

[Court backs rules to protect fire victims from being underinsured](#)

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California's insurance commissioner has the authority to adopt rules that protect homeowners whose policies fall far short of the amounts needed to rebuild or replace homes destroyed by wildfires or other disasters, the state Supreme Court ruled Monday.

Insurance companies usually give homeowners estimates of the cost of replacing their property so they have an idea of how much coverage to buy. But the court cited a study of homes destroyed by Southern California wildfires in 2007 that found only 26 percent of the owners' policies fully paid for replacement costs — and the others were under-insured by an average of \$240,000.

Events dating back to the 1991 Oakland Hills fire, the court said, showed “an additional aspect of the danger wildfires pose to homeowners: under-insurance.”

The regulations to protect homeowners were drafted under former Insurance Commissioner Steve Poizner and adopted by his successor, Dave Jones. The regulations would require insurers who provide cost estimates to include numerous details, such as the costs of labor, materials, home demolition, building permits and the builder's overhead and profits. Those figures would have to be updated at least once a year.

The rules were scheduled to take effect in June 2011, but were blocked by Los Angeles judge and a state appeals court in response to a lawsuit by insurance companies. Those courts said state law did not authorize the commissioner to regulate replacement-cost estimates, but only to seek penalties against insurers who the commissioner believed had given deceptive estimates.

The state's high court unanimously disagreed, saying the commissioner has the power to protect consumers from deception by requiring insurance companies to include the likely costs of home replacement, in detail, in any estimates they provide.

“The regulation seeks to reduce the possibility that an estimate would be misleading by ensuring that the estimate include all that is reasonably knowable about actual costs at the time,” Justice Mariano-Florentino Cuéllar said in the 7-0 ruling.

He said state lawmakers prohibited deceptive and misleading business practices but did not spell out the types of insurance cost estimates that should be considered misleading, and “entrusted that determination instead to the commissioner’s expertise.” The court returned the case to lower courts to consider additional insurance industry challenges to the regulations.

A consumer advocate said the rules, once implemented, would provide much-needed protection for homeowners.

“The community of wildfire victims in California has been devastated by chronic under-insurance,” said Amy Bach, co-founder and executive director of the nonprofit United Policyholders. “The consumer relies entirely on the insurance company and its sales representative. They put themselves forward as the experts. ... The law protects the agent and the insurer with the fiction that the homeowner is responsible for setting the limits of their policy.”

Insurers criticized the ruling.

“We respectfully disagree with the court’s opinion today upholding the commissioner’s overreach; we believe it does not accurately reflect the Legislature’s intent,” Mark Sektman, president of the Association of California Insurance Companies, and Kara Cross, general counsel of the Personal Insurance Federation of California, said in a joint statement.

The case is Association of California Insurance Companies vs. Jones, S226529.

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