United Policyholders
Empowering the Insured

Hundreds of fire victims finding themselves vastly underinsured

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Hundreds of Sonoma County residents who lost their homes in the October wildfires say they are finding themselves underinsured and many are pressing their cases with their homeowners' insurance carriers. Many displaced homeowners are discovering that they will likely have to pay tens to hundreds of thousands of dollars out of pocket as they process their claims, according to fire victims and attorneys. One attorney estimated that some policyholders could be out more than $1 million in costs.
About 97 percent of the more than 200 fire victims whose policies were examined by the Friedemann Goldberg law firm were found to be underinsured, either for coverage of their structure or personal property, said John Friedemann, managing partner of the Santa Rosa firm.
In Sonoma County alone, policyholders have filed 14,686 residential property claims, resulting in almost $7 billion in damages, according to the state Insurance Department. There were 4,785 residences destroyed. Insurance companies have paid out almost $2.4 billion so far.
At issue is whether the carriers have underpriced their policy limits on the overall cost of rebuilding replacement homes to the detriment of their customers, or whether policyholders have opted on their own for their lower coverage — and lower premiums — and should have to live with the choices they made.
The debate is not new.
In fact, California lawmakers have wrangled over the issue of adequate insurance compensation for rebuilding since the 1991 Oakland Hills fire, but to no avail. The enormity of the wildfires in Sonoma County has put the issue back in the spotlight, especially given the expected rise in the cost of building materials and labor.
Policyholders are trying to apply pressure on their insurance companies to compensate them fully for their claims, whether by going to court or by mounting a public relations campaign to force insurers to offer more money in their quest to rebuild their homes. In the aftermath of the nation's costliest wildfires, insurance claims throughout the region have already totaled more than $9 billion.

“We are finding the numbers are so grossly insufficient,” said Michael Bidart, a Claremont lawyer who has consulted with more than 200 local residents who lost their homes in the fires.

Bidart is preparing to sue USAA, alleging that the carrier underestimated the coverage limits needed to build a new home and then used a software program, Xactware, to cut its exposure during the claims process — “a double whammy for USAA policyholders” he wrote in a Dec. 5 letter to the company.

One nonprofit group, United Policyholders, surveyed Californians who lost their homes in 2007 wildfires. Its survey showed that only 26 percent had enough coverage to rebuild their homes.

“The vast majority of people are underinsured,” said Amy Bach, executive director of the San Francisco-based consumer advocacy group.

In fact, the situation was so bad that a 2008 survey by the state Department of Insurance found that those with extended replacement coverage — policies that can pay out as much as 150 percent of the overall limit in some cases — still ended up paying out-of-pocket costs in 57 percent of the cases.

In 2010, the state Insurance Department tried to implement a regulation to improve the environment.

The rule did not require an insurer to set or recommend a policy limit for rebuilding.

But if the carrier did issue such an estimate, the regulations spelled out how they were to be calculated and communicated to the policyholder.

The industry sued to block the rule, arguing that it was too prescriptive. “It was a ‘one size fits all,’” said Mark Sektnan, vice president of the Property Casualty Insurers Association of America.

A state judge and appellate court ruled for the industry, but the California Supreme Court in January unanimously backed the department, noting in its ruling that the commissioner had the authority to issue “reasonable rules and regulations” under state law to spell out the duties for carriers who provided such estimates. The court also noted that guaranteed replacement coverage was the norm up to the 1990s, but only a small subset of insurers even offer it now.

State Insurance Commissioner Dave Jones said in an interview his hands were tied because the state Legislature has not passed legislation mandating a replacement cost estimate be provided. The department has received fewer than a dozen complaints as of last week regarding underinsurance, according to a spokeswoman.

“The best I was able to do is issue a regulation that when insurers offer a replacement cost estimate that it would be a complete and comprehensive estimate,” Jones said. “The insurers didn’t even want that.”

That’s not much solace to fire victims such as Robert Bivin, a USAA policyholder who lost his $1.2 million Fountaingrove house in the fire. Bivin had his home under California Capital Insurance, but switched this summer to USAA so his auto and home policies would both be with one insurer.

Bivin’s previous policy limits were higher and when he inquired, he said he was assured by the USAA representative that the new level was adequate, with an estimated rebuild cost of slightly more than $621,000.

"The message I was getting was that I was essentially overinsured," Bivin said of the USAA representative.

He said he now finds himself likely hundreds of thousands of dollars underinsured, with a reimbursement of $177 per square foot from his policy for his dwelling, while rebuilding estimates for some Fountaingrove homes start around $400 per square foot.

"They said your coverage is your coverage," Bivin said when he inquired about the discrepancy in the cost for rebuilding.

In a statement, USAA said its goal is to insure their policyholders' homes "in an appropriate amount, not underinsuring, but also not overinsuring."

The Xactware software provides an estimate of the minimum cost to rebuild their home, USAA said. The company recommends that its customers insure their homes for 100 percent of the estimated minimum and it also explains the difference between the rebuild cost and current market value.

"If the member agrees to insure for at least 95 percent of the minimum estimated rebuild cost, we offer an endorsement that provides up to 25 percent additional coverage in the event of a total loss," USAA said.

Most of the USAA customers who filed a claim in the fires had the additional 25 percent coverage, the company said, which helps cover such things as a contractor shortage.

"This situation has understandably led some residents to worry about underinsurance. We are working with all of our members and any contractors they've been able to hire to determine their costs and promptly pay any additional amounts owed," the company's statement said.