

## [Insurance Consumer Rights in Texas \(2022\)](#)

Insurance policies are contracts and legal rules come into play when you file an insurance claim. You are “the insured” and your insurance company is “the insurer.” Understanding how your insurer should handle your claim and what your rights are will help you navigate the process, be your own best advocate and collect all available policy benefits to cover your losses.

After disasters, it’s common for an insurer to rotate adjusters, which means you will have to work with multiple adjusters before your claim is resolved. Knowing your legal rights will make it easier for you deal with rotating adjusters and keep your claim on track toward a fair and full claim settlement without unreasonable delays.

Your insurance company and its employees are required to be fair and reasonable and follow state laws and regulations. They must do a timely, thorough and unbiased investigation and assessment of your loss(es) and claim. They must work with you to adjust your claim and pay what they owe in a timely and fair manner and in full compliance with the policy contract and applicable laws.

Insurance company claim adjusters are supposed to be trained on your state’s laws and claim handling regulations, but it’s often up to you to make sure they’re valuing your losses fairly, offering all benefits you’re entitled to, and following the regulations and laws in your state.

Use the guidance and [sample letters](#) you’ll find here to [“speak UP”](#) and collect all benefits you’re entitled to under the policy you paid for.

The information included here will give you a basic understanding of how the claim process should go and the legal rights that give you leverage to get a fair outcome. Here are the places where your rights as an insurance consumer are spelled out:

### [-Texas Insurance Code](#)

### **[UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES - Texas Insurance Code; Title 5, Subtitle Chapter 541](#)**

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- **Texas Administrative Code [Title 28 Insurance](#)**

**Unfair Claim Settlement Practices - [28 Tex. Admin. Code §21.203](#)**

- **Notices and bulletins issued by the [Texas Insurance Department](#).**

**Claim Communications**

UP strongly recommends keeping a daily claim journal. As often as possible, jot down the date, time, and details of conversations, issues, problems and agreements with the adjuster assigned to your claim and other professionals such as contractors, government agencies, etc.

Also, we strongly recommend communicating in writing with insurance company representatives so there is a clear paper trail of how your claim is being handled. These days many communications will be via email, so make sure to save those emails where you can find them. After in-person or phone conversations with insurance company representative you should send short follow-up emails or letters summarizing what was said or agreed to. Document that you're cooperating fully with the insurer. This will prevent them from blaming you for delays and confirm that you're holding up your end of the bargain.

Check out our "[Speak UP](#)" tips on being politely assertive, organized and avoiding delays and misunderstandings.

**Time Frames and Deadlines**

Below are timeframes and deadlines to be aware of. After a disaster, deadlines can become unrealistic due to shortages of available inspection, clean up and construction professionals. Speak UP! Document the contractors or service providers you called, who you spoke with, and what they told you in your claim journal. Sometimes following a natural disaster more work exists than skilled labor can support, and it is important to document that you kept trying to find someone to help protect your property following a

loss.

#### Processing your claim

**15 Actual Days** - Your insurer has fifteen (15) actual days after receiving written notice of a claim (or, if the insurer is an eligible surplus lines insurer, thirty (30) business days after the date an insurer receives written notice of a claim) to acknowledge your claim. [TEX. INS. CODE § 542.055](#)

**15 Actual Days** - Your insurer has fifteen (15) actual days after receiving written notice of a claim (or, if the insurer is an eligible surplus lines insurer, thirty (30) business days after the date an insurer receives written notice of a claim) to begin investigating the claim. [TEX. INS. CODE § 542.055](#)

#### Communicating information to you

**Reasonable Promptness**- An insurer must acknowledge with reasonable promptness pertinent communications relating to a claim arising under the insurer's policy. [TEX. INS. CODE § 542.003](#)

#### Investigating your claim

**15 Business Days** - Your insurer must complete its claim investigation within 15 business days of receipt of all necessary information required to investigate the claim (i.e., the petition or complaint and invoices from defense counsel). [TEX. INS. CODE § 542.056.](#)

#### Paying or denying your claim

**15 Business Days** - The insurer must notify you in writing whether it accepts or rejects the claim within 15 business days of the receipt of all necessary information required to investigate the claim (i.e., the petition or complaint and invoices from defense counsel). If the insurer rejects the claim, the written notice must state the "reasons for the rejection." [TEX. INS. CODE § 542.056.](#)

**More time** - If for any reason the insurer is unable to accept or reject the claim within 15 days after receiving the documentation, the insurer is entitled to explain to the insured why it is not able to do so in that period in writing and it then it has 45 days to accept or reject the claim. [TEX. INS. CODE § 542.056.](#)

#### Preserving your right to sue if necessary

There is typically a deadline in your insurance policy for filing a lawsuit related to a claim. Check your policy for a “suit against us” provision, or similarly worded provision, to find that deadline. It’s typically 12 months from the date of loss or the date your insurer closes your claim. However, the laws in your state that apply to lawsuit deadlines may extend the period stated in your policy, so it’s best to check with an experienced Texas state attorney to avoid losing your legal rights and the leverage those rights give you to get a fair payout on a claim.

[Texas Insurance Code, Section 541.151](#) - says that a person who sustains actual damages may sue the other person (insurance company or agent) who caused the damages. If the other persons’ actions are defined by Subchapter B to be an unfair or deceptive act or practice in the business of insurance or an unlawful deceptive trade practice in [Section 17.46\(b\), Business & Commerce Code](#), then an action may be brought against that person. A person seeking damages under this section must provide a 60-day written notice of the claim. The notice must advise the person of, 1) the specific complaint, 2) the amount of actual damages including attorney’s fees. There are at least two exceptions to this that rarely apply. If the 60 day notice is not given as required by Section 541.154, [Section 541.155](#) allows the lawsuit to be abated. Sometimes this abatement can be automatic and sometimes there is a hearing on the matter.

### **Unfair Claim Practices**

Your insurer is prohibited from using unfair claim practices and/or treating you badly during the claim process. These practices are set out generally in the [Texas Insurance Code](#) and more specifically in the [Texas Administrative Code](#). Texas has adopted the Unfair Claims Settlement Practices Act. The following are a few examples listed in [28 Tex. Admin. Code §21.203](#).

#### **Specific Unfair claim settlement practices defined:**

No insurer may engage in unfair claim settlement practices. Unfair claim settlement practices means committing or performing any of the following:

- 1) misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue;
- 2) failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies, provided that “pertinent communications” will exclude written communications that are direct responses to specific inquiries made by the insurer after initial

report of a claim. An acknowledgment within 15 business days is presumed to be reasonably prompt;

- 3) failing to adopt and implement reasonable standards for prompt investigation of claims arising under its policies;
- 4) not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability has become reasonably clear;
- 5) compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them;
- 6) failing to provide promptly, when provided for in the policy, claim forms when the insurer requires such forms as a prerequisite for a claim settlement;
- 7) not attempting in good faith to promptly settle claims where liability has become reasonably clear under one portion of the policy in order to influence settlement under other portions of the policy coverage. (This provision does not apply to those situations where payment under one portion of coverage constitutes evidence of liability under another portion of coverage.);
- 8) failing to promptly provide to a policyholder 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;
- 9) failing to affirm or deny coverage of a claim to a policyholder within a reasonable time. The reasonable submission of a reservation of rights letter by an insurer to a policyholder within a reasonable time is deemed compliance with the provisions of this paragraph;
- 10) except as may be specifically provided in the policy, to refuse, fail, or unreasonably delay offer of settlement under applicable first-party coverage on the basis that other coverage may be available or third parties are responsible in law for damages suffered;
- 11) attempting to settle a claim for less than the amount to which a reasonable person would have believed she/he was entitled by reference to an advertisement, as described in §21.102 of this title (relating to Scope), made by an insurer or person acting on behalf of an insurer;
- 12) undertaking to enforce a full and final release from a policyholder when, in fact, only a partial payment has been made. (This provision will not prevent or have application to the compromise settlement of doubtful or disputed claims.);
- 13) failing to establish a policy and proper controls to make certain that agents calculate and deliver to policyholders or their assignees funds due under policy provisions relative to cancellation of coverage within a reasonable time after such coverages are terminated;
- 14) refusing to pay claims without conducting a reasonable investigation based upon all available

information;

- 15) failing to respond promptly to a request by a claimant for personal contact about or review of the claim;
- 16) with respect to the Texas personal auto policy, delaying or refusing settlement of a claim solely because there is other insurance of a different type available to satisfy partially or entirely the loss forming the basis of that claim. The claimant who has a right to recover from either or both insurers is entitled to choose under which coverage and in what order payment is to be made;
- 17) a violation of Insurance Code Chapter 542, Subchapter B, by an insurer subject to its provisions; or
- 18) requiring a claimant, as a condition of settling a claim, to produce the claimant's federal income tax returns for examination or investigation by the insurer unless the claimant is ordered to produce those tax returns by a court of competent jurisdiction, the claim involves a fire loss, or the claim involves a loss of profits or income.

### **Remedies: Filing an official complaint with your State Insurance Agency**

The Texas Department of Insurance oversees how insurance companies operate in the state. They can impose penalties on your insurance company if they did not comply with the laws in your state that require insurers to handle claims fairly and in good faith.

Visit [uphelp.org](https://uphelp.org) and Insurance Resources for Texas <https://uphelp.org/recovery/state-by-state-help/texas/> for resources and tips on the process and strategy of filing a formal complaint.

You can call the Office of the Insurance Commissioner consumer hotline with any questions or complaints toll-free at 800-252-3439, file a complaint online, by going to <https://www.tdi.texas.gov/consumer/get-help-with-an-insurance-complaint.html> create an online account file your complaint. Their mailing address is:

Texas Department of Insurance  
PO BOX 12030  
Austin, TX 78711-2030

### **Special rules that may be in place after a disaster**

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Check the Texas Department of Insurance website regularly to find all rules, regulations, or other updates they may have put out that are specific to the disaster. <https://www.tdi.texas.gov/news/index.html>

After past disasters, special rules have been put into place such as:

- Requirements that insurers advance funds for temporary expenses instead of requiring you to incur and submit receipts.
- Requirements that insurers extend deadlines for submitting proofs of loss and other documents.
- Agreements with insurers that they will accept less detailed contents inventories.

### **Hiring Professional Help**

When you paid your premium, you paid for coverage *and* good claim service. In theory, you should not have to hire outside help to get what you already paid for. However, in reality, you may need to. You have the right to hire an attorney or public adjuster to help navigate your claim. However, we urge caution before agreeing to pay a portion of your insurance benefits to any professional, and before hiring anyone to speak for you or negotiate on your behalf with your insurance company. Only hire someone who has strong references and who is likely to add value to your claim and recover more funds more quickly than you'd be able to recover on your own.

**Attorneys** – If you hire an attorney to resolve an insurance claim dispute, try to hire them on a contingency (not hourly) fee basis and agree to advance litigation costs. Claim disputes are time-consuming, so it gets expensive fast when you pay by the hour. Ideally, arrange for one or two qualified attorneys to do an initial evaluation of your situation free of charge. Only hire one that has represented insurance consumers in claim disputes and is a member in good standing of the Texas Bar. Visit our [Texas Professional Help Directory](#). We strongly recommend reading our publication titled [“Questions and Answers for Hiring an Attorney for an Insurance Claim”](#) before making this important decision.

**Public Adjusters** – A qualified public adjuster can value your losses, handle the day-to-day aspects of your claim and negotiate a settlement on your behalf. Generally speaking, if you hire a public adjuster, you agree to pay them a percentage of the insurance benefits they recover on your behalf – not an hourly fee. Texas public adjusters can also be found by visiting our [Texas Professional Help Directory](#). We strongly recommend reading our publication titled [“Questions to Ask Before Hiring a Public Adjuster”](#) before making this important decision.

## **Using the Legal System to get a Fair Settlement**

If you haven't been able to get a fair insurance claim settlement on your own or with help from a professional and/or your state's insurance oversight agency, filing a lawsuit is your next option. If your lawsuit is successful, you can recover what the insurer owed and (ideally) also get compensation for the expenses you incurred chasing the policy benefits you were entitled to in the first place. Your success in using the legal system to get a fair settlement will depend on the quality of the lawyer(s) you hire, the laws in your state and the facts in your case.

It's common to worry that a lawsuit will be too time consuming or expensive (or both), but if you get the right lawyer and your case is strong, suing an insurer is often the best and only way to recover what you're owed. Finding a qualified lawyer is essential. Insurance matters require specialized expertise and you need a strong advocate who speaks the language and has previous experience litigating against an insurance company.

Start in our ["Find Help"](#) section and click on your state to find professionals who specialize in representing policyholders and support United Policyholders. You'll find many lawyers on the Internet that advertise as insurance specialists, and many of their websites have a chat window that pops up as soon as you visit their site. Speak directly to the lawyer who'd be handling your case and interview them about their insurance and litigation experience. Get and check client references. A lawsuit is a major undertaking but is often the best way to get full compensation, so be an astute consumer and choose your attorney carefully.

The cost of hiring an attorney varies from firm to firm. The two main options are attorneys who charge by the hour and those who work on contingency. For most policyholders, hiring an attorney on a "contingency" fee basis is the only feasible way of doing battle with a well-funded insurance company. Hourly fees for lawyers vary according to firm size, experience of the attorney, and geographic location. While attorneys who work on contingency usually set their fee at 33% of the amount they recover on your behalf, that may increase to 40% if your case goes to trial. Most cases settle before trial. In some states you may not have the option of hiring an attorney on a contingency fee basis.

Using the legal system gives you leverage to get a better settlement and a lawsuit is a valuable tool. For more guidance on what to consider before suing your insurance company, read [Hiring an Attorney for an Insurance Claim](#).



## **Best Practices**

Visit and use UP's [Disaster Recovery Help Library](#) to get information, about the recovery process, after a disaster occurs. Additionally, for best practices, follow these steps:

**Inventory and document your losses.** Take pictures of identifiable items before they're removed for disposal or repairs before your lot gets cleared. Create detailed lists of damaged property. If your home was seriously damaged or completely destroyed, get at least one, ideally two, independent repair/replacement cost estimates.

**Cooperate with your insurer as best you can and keep a good paper trail.** If you are not able to stay in your home, make sure the company has an address and phone number where it can reach you.

**Be present for inspections.** It's a good idea to be home when the adjuster and or others inspect your property. Feel free to ask your contractor to be there with you to explain his/her opinions and estimates to the insurance company's representatives.

**Make only urgent/temporary repairs before filing a claim.** Your insurance company may deny your claim if you make permanent repairs before it inspects. If you're not sure if your company considers a repair to be permanent, ask your company (in writing) before starting any repair work. The cost of these repairs and for storing personal belongings is likely covered by your policy.

**Keep receipts.** Your insurer will usually require you to provide receipts before they'll reimburse you for expenses due to losing the use of all or part of your property. This is also true for collecting full replacement costs above depreciated/actual cash values. On our website you'll find a free expense spreadsheet to help you keep track.

**Speak UP.** Be politely assertive, communicate clearly, and set realistic goals during the claim process.