Let Go Lender: Getting Your Mortgage Company To Release Insurance Proceeds

If you have a mortgage, and your home has been severely damaged or destroyed, the checks your insurance company issues to you for repairing or replacing your dwelling will be made out to BOTH you and your mortgage company. This is because your lender has a financial interest in your dwelling until your mortgage gets paid off. Insurance checks for your personal property and temporary rent/additional living expenses, should **only** be made payable to you, the insured.

Until your mortgage company (lender) releases its claim on some or all of your dwelling insurance funds, the funds will be deposited in an account they control. This means that before you can begin to rebuild, you must first get your mortgage lender to sign off on/approve a release of all or part of your dwelling insurance proceeds. You can view a sample letter you can write requesting your insurance funds here.

Some states have special rules relating to post-disaster insurance claims and mortgage company obligations. See, for example, Colorado's rule: **https://leg.colorado.gov/bills/hb24-1011**

This publication has three goals:

- Help you **access your insurance** funds as painlessly as possible so your repair/rebuild project can move forward.
- Help you get your mortgage company to release any insurance funds they should not be holding.
- Help you collect interest on the insurance funds the mortgage company is holding on to.

Q: Why can't I just deposit and use my insurance checks? Why does it have to go through my mortgage company first when I paid the insurance premiums?

When you borrowed money to buy your home, you agreed that the mortgage company would be specifically named as an "additional named insured" or "co-insured" on your insurance policy.

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Your mortgage documents are set up to protect the mortgage company if you take your insurance rebuild money and disappear. In other words, your home is the collateral for the loan; so if you were to cash home insurance checks but not repair or rebuild, then the mortgage company would have a problem. The loan and insurance documents set up a system to prevent you from doing that.

Every **Coverage A** check you get, and maybe some of your other coverage checks, will say something like: “Pay to the order of Jane Doe and Jane Doe’s Mortgage Company”.

You will be required to endorse/sign the check first, and your mortgage company will deposit the money into its own account, and then release the money to you later, once you have started the process of repairing or rebuilding your home.

Q: Will the mortgage company be a co-insured on only the Coverage A checks?

A: They may also be named on checks issued for “Other Structures,” “landscaping”, etc.

A good rule of thumb is to assume that the mortgage company could claim a right to be treated as a co-insured on insurance coverage for those things that are or must stay on the property when the house is sold — plants, grass, the house, the fence, the driveway, etc.

But insurance companies often only co-write the Coverage A checks, and Loss Departments often do not challenge that. If your mortgage company’s name shows up on your Personal Property or Loss of Use checks, they will need to reissue those checks to remove their name and make the checks payable only to you. Your mortgage company is not entitled to your Personal Property or Temporary/Additional Living Expense/Loss of Use insurance proceeds.

Q: If the insurance checks total more than my mortgage, does the lender get to keep more money than the remaining amount I owe them on my mortgage?

A: The mortgage company should not be able to keep insurance proceeds in excess of the remaining amount of the loan secured by the mortgage. Some mortgage companies have a written policy saying the company only holds money up to the amount of the outstanding loan balance. This may or may not be outlined specifically in the regulations in your state, so contact your state’s Insurance Department for

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assistance if needed.

Q: Why does the company need such a policy if it already is part of the mortgage?

A: The mortgage company has a special department (the “Loss Department”) that handles control of rebuilding money after you have had a catastrophic property loss. This work often is actually outsourced to an independent company. In either circumstance, the people you deal with may not know what the mortgage actually says.

Knowledge is power. Be tenacious. Read and understand your documents, and use that knowledge to your advantage. The Loss Department is generally not user friendly. Do not be surprised if:

1. “Loss Department” will not, on its own, refund to you the extra money until you ask for it, or
2. It is difficult to talk to a live human being at the Loss Department at all, or
3. You get form responses to your letters, rather than a response that answers your questions.

CAUTION: We are unaware of anyone who has ever fought the issue all the way through to court, and so there is no “final” answer.

Q: How quickly can I get the lender to release the insurance proceeds?

A: Not as quickly as you would hope for. Ask who is the point of contact with your lender who is in charge of signing off on these payments. If you cannot find that person or you are not receiving timely communications, other survivors have had success using **social media** such as LinkedIn to contact a top executive with that company directly.

Q: But my contractor will not agree to rebuild my entire house before getting paid. What can I do?

A: You are right – it is a “business reality” that a builder is not going to do all the work before getting paid any of the money. It also is a “business reality,” however, that most builders are used to working in the environment where they are not paid entirely in advance, but rather get partial, periodic payments with at least some amount retained or withheld from payment until completion.

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Your mortgage company understands this. Because your mortgage requires you to rebuild or restore your property to good condition after a fire, the mortgage company will not hold all the money to the end, because that could be a “breach [by the mortgage company] of the implied covenant of good faith and fair dealing.” This means the company has to play fair to avoid getting sued. So you will get the money in “progress payments”.

A typical progress payment policy is to release 1/3 of the held proceeds up front, 1/3 upon inspection verifying 50% completion, and 1/3 upon verifying 100% completion. There probably will be no “shortfall issue” until you are ¾ finished with construction.

Q: Can the mortgage company just use the money to pay off the mortgage, even if I do not want them to?

A: The short answer is NO. They do not have the legal right to change the terms of your mortgage to speed up your repayment schedule, or your insurance policy.

Q: So what is the bottom line?

A: Read your documents.

- Get in touch with your mortgage company, both by telephone and by mail.
- Stay in touch. Be persistent and patient, and be polite but firm.
- Keep a diary of the name and contact number (and the name of their superior and that person’s contact number) of EVERY PERSON you talk to.
- Write detailed letters that review what’s happened to date.

Final points to consider emphasizing when dealing with your mortgage company:

- Without the money, you cannot get their collateral rebuilt.
- Treating you well will be good public relations for them.
- You likely are not their only borrower who lost a home in your community. If there is a trial to determine if they are treating you fairly, then:
    - It will be on behalf of ALL of their borrowers who lost homes in the wildfire and

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    - Every juror will be either (a) someone who lost their home, (b) someone who knows someone who lost their home, or (c) someone who thinks “Oh my goodness, I could lose my home!”
- Ask the mortgage company to document what happens to the money while they have it (does it generate interest, and if not, is it invested?) – the answer could be uncomfortable for them, and if so, that is good for you.

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