United Policyholders
Empowering the Insured

BUY or REBUILD? (California FAQs)

This publication provides guidance to disaster-impacted property owners who want to buy a replacement home instead of rebuilding the one they lost and FAQ's about land value.

If your destroyed home was insured and ***in the State of California***, you now have the right to collect **all** benefits that would have covered rebuilding your destroyed home, and use those benefits to ***buy*** a replacement home instead. California law specifically requires insurance companies to pay the same amount they would owe to rebuild your home and let you use those funds to buy instead. In other states the law is less clear.

Traditionally, after a loss, you had to rebuild a like kind and quality home at the original location in order to collect all available benefits under your insurance policy. But in California, you now have the legal right to replace by buying elsewhere, instead of rebuilding, and still collect benefits as if you had rebuilt. Cal. Ins. Code. 2051.5 spells out your rights.

The main thing to focus on is reaching an agreement with your insurance company on what it would theoretically cost if you did rebuild the exact same home that was destroyed. Generally speaking, that is what the insurer owes you. This theoretical rebuild cost should include all trades, fees, materials, labor and work required to comply with the building codes/rules in your area. Once you reach an agreement on that theoretical replacement cost of the original home, you have the basis for reaching a fair insurance settlement that will allow you to buy a new home instead of rebuilding.

Because the California law allowing you to collect and use all available insurance benefits toward buying, instead of rebuilding, is relatively new, insurers were creatively interpreting it and withholding some benefits to those who exercise their right to buy a replacement home. And, many of the adjusters that come into California from other states to handle wildfire claims are not well trained on this law. The California legislature has had to put a stop to the creative interpretations.

It is now clear and settled that your insurer cannot withhold payment for the land value under the purchased home and must make all extended and code upgrade coverage available, though technically there are still gray areas if your loss occurred prior to 2021. United Policyholders continues helping homeowners to use all available arguments, including the recently amended CA. Insurance Code 2051.5, this California Dept. of Insurance bulletin, this Merlin Law Group blog, and the suggested arguments below to convince your insurer that it is not ***reasonable*** for them to deduct land value from your payout.

What is "Replacement Cost Value" Coverage (RCV)?

RCV Coverage is the dollar amount it would cost to replace or repair your home with one of like kind and quality to what you lost. No depreciation is applied since brand new materials are used to calculate costs.

What is "Actual Cash Value" Coverage (ACV)?

Generally speaking, ACV Coverage gives you the Fair Market Value of your home on the day before the loss (what a willing buyer would have paid a willing seller). Your policy may have a different definition; a common one is that ACV equal the RCV minus depreciation. It is important to remember that ACV will not exceed the RCV, and is typically lower than the RCV since depreciation of materials is applied.

What is "Building Code" Coverage?

Building Code Coverage is an insurance option that pays for work and materials required to improve your home so it is in compliance with the codes/laws that apply to buildings in your area. Most insurance policies won't pay for improvements, but if you have building code coverage, it will cover some or all of them.

What is Extended Replacement Cost Coverage (ERC)?

Extended Replacement Cost Coverage is a feature that gives you extra coverage above your dwelling limit if you suffer a loss above that limit. It's usually provided through a "rider" or "endorsement" you paid extra for. The most common ERC comes in amounts of 25, 50, 75 or 100% above your dwelling limit

When does the insurer pay ACV instead of RCV?

Typically, when rebuilding on the same lot, your insurance company will pay ACV after they have calculated the cost to rebuild, but before the work to rebuild has actually been done. The difference between the RCV and ACV is paid to you once the work is done and the structure is returned similar to its pre-fire condition. A California decision describes the above concept by saying, “an insured [is] required “repair, rebuild, or [replace]” in order to collect full replacement cost [citing CA Ins. Code sec. 2051.5]: “If the policy requires the insured to repair, rebuild, or replace the damaged property in order to collect the full replacement cost, the insurer shall pay the actual cash value [ACV] of the damaged property, as defined in Section 2051, until the damaged property is repaired, rebuilt, or replaced. Once the property is repaired, rebuilt, or replaced, the insurer shall pay the difference between the actual cash value payment made and the full replacement cost reasonably paid to replace the damaged property, up to the limits stated in the policy.” Minich v. Allstate Ins. Co, 193 Cal.App.4th 477 (2011). Generally, the insurer pays only ACV until progress has been made toward replacing or repairing the asset.

When will the insurer pay full RCV benefits toward the purchase of a replacement home?

Your insurer should pay you the amount of the theoretical cost of rebuilding your home at the original location (including code upgrades and extended coverage if you have those benefits) as soon as you and they agree on that cost and you’ve given them proof of the purchase price of a home you want to buy. To receive ALL of the RCV benefits, the cost of the new home must meet or exceed the theoretical cost to rebuild your home at the original location, the RCV. If you choose to spend more than your insurance settlement on buying the replacement home, you can do so by adding in your own money. Remember that you are not entitled to payment for any dollar spent over your RCV agreed-upon amount from your insurance carrier.

Will I be able to get my full extended replacement costs if I buy instead of rebuilding?

Yes…theoretically (in California at least). According to the California Department of Insurance, you are entitled to the full benefit of all coverage extensions, including extended replacement costs. This view is confirmed in a legal memorandum issued by the Department in 2008 citing Conway v. Farmers Home Mutual Insurance Co., 26 Cal.App.4th 1185 (1994).

Can I buy a house for less money than my full extended cost replacement value and pocket the difference?

According to the Department of Insurance the answer is NO. Again. state-by-state approaches may differ.

If I buy instead of rebuild, can insurers deduct from my replacement cost settlement an amount it determines to be for the land value of my new home?

As of January 1, 2021, this is no longer allowed in California. If your loss happened before then, there are several arguments you can make to avoid having your insurer deduct the land value under the replacement home you're buying, and you can reference a bulletin the California Insurance Commissioner issued in 2019:

1. If the policy doesn't authorize a land value deduction, the insurer is not entitled to take one.

2. Land values are subjective. Why should the insurance company be entitled to its number?

3. If you buy a new home plus the land it sits on for the same amount you'd have to spend to rebuild your own home, it stands to reason that you would be buying a home that is lesser in value than the costs of replacing your own home.

4. The simplest approach is for your insurer to pay you the full amount, up to your policy limits including all extensions that you would have to spend to rebuild your destroyed home. This assumes that you have provided a reasonable scope of loss as well as proof of your intent to actually buy a different home.

Do I need to present the insurance company with a SCOPE OF LOSS and estimate of what I lost AND the price of the home I want to buy?

We recommend doing both. Your insurance company has the legal obligation to investigate and value the damage to your property and fairly pay your claim. However, because your home is your valuable asset, it's in your best interest to verify that their valuation is accurate. For verification, we recommend getting a detailed scope of loss prepared by a trustworthy professional with construction estimating expertise to help you determine what your home would ***theoretically*** cost ***if you did*** rebuild the exact same home that was destroyed. Generally speaking, that is what the insurer owes you.

Once you reach an agreement on that theoretical replacement cost of the original home, you have the basis for reaching a fair insurance settlement that will allow you to buy a new home instead of rebuilding. If you choose to spend more than your insurance settlement on buying the replacement home, you can do so by adding in your own money. You may have to negotiate with your insurer over land values at the old and new home site to complete the settlement and purchase.

Good luck! We're rooting for you…