

[Insured homeowner owed full cost of repairs, appeals court rules](#)

San Francisco Chronicle

An insured homeowner whose home has been badly damaged is entitled to coverage for the cost of repairs, even if those far exceed the property's market value, a state appeals court has ruled.

Reversing a Contra Costa County judge's decision, the First District Court of Appeal in San Francisco said a Richmond woman whose home was damaged by a kitchen fire in 2011 should receive \$320,549, the repair cost minus depreciation, rather than the \$75,000 market-value coverage her insurer paid.

More broadly, the court said a 2004 state law, prompted by numerous insurance disputes over damage caused by Southern California wildfires, allows homeowners to recover repair costs even when their insurance policies are drafted more restrictively. Coverage is limited to fair-market value only if a home has been destroyed or damaged beyond repair, the court said.

"Courts have recognized that homes may have values to an owner that are distinct from economic worth, such as familiarity, comfort and the memories they invoke," Justice Therese Stewart said in the 3-0 ruling, issued Friday.

For that reason, she said, lawmakers could have decided that owners whose homes had been damaged but not destroyed should "have the option of repairing their homes and remaining in the homes and neighborhoods they had chosen."

State Insurance Commissioner Dave Jones and the consumer organization United Policyholders filed arguments supporting the Richmond homeowner, Marlene Garnes. Garnes' lawyer, Dylan Schaffer, said Wednesday the ruling was important for its interpretation of the 2004 law.

"The Legislature wants people to stay in their houses and repair them," Schaffer said — in contrast to

auto insurance, which covers no more than the value of a damaged car. “Unless the building is leveled to the ground, you’ve got to pay what it would cost the homeowner to fix the building.”

A lawyer for the insurer, the California Fair Plan Association, could not be reached for comment. The association, a group of insurance companies commissioned by the Legislature in 1968 to cover homes in high-risk areas, could appeal the ruling to the state Supreme Court.

“The Court’s decision prevents the association) from forcing residents in lower income and other economically challenged neighborhoods to move or live in a damaged home instead of repairing it after a fire,” said Jones in a statement.

Schaffer said Garnes, who has lived in the home since childhood, has scraped up funding for enough repair work to let her stay in the house while seeking full coverage in the courts.

Defending its decision to pay only the \$75,000 market value, the insurance association cited language in its policy that said it would cover only the actual cash value if the repair or replacement costs were higher.

But regardless of the policy language, the court said, state law draws a distinction between “total loss” of a property, to be reimbursed by its market value, and “partial loss,” covered by repair costs minus depreciation.

“Garnes’ home was damaged, not destroyed,” Stewart said. “An insurer may not circumvent the law by employing contrary contract terms.”

Bob Egelko is a San Francisco Chronicle staff writer. Email: beigelko@sfchronicle.com Twitter: @egelko