

Many Black Forest residents were thrilled to find their property intact after the 2013 wildfire. For some, the ordeal was just beginning.

The Colorado Sun

Properties classified as “partial loss” sometimes become the object of intense disagreement between homeowners and insurers

BLACK FOREST — At first, Nancy Trospen could hardly believe her good fortune. Although she initially heard that her house had burned to the ground in the disastrous 2013 Black Forest fire, the report proved erroneous.

When she saw it still standing, and authorities finally allowed her to move back in, she was ecstatic. But Trospen soon realized she hadn’t totally dodged the bullet. Like other homes that remained standing, her house suffered damage — not immediately visible — from heat, smoke and possibly even retardant used to fight the fire.

And it wasn’t always covered by insurance.

Trospen still digs into her own pocket to fix damage to things like windows, whose seals were compromised by the intense heat. Other fixtures, like the composite, wrap-around deck that dissolved into what she terms “my sandy beach” from baking in the fire’s estimated 650-degree temperatures, may never be replaced.

“People say, why don’t you move?” Trospen says. “I considered it. But I’ve been here almost 30 years. It sounds easy to say, ‘I’m going to move.’ But it’s my home. There’s tradeoffs.”

So she has remained in the house on her two-acre site on the north end of the fire’s path.

When she moved back in, she did some cleaning but realized that it was a bigger job than she could handle — and her insurance company arranged for professionals. What she didn’t understand at the time

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was the extent that smoke damage can pervade carpet and walls, and the toxins that can cause health concerns.

“Even after it was cleaned, we got sick and had to move out,” says Trospen, who shared the house at the time with her adult son and his friend. “A lot of damage that can be done, that initial cleaning doesn’t take care of.”

She ran into a problem that homeowners often do when processing claims of partial damage to property impacted by fire, says Amy Bach, an attorney and executive director of the San Francisco-based United Policyholders, a national nonprofit that advocates for consumers. She visited Colorado Springs in the wake of the Black Forest fire.

Among those who suffered partial damage to their homes, Bach found that many complaints centered on issues of air quality and the thoroughness of cleaning — which themselves revolve around a primary concern.

“It always comes down to money,” Bach says. “Bleach and a sponge are less than \$5. Professional cleaning for smoke remediation can be \$5,000. When there’s that discrepancy, the insurance company digs in its heels. They feel people are exaggerating health problems or trying to get new carpeting on the insurance company’s dime. It sets up this conflict.”

On the hook for hidden damage

It’s the hidden damage that usually triggers conflict.

“People get into arguments about air ducts, damage behind walls,” she says. “The classic thing is an adjuster doesn’t want to tear off drywall to see if there’s damage to insulation or heating or air conditioning ducts, but it may be necessary. It’s a cost-driven conflict.”

While insurance paid for some things, Trospen found herself on the hook for deck and roof repairs, carpet and pad replacement, she says. She had to do an oil-based seal on sub-floors and ceilings to block smoke seepage. A lot of furniture and mattresses had to go. She hired a total of three licensed hygienists to assess any health issues in her house, plus an allergist. She got notes from her doctor saying her health had suffered from exposure to toxins.

She even paid a forensic fire expert to try to determine how hot the fire had burned — and by extension, what parts of the structure might have been affected and covered by insurance. It was the forensics expert who estimated that the temperature had reached 650 degrees, though he couldn’t determine the duration of that heat level.

Her insurance company stood firm.

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“I had so much evidence both from my house and my health,” she says, “and they ignored it all. They said I had an older home, so what do you expect? They said you haven’t maintained your home.” By this point, she had devoted two years and thousands of dollars to making her case. Trosper says she considered a lawsuit, but decided she didn’t want to drag out the process even longer, with no guarantees. She settled, and as part of the deal signed a non-disclosure agreement, “which means I have to be very careful about what I say,” she explains.

“Partial loss” can vex insurers, too

Although homeowners can find the claims process for a partial loss difficult to manage, insurers have their own issues to sort out when dealing with catastrophic wildfires.

Total losses, from a claims standpoint, tend to be more straightforward, says Carole Walker, executive director of the Rocky Mountain Insurance Information Association that represents insurers from four western states.

“Now you’re looking at damaged property — is it replaceable? Can it be fixed?” Walker says. “Smoke damage remediation and all those factors come into play versus when a house is burned to the foundation. Partial damage, especially from catastrophic wildfire, can be challenging.”

Walker also notes that the third-party contractors can contribute to an adversarial relationship between homeowners and their insurers. Particularly with the proliferation of big wildfires in California and Colorado, she says, businesses that arrive in the wake of disaster have given insurance companies pause.

“There is a concern that with catastrophic wildfires we’ve seen a growth industry from third-party vendors,” Walker says. “That causes a lot of fear and panic in homeowners themselves, and sets up an adversarial relationship.”

In some cases, she adds, third-party businesses may be working for fees contingent on any settlement, so insurers may be skeptical of particularly high damage estimates.

The Black Forest fire, coming just a year after the nearby Waldo Canyon fire that ravaged the Mountain Shadows community, gave both insurers and homeowners the benefit of lessons learned. But perhaps the most significant development was the Colorado Homeowners Insurance Reform Act, which Gov. John Hickenlooper signed into law just about a month before the Black Forest fire erupted. Best practices became codified, Walker says.

Timelines were extended for things like submitting home inventories. Even the time limit for filing a lawsuit was extended. Some companies wrote one-year limits into their policies, but under the new law,

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Colorado's statute of limitations overrules policy limits. For example, breach-of-contract claims fall under a three-year statute of limitations.

Poll: Most residents unhappy with settlements

But for Trosper, some decisions by her insurer were simply puzzling. Her auto policy covered smoke damage to her convertible, but her homeowner's policy wouldn't cover the damage to the interior of the garage where it was stored.

"The Black Forest fire was a first for a lot of us," she says. "Maybe the adjusters didn't know any more than we did."

Although some companies got high marks from Black Forest homeowners, a poll taken by United Policyholders one year after the fire showed significant dissatisfaction among others.

The survey polled 130 residents and found that more than half who responded to a question asking if they were satisfied with their insurance settlement said they were not, and more than a quarter of those people said they would not recommend their carrier.

"If you really want to fight back, hiring a lawyer — if they know what they're doing — is a great way to fight back," Bach said. "But lot of disaster victims are tired. They just take it."

She figures that maybe 2 percent of disaster victims fight back, and of that number at least half can't find a lawyer, or live in a state that doesn't give them remedies that make it financially feasible for an attorney to take the case on a contingency basis. Colorado is not among those, she adds.

If there is one takeaway from the experience that soothes Trosper even a little, it's the knowledge that she's not alone in her frustration. "A lot people think if your house didn't burn, you're OK," she says.

Don't misunderstand: She wouldn't trade places with anyone who saw a pile of ashes where their house once stood. But while many around her have rebuilt, she still recovers on the installment plan. It took a year just to fix the walls and flooring.

She managed to replace her windows only last November. The siding also was a recent expense.

"I still have a lot of work to do," Trosper says. "and many thousands of dollars to go."

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