 26, Section 2695.*

## **Timeline of Important Deadlines Under California Fair Claims Settlement Practices Regulations**



<b>Time</b>	<b>Activity</b>	<b>Authority in CCR</b>
21 Calendar Days	Within 21 calendar days, respond in writing to DOI inquiries.	2695.5(a)
15 Calendar days	Immediately, but no more than 15 calendar days, respond to communications from claimant, unless claimant has initiated legal action.	2695.5(b)
15 Calendar Days	Within 15 calendar days of notice of claim, unless claimant has initiated legal action: -acknowledge receipt, or - pay the claim	2695.5(e)(1)
15 Calendar Days	Within 15 calendar days of notice of claim, unless claimant has initiated legal action: - provide necessary forms, instructions and assistance to claimant.	2695.5(e)(2)
15 Calendar Days	Within 15 calendar days of notice of claim, unless claimant has initiated legal action: -commence necessary investigation.	2695.5(e)(3)
40 Calendar Days	Accept or deny the claim. If more time needed, communicate in writing every 30 days.	2695.7(b) 2695.7(c)(1)
30 Calendar Days (continuing)	Communicate in writing every 30 days as to why claim cannot be accepted or denied, and why.	2695.7(c)(1)
30 Calendar Days	After acceptance of claim, tender payment (or portion of payment) that has been determined and is not disputed.	2695.7(h)
60 Calendar Days	60 calendar days or more before statute of limitations or contract limitations period runs, notify claimant	2695.7(f)

[1] Insurance Code Section 2071 contains the coverages and policy rules required by law in CA. Your insurer can sell you more coverage than required in 2071 but not less.

This publication was prepared by Executive Director Amy Bach, Esq. and Rebecca Huston, a UP volunteer who lost her home in 2003 in Cedar Glen, California and became a citizen lobbyist for insurance reforms.

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