

## **“The dirt” on insurance protection for mud flow damage**

When heavy rain falls on land that lacks adequate surface vegetation, it can cause mudslides/mud flow. If trees and other vegetation on or near your property have been destroyed or burned in a recent or fairly recent wildfire, your home is at higher risk for damage from mudflow. This is especially true during rainy season, and if your home is located downhill from a burned area.

Damage from earth movement, mudslides, mudflow and earthquakes is generally not covered in a standard property insurance policy. Depending on where you live and your financial resources, you may be able to buy an add-on or separate policy to cover those types of damage. A National Flood Insurance Program policy will cover mudflow as long as it's mostly liquid, not a lot of tree debris, rocks, etc. (“Chocolate Shake, not Chocolate Cake”).

Read the questions and answers below to find out how to insure your home against mudflow, either through your homeowner's policy, or through a separate flood policy.

### **Q: What is mudflow?**

A: Mudflow is defined by the National Flood Insurance Program as “a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water.”

### **Q: How do I know if mudflow is covered in my homeowner's policy?**

A: Review your policy carefully and find out exactly what it includes or excludes with respect to land movement, flood, and rain. Below is the language from a sample homeowners policy:

**“Earth Movement, meaning any loss caused by, resulting from contributed to or aggravated by earthquake, landslide, mudflow, earth sinking, rising or shifting;**

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**volcanic eruption, explosion or effusion of a volcano.”**

Ask your agent or adjuster whether there are exclusions in your policy coverage for land movement, and whether your policy requires you to “protect” your property after a loss from “further loss”? If it does, find out exactly what your insurance company defines as your “property”. Is it just the house or garage and outbuildings? Is the lot and landscaping included?

Ask whether your policy specifically provides protection for “land stabilization”, and, if so, are you responsible for paying up front for these measures of protection? Find out if your insurer will agree to pay up front, if you get an estimate.

**Q: I read my policy and found the wording about land movement. What is the next step?**

A: Copy your policy’s language about land movement word for word in a notebook. Then call your insurance agent and have a conversation about this specific issue. Be sure to document everything: write down exactly what your agent tells you, and what you say to them. Note the date and time of the discussion as well for future reference.

It is important to follow up in writing with your insurer (via email, letter, or fax) and reiterate what you were told about your policy with regard to the issue of land movement/mudflow. If you have any lingering questions or concerns, write them down as well, and ask the insurer to respond to your questions in writing.

Following this process will ensure that you and the insurance company are on the same page. It will eliminate miscommunication and you will have written evidence that will hold up in court, should you ever have to file a claim for mud damage in the future.

**Q: What kind of insurance does cover mudflow?**

A: Flood policies issued by the [National Flood Insurance Program](https://www.floodsmart.gov/floodsmart/pages/residential_coverage/whats_covered.jsp) cover mudflow (explained above). There is a thirty-day waiting period from the date you purchase a policy, until it goes into effect. Depending on where you live, flood insurance can be cheap or expensive. For summary of coverage in NFIP policies, visit [www.floodsmart.gov/floodsmart/pages/residential\\_coverage/whats\\_covered.jsp](https://www.floodsmart.gov/floodsmart/pages/residential_coverage/whats_covered.jsp)

**Q: I live downhill from a neighbor whose house burned last summer, and I am concerned about mudflow because it's now the rainy season. What can I do to protect my property?**

A: Find out if the county has made available free sand and bags for residents in affected areas. Ask local charities as well, including the Red Cross, if they are offering any free or low-cost resources for homeowners. If you need to take emergency measures to protect your property, be sure to contact your agent and follow-up in writing (email counts).

It is important to notify your insurance agent what emergency measures are needed to protect your property from damage, and reiterate that you will be acting quickly. Request the insurer's immediate assistance and confirmation that your actions taken to limit damage to property will be promptly reimbursed. This prompt notice to the insurer is needed to avoid a common dispute that notice was not promptly provided.

Take photos of the efforts you have taken to protect your own property. Keep copies of the photos in a safe place outside your home. Even just a few "before and after" shots can illustrate (for the insurer and courts, if need be) proof that the policyholder followed through on their obligations. Also be sure to get photos of any signage in the local area. Often the county will post "Beware of Mudflows" signs to alert neighborhoods impacted by fire. Documenting these signs will go a long way toward defending your claim, should you have one in the future.

If the policyholder has taken all reasonable measures to limit additional damage to their property, after a loss by fire, and has documented an assessment of their property with respect to the soil stabilization, it is much easier to deal with an insurer who may be contesting or denying reimbursement or payment for these services.

Important: According to the USGS, if you build walls to divert debris flow and the flow lands on a neighbor's property, you may be liable for damages. And vice versa.

**Q: My property has been damaged by mudflow originating on a neighbor's property. What legal recourse do I have if mudflow is not covered in my homeowner's policy?**

A: Should your property be damaged by mudflow, your insurer (and the courts) will look for the "proximate cause" - what is the source of the peril? Some providers of basic homeowner policies may be

willing to pay for damage if residents can definitively link a mudslide to a recent fire. The USGS studies mudflow and landslides and periodically puts out [reports about hazardous mudflow](#) linked to specific wildfires.

A policyholder's best defense is to find an expert willing to evaluate the cause of your mudflow (and to back up their opinion in court, if need be) as to the original cause of the soil de-stabilization when fire is involved. If an insurer requests to take your recorded statement about the circumstances of a loss or claim, you should contact a policyholder-side coverage attorney prior to giving any statement. Insurance company lawyers will be present – you are entitled to the same representation.

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