

## **Insurance Consumer Rights in Colorado (2021)**

If your home has been damaged or destroyed, you are likely to feel overwhelmed by the loss and by the repair, replace and recovery process that lies ahead. If your property was insured, that insurance policy is the best vehicle to get you back home. If this is your first time navigating the claim process, it's helpful to recognize that a large insurance claim is basically a business negotiation.

When it comes to insurance lingo, laws and construction estimating, you're not on a level playing field with the experienced insurance company. But although you may be unfamiliar with your policy and the process in general, there are laws and rules that give you rights. Use them to negotiate and recover the full benefits you're entitled to under the policy you paid for.

Our goal is to help you understand the laws and rules so you can be your own best advocate and know where and how to get professional help if you need it. Here are your basic homeowners insurance claim rights in Colorado:

### **You have the right to money and good claim service from your insurance policy:**

- Good claim service includes fairly and completely investigating and estimating your loss and helping you with paperwork.
- You trigger your rights by giving your insurance company "notice" of a claim. This includes providing details about where, when, how and with whom the loss occurred. If you don't give this notice, you may jeopardize your claim based on "late notice."
- Cooperate with your insurance company and the "adjusters" or "representatives" they assign to your claim by giving them all loss documentation they reasonably require plus access to inspect damaged property.

### **You have the right to get a complete and current copy of your insurance policy...and read it.**

The only way to get the full benefits you're entitled to is to read your policy over and over until you have a basic understanding of what's in it. If you do not have a complete and current copy of your policy, request one immediately and make sure you and the company adjuster are working off the same

document. In Colorado, the insurer must provide you with a complete copy within 3 days after you request it, within 30 days if you request a certified copy. There's often math involved in figuring out how much you're entitled to for dwelling replacement[1], debris removal, trees and building code compliance. If you rely only on the company adjuster you may leave money on the table. UP offers many publications to help you read and understand your policy but if you can't do it on your own, (and many can't), consider hiring a policyholder lawyer or public adjuster to help you.

Start by reading your policy's "declarations page." It shows how your policy is divided into coverage categories: Dwelling ("Coverage A"), Other Structures ("Coverage B"), Personal Property ("Coverage C"), Loss of Use/Additional Living Expenses ("Coverage D"), as well as other categories such as liability and medical payments. You may also have additional "Endorsements" or extras that may be listed on your declaration page. UP's "[Simplified Guide to Your Homeowners Policy](#)" will help you understand your declarations page and what's inside your policy.

**Remember:** It will take time to read and understand the fine print – but stick with it. Take notes, highlight and re-read until you have a basic understanding of what you are entitled to.

### **You have the right to reimbursement for expenses due to losing the use of your home.**

"Additional Living Expense" (ALE) coverage, sometimes called "Loss of Use" pays benefits for reasonable expenses for food, lodging, gas, etc. that are over and above your usual costs of living. Get in the habit of keeping all receipts. You usually have to cover the expenses yourself then submit receipts for reimbursement, although insurers will often give you an ALE advance to help you get situated if you ask for it (so ask for it). There is likely to be a limit in your policy for the amount of money you can collect for ALE and the amount of time you have to collect it (in Colorado, ALE must be available for at least 12 months; your insurer should have offered you 24 months at point of sale, so check your policy language to see how long you have). If delays or things beyond your control have made it impossible for you to complete repairs or rebuilding when you hit an ALE time limit, ask (in writing) for an extension[2]. For more information on ALE, read "[Survivors Speak: Information About Insurance Benefits for Temporary Living Expenses \("ALE/Loss of Use"\)](#)".

If you're confused about whether an expense belongs in the ALE versus Contents or Dwelling coverage category, ask yourself: Is this a living expense I incurred because of the loss event? If the answer is yes, it is reasonable for you to seek reimbursement under ALE/Loss of Use coverage. Remember to keep all

your receipts because you will most likely need to submit them to your insurance company to collect your “Additional Living Expense” coverage.

**You have the right to be paid for your covered losses in a timely manner.**

Your insurance adjuster will ask for proof of your damaged property as it existed before the loss, estimates to fix, restore or rebuild, and as much itemization and valuation of losses as you can muster. In Colorado, and in accordance with C.R.S. 10-4-110.8 (11)(a), in the event of a total loss of an owner-occupied primary residence that was furnished at the time of loss, the insurer shall offer the policyholder a minimum of thirty (30) percent of contents coverage without completing an inventory. In order to receive up to the full value of contents, the policyholder must complete the inventory. You will have 365 days after a total loss to submit an inventory of lost or damaged property. You will also have 365 days after you have depleted Additional Living Expense coverage to replace your property and receive the money taken away for depreciation. C.R.S. 10-4-110.8 (11)(c)(i-ii). Letters, photos or statements from family, friends or relatives who visited your home can be helpful. It is critical to list as much detail as you can, because the insurer will rely on this information to justify how much they owe you for the loss under the terms of the policy.

You should also obtain your own estimates from several independent, licensed, reputable contractors, and work toward a settlement with your insurer that is based on these independent estimates (which tend to be more accurate and have a higher dollar value than the estimate provided by your insurer).

Very few people replace a destroyed home by rebuilding an identical home. But it is so important to remember that your insurer is only obligated to pay what it would cost to replace the home you lost. This is often referred to as “scope” of your loss. That’s what they owe – subject to policy limits- so nail that down as soon as possible [3]. The more detail you give your insurer about the cost of replacing the home you lost, the more negotiating power you will have to reach an agreement on what that cost would be if you were going the route of a like kind and quality replacement. Once you reach that agreement, you may have flexibility to make changes and/or buy a replacement home instead of rebuilding. But the best way to go off track in an insurance claim negotiation is to mix apples with oranges by talking about the replacement home before you’ve reached agreement on the cost of replacing the “as was” pre-loss home. For more information, read our publication: [Insurance Recovery Tips for the Dwelling Part of Your Claim](#).

Understand that insurers view all proofs of loss with some skepticism given their training to detect fraudulent claims. In Colorado, anyone who deliberately falsifies any part of a claim will see the entire claim voided—not just the part that was embellished. Honest, innocent mistakes do not jeopardize the entire claim, but be careful not to exaggerate or inflate any claims.

When there is a differential in the insurance company's scope of loss and the independent rebuild estimates or official "Scope of Loss" you have obtained, you might be being "lowballed" by the insurance company. While this is a common problem, it is prohibited by Colorado law. Lowballing occurs when the insurer attempts to settle a claim for less than its full value by artificially reducing either the scope of repairs, the price of repairs, or both. Read our [FAQ about property damage in Colorado](#) for more information.

### **You have the right to be kept informed on the progress of your claim.**

Keep an insurance claim diary where you take and keep detailed notes of all conversations with insurance company representatives...record their names, phone numbers, job titles and supervisor's names. This will help you keep track of your claim progress and protect your rights. It is important to set deadlines and enforce them and confirm agreements in writing (email counts). For more information on how to communicate with your insurance company, read: [Speak UP: How to communicate with your insurance company](#).

Your rights include that your insurer should immediately pay you what is owed without delay. They should not hold back any part of your benefits while another part is uncertain or under investigation. Nor should your insurer try to pressure or leverage you into settling your entire claim while one portion is not yet finalized. They should just pay the undisputed amount first while the remainder is being investigated and evaluated.

In Colorado, the Unfair Claim Settlement Practices Act [C.R.S. §10-3-1104 (1) (h)] regulates how insurers should treat insureds. Insurers must provide the insured with a prompt explanation for how the claim is being decided based on the policy language, applicable law or unique facts of the claim. They owe the insured a procedural duty of good faith to keep the insured informed about the claim after conducting an unbiased investigation and evaluation. Insurers who deny or delay payment of covered benefits without a reasonable basis, such as by not following industry standards, may face the penalty of paying their insureds twice the amount of the covered benefits (in addition to the covered benefit), plus attorney's

fees and costs, for such misconduct (C.R.S. §§10-3-1115, 1116).

**You have the right to file a complaint and/or hire professional help.**

Particularly on large claims, you may need the help of a professional to recover your full insurance benefits, especially if you do not feel you are being treated fairly, or if the insurance company is violating your rights under the Colorado Unfair Claim Settlement Practices Act. Attorneys who specialize in representing policyholders and public adjusters are available to help you through your insurance claim. Contingent and percentage fee agreements allow consumers economical access to professional help but affect the amount of your settlement, and percentage fees are always negotiable. Check references and professional standing. To file a complaint with the Colorado Division of Insurance, visit the Colorado Division of Regulatory Agencies at: [www.dora.state.co.us](http://www.dora.state.co.us)

Many homeowners may discover they are “underinsured” and have inadequate coverage to pay for all of their losses. If you are underinsured, you may have little financial recourse against the insurer or sales agent. Getting an insurer to pay more than their contract says they owe you is not easy unless you can show that a “special relationship” existed between you and your agent, such as if the agent agreed to assume additional responsibilities to provide you with adequate coverage to pay for all of your rebuilding or restoration losses [Kaercher v. Sater, 155 P. 3rd 437 (Colo. App. 2006)]. A good policyholder attorney will be able to assess the strength or weakness of your underinsurance claim. For more information visit the [Underinsurance Help](#) page.

**Remember:** to check references and professional standing before hiring professional help.

Visit the [“Find Help”](#) directory and read our tips on [Hiring Professional Help](#).

Additional reading and all publications referenced above can be found on the Colorado State Help Page at: <http://uphelp.org/resources/state-by-state/Colorado>

**COLORADO DEPARTMENT OF INSURANCE STATUTES, EMERGENCY REGULATIONS, AND BULLETINS:**

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You can find current Colorado insurance statutes, emergency regulations, and bulletins here:  
<https://doi.colorado.gov/insurance-statutes-regulations-bulletins#emergencyregs>

### **HOMEOWNERS INSURANCE REFORM ACT OF 2013 (HB 13-1225):**

HB 13-1225 requires insurance to:

- **Offer Extended Replacement Cost of at least 20% of dwelling coverage**
- **Offer Law and Ordinance Coverage of at least 10% of dwelling coverage**
- Offer 24 months of ALE vs standard 12 month limit
- **Consider a Replacement Cost estimate from a licensed contractor or architect, subject to UW approval**
- Provide the insured a copy of their complete insurance policy within 3 days of request, **30 days for a certified copy**
- Issue 30% of contents without an inventory if primary dwelling is a total loss
- **Allow 365 days after ALE expires to replace contents and receive withheld depreciation**
- Allow the full 2 or 3 years provided by State law, depending on whether it is a contract or bad faith issue, to file suit rather than the language in the insurer's policy

### **COLORADO LAWS RELATED TO INSURANCE CLAIMS:**

A law may be found in statutes, regulations, and judicial decisions (“case law”). But regardless of the source, a law is a law. Colorado Revised Statute § 10-3-1104 (1) (h) outlines conduct by insurers that is illegal:

(I) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue; or

(II) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies; or

(III) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; or

(IV) Refusing to pay claims without conducting a reasonable investigation based upon all available

information; or

(V) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; or

(VI) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear; or

(VII) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds; or

(VIII) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application; or

(IX) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured; or

(X) Making claims payments to insureds or beneficiaries not accompanied by statement setting forth the coverage under which the payments are being made; or

(XIII) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(XIV) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or

### **Summary of Colorado Revised Statute § 10-4-120**

The law prohibits an insurance company or its agent from:

- Requiring that appraisals or repairs to the real or personal property be made or not be made by a specific repair business
- Representing to a claimant that the use of or the failure to use a particular repair business may

result in nonpayment or delayed payment

- Coercing, intimidating, threatening, or inducing by incentive, a beneficiary or claimant to use a particular business for repairs except that an inducement by incentive does not include Warranty or Guaranty of repairs
- Contracting with a person to manage, handle, or arrange repair work for the insurer on the condition a business does claims work at a price established by the insurer and the person retains a percentage of any compensation paid by the insurer
- Using disincentives to discourage a beneficiary or claimant from using a repair business, not including Warranty or Guaranty repairs
- Soliciting or accepting a referral fee in exchange for referring the beneficiary or claimant to a repair business
- Requiring the beneficiary or claimant to travel an unreasonable distance to choose a repair business
- Misinforming a beneficiary or claimant to induce the use of a particular repair business, and
- Requiring a third-party claimant to have repairs done by a particular repair business.

The law requires an insurance company or its agent to:

- Inform the beneficiary or claimant that they may select any repair business of their choosing
- Supply the beneficiary or claimant with a copy of the estimate upon which a settlement is based, when partial losses are settled based on an estimate prepared by or for the insurance company
- Confirm that any estimate prepared by or for the insurer to repair damages that are visible or evident at the time of inspection is adequate to restore the real or personal property within a reasonable time to its condition before the loss, in accordance with applicable policy provisions
- Pay for repair services and products based on the prevailing competitive price
- Assume all reasonable costs sufficient to pay for the beneficiary's or claimant's repairs less any applicable deductible or reduction for comparative negligence
- Furnish the notice required by § 10-4-120 C.R.S. to the beneficiary or claimant for each claim
- Promptly pay the cost of the real or personal property repair less the deductible according to the terms of the insurance policy at no less than the prevailing competitive market price in the same geographic area
- Disclose any ownership interest in, affiliation with, a recommended repair business



Colorado courts are making insurance laws on an ongoing basis as they publish decisions in individual cases. These laws evolve as new cases come down, so the following examples may not be entirely current:

1. An insurer should give equal consideration to the interests of the insured as it does to its own interests with neither interest being superior. *Bailey v. Allstate Insurance Co.*, 844 P.2d 1336 (Colo. App. 1992).
2. An insurance company should not deny a claim without substantial justification. *Giampapa v. American Family Mutual Auto Insurance Company*, 64 P.3d 230 (Colo. 2003).
3. An insurer must keep an insured reasonably apprised of the status of the insured's claim for benefits. C.R.S. Section 10-3-1104(1)(h)(II)(V)(VI)(XIV).
5. An insurer should not investigate, evaluate or deny a claim based on biased, one-sided information. *Rawlings v. Apodaca*, *supra*, *Mariscal v. Old Republic Life Insurance Co.*, 50 Cal.Rptr. 224, 227, (Cal. App. 1996).
6. A reasonable investigation is one that is based upon "all available information." *American Family Mut. Ins. Co. v. Allen*, 102 P.3d 333, 345 (Colo. 2004).
7. The duty to conduct a reasonable investigation includes "a duty to promptly and effectively communicate with anyone [the insurer is] reasonably aware ha[s] . . . information pertaining to the handling of the plaintiff['s] claim." *Dunn v. American Family Ins.*, 251 P.3d 1232, 1238 (Colo. App. 2010).
8. Implicit in the duty to investigate is the requirement that the investigation be adequate and fair. Adequacy and fairness means that the insurer has a duty to diligently search for evidence which supports [the] insured's claim and not merely seek evidence upholding its own interests. *Thompson v. State Farm Mut. Auto. Ins. Co.*, 457 F. Supp. 3d 998, 1004 (D. Colo. 2020) (quoting 14 Steven Plitt et al., *Couch on Insurance* § 207:2d (3d ed. 2019)).
9. Bad faith can occur in the unreasonable refusal to investigate a claim or to gather facts. *Brodeur v. American Home Assurance Co.*, 169 P.3d 139, 147 n.7 (Colo. 2007).

10. An insurer must be honest with its insured and third-party claimants. *Weigel v. Hardesty*.
  11. An insurer should provide its insured with factual reasons for why the insurer is denying or delaying payment of an insured's claim for benefits. C.R.S. Section 10-3-1104(1)(h)(XIV).
  12. Insurers should not try to "low ball" insureds for unreasonably low amounts. *Zilisch v. State Farm Mutual Auto Insurance Co.*, 995 P.2d 276 (Ariz. 2000).
  13. An insurer should compensate an insured for financial losses, including interest on the benefits, caused to the insured by the insurer's unreasonable delay in investigating and evaluating an insured's claim. *Bowen v. Farmers Insurance Exchange*, 929 P.2d 14 (Colo. App. 1996).
  14. An insurer should not take advantage of the insured's vulnerable condition after a covered loss. *Zilisch v. State Farm*, *supra*.
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[1] Most policies sold today include a total loss endorsement with "extended replacement" coverage, which increases your "Coverage A" limits by a given percentage (commonly 25, 50, or 100 percent) when your Coverage A limits are inadequate to repair/replace your damaged/destroyed property. (Some policies apply this "extended replacement" benefit to Coverages B, C and D, but most apply only to Coverage A.)

[2] Note that your insurer may extend the number of months they will pay ALE but not the total dollar amount.

[3] Many people find it worthwhile to pay a construction estimator to create a detailed Scope of Loss to use for negotiating an insurance settlement. This is because it's hard to find a contractor willing to put time into creating a detailed estimate of a home they know you will not be hiring them to build.

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their time and expertise to the Roadmap to Recovery Program in Colorado. And a special thanks to UP Volunteer **Nancy Walery, 2007 Witch Creek Fire Survivor**, for her editorial contribution. For an in depth look at bad faith law in Colorado, see [The Duty of Good Faith and Fair Dealing in Colorado](#) by Brandee Bower of the Merlin Law Group (for the Property Insurance Coverage Law Blog). UPdated 2021 by UP Staff Attorney Elyse Hicks.

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