

Texas tips on your insurance money and your mortgage

What do I do if my lender (mortgage company) says I need to sign over all the insurance money to them?

As to insurance payments on your dwelling, it is very likely that your lender is right. Most Texas mortgages read the same (because of FNMA and FHLMC)[1]. Your mortgage probably required you to have home insurance, make your lender a “co-insured” on the policy and let your lender hold up dwelling insurance payments until you either repair, rebuild or repay your loan. Your lender can’t take your “contents/personal property” insurance money, your “Additional/temporary Living Expense” or any other insurance money that’s not related to the dwelling they loaned you money to buy.

What arguments can I make to a lender that wants to keep all the insurance money I got for fixing or rebuilding my home?

Your mortgage contract requires you to rebuild the home. If the lender does not release dwelling insurance money so you can pay your contractor as repairs/rebuilding progresses, then you cannot fix or rebuild your home. You can tell the lender that by holding ALL the dwelling insurance money up, they are forcing you to breach the mortgage contract. They are not allowed to do that – it is called “bad faith.” But it is unlikely they will do this – most banks want you to fix/rebuild, and have written policies providing for periodic disbursements when you reach defined progress points. Under Texas law, your lender must, within 10 days of a request, either release all or part of the funds or explain why they are not releasing the funds and what you must do in order to have the funds released. This requirement is found in Tex. Ins. Code §§ 557.002 and 557.003.

If my lender says I have to use some of the insurance money to pay off (or down) my mortgage early, how can I find out whether I can refuse?

Check your mortgage. It is very likely that clause 5 of your Deed of Trust says exactly the opposite – in

other words, it likely says that unless the lender agrees to let you pay down your mortgage, you have to use the money to rebuild.

If I've already signed over insurance money to my lender is there any way to get the money back?

No. But you should keep a careful log of the name of, telephone number of, and what was said by, anyone you talk to at your about the money, including the date and time of the call.

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[1] FNMA stands for “Fannie Mae”, a government-sponsored enterprise chartered by Congress to strengthen the U.S. housing and mortgage markets, and to support affordable homeownership.

FHLMC, Freddie Mac was also created by Congress to stabilize the nation’s residential mortgage markets and expand opportunities for homeownership and affordable rental housing.

United Policyholders thanks volunteer attorneys Ken Klein, (San Diego, California) and Chris Files, (Bastrop, Texas) for assistance with this publication. Ken lost his own family home in a 2003 wildfire and is a volunteer with the United Policyholders Disaster Survivor Support Network. A native Texan and a former litigator, he teaches at Case Western School of Law and has both personal and professional expertise in legal and financial matters related to disaster recovery. Chris Files has assisted hundreds of 2011 wildfire victims in her home town of Bastrop, Texas.