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[Maximizing Insurance Payouts After The California Fires](https://uphelp.org/maximizing-insurance-payouts-after-the-california-fires/)

Law360

It is estimated that there are over 13.5 million homes in California and one-third of those are located in or near areas vulnerable to wildfires. Unfortunately, for those of us who live and work in California, wildfires are an annual occurrence that have, in recent years, become increasingly more devastating and more costly, both in terms of loss of life and damage to property. Following the wildfires that ravaged the state in 2017, insurance companies received 45,000 claims totaling close to $12 billion in losses. As this article is being written, huge wildfires are burning in Butte, Ventura and Los Angeles counties. As affected property owners are allowed back into the burn areas and begin to rummage through the ashes, wondering how to find the strength to rebuild, insurance coverage for fire related damages may be the last thing on anyone's mind but it will inevitably come to the forefront. Property owners need to be prepared for the insurance claims process. As discussed in this article, a number of important insurance lessons were learned from the claims submitted in connection with the 2017 wildfires and that experience, together with an understanding of certain legislation recently signed into law in California as a result of those fires, should greatly assist those impacted by the 2018 fires in how to maximize their insurance payouts.

Nearly 9,000 separate wildfires spread through California during the 2017 fire season and those blazes burned 1.3 million acres of land or an area the size of the state of Delaware. The December 2017 Thomas Fire alone scorched more than 280,000 acres across Southern California and was the largest wildfire ever recorded in California. In fact, five of California's most destructive wildfires on record occurred in 2017. According to the California insurance commissioner, the 2017 fires killed more than 45 people more than in the 10 previous years combined) and they damaged or destroyed 32,000 homes, 4,300 businesses and over 8,200 vehicles, watercrafts and equipment. The National Interagency Fire Center's predictive outlook for 2018 forecasted above normal fire potential in California due to the persistence of dry fuels, frequent offshore winds and generally unfavorable weather. Regrettably, those predictions appear to be coming to fruition.

In the last four months, the California legislature has actively taken a pro-policyholder position when it comes to insurance coverage for losses caused by wildfires. On Sept. 21, 2018, California Gov. Jerry Brown signed eight new insurance bills into law all of which were designed to assist those impacted by both the 2017 wildfires and by future wildfires, to maximize insurance protections. The September laws were in addition to three other wildfire laws the governor signed in July and August of 2018. Of these 11 new insurance laws passed and signed by the governor, only three of them AB 1772, AB 1800 and AB 2594) took effect immediately and will play a part in the insurance claims arising out of this year's fires; the other eight do not take effect until 2019. Nearly seven weeks to the day after Gov. Brown signed the September laws, emergency 911 calls rang through to fire departments in Butte, Ventura and Los Angeles counties on Nov. 8, 2018, seeking assistance with wildfires that would become the most costly and deadliest fires in the state's 168-year history.

Ten days later, the Butte County fires are currently 60 percent contained and have already killed 77 people a number which is expected to rise with 1,000 people still unaccounted for), burned nearly 150,000 acres of land, and destroyed nearly 12,000 structures including homes). The Southern California fires are presently between 90 percent and 100 percent contained, have killed three people, burned nearly 100,000 acres and destroyed over 700 structures including homes). It is estimated that the total cost of the current fires will be more than $19 billion. Although roughly 90 percent of California homeowners buy insurance coverage and 40 percent of renters also have insurance protection) those impacted by the current wildfires would be well-served to take heed of the lessons learned from the insurance claims submitted after the 2017 fire season.

Almost 70 percent of the 2017 fire victims believed that they did not have enough insurance to fully replace or rebuild their homes. Some homeowners found themselves with as much as a $400,000 shortfall between the estimated cost of rebuilding and the amount of insurance coverage they had on their homes; a gap that property owners were forced to fund out of their own pockets. According to a survey conducted by the nonprofit consumer insurance protection group United Policyholders, two-thirds of respondents reported being underinsured in connection with the 2017 wildfires by an average of $317,000. In the midst of coping with the fact that all of their possessions were destroyed, property owners, who likely felt secure in thinking that they were properly insured, suddenly found themselves faced with the tough decision of either draining their bank accounts in order to rebuild or leaving California altogether. Many of these situations could have been avoided if the homeowners had reviewed their policy on an annual basis and ensured that they were sufficiently insured.

As detailed by California Insurance Commissioner Dave Jones, his department found that insurance companies often understated and underestimated the replacement costs to potential customers. These insurance companies also omitted or misrepresented the need to insure the costs associated with permitting, architectural, zoning and labor fees when an insured property needs to be completely rebuilt. Insurance companies typically value the costs of rebuilding by looking at the size of the structure, the original purchase price and the price of homes in the area. However, these factors are usually based on a single fire rather than taking into account the fact that, when thousands of structures are impacted by a wildfire, it is not uncommon for the costs of rebuilding in burn areas to skyrocket because of the scarcity of materials and labor needed to rebuild thousands of structures in the same area at the same time. Sadly, not enough homeowners update their insurance policies on an annual basis to account for inflation, home upgrades or increasing labor and material costs.

As property values and building costs continue to increase, reviewing one's policy on an annual basis to ensure that there is sufficient coverage in the event of a total loss, or even temporary displacement, is strongly recommended. For those impacted by this year's wildfires who did not update their policies after the 2017 wildfires, it is now too late to do so but it is not too late for every other Californian living in areas vulnerable to wildfires to review their polices and increase their policy limits to cover the current rebuilding costs. Further, an effective strategy employed to minimize the impact of being underinsured following last year's wildfires, was to negotiate with insurers to combine the limits of liability from all coverage parts of the policy.

One of the bills signed into law in September 2018 AB 1800), which took effect immediately, prohibits a property insurer, in the event of a total loss, from limiting or denying rebuilding payments based on the homeowner's decision to rebuild their home or purchase a new home in a different location, say in an area not vulnerable to wildfires. That law also provides that, to the extent a homeowners' policy includes coverage for building code upgrades and extended replacement costs, such coverages would also apply to the costs of rebuilding or buying a new home in a new location. If the policyholder decides to rebuild in the original location, AB 1800 also clarifies that the measure of indemnity will not exceed the replacement costs in that location, including building code upgrades and extended replacement costs, provided that those coverages are included in the insurance policy. The two other bills signed into law in September 2018 and made effective immediately relate to certain time limitations for filing a claim by extending the statute of limitations from 12 to 24 months after the loss and extending the minimum time during which an insured may collect the full replacement cost of a loss relating to a state of emergency from 24 months to 36 months).

Another issue that arose after the 2017 wildfires concerned the proper application of additional living expense, or ALE, coverage found in homeowners' policies. ALE is designed to reimburse policyholders for the cost of maintaining a comparable standard of living following a covered loss that exceeds their normal expenses prior to the loss. That coverage usually provides benefits for a “like” dwelling but, in areas ravaged by wildfires, alternative housing can become scarce relatively quickly and the cost for temporary housing or short-term leases can become very expensive. In the aftermath of the 2017 fires, many insurance companies were willing to negotiate this coverage and agreed to pay for something that was not necessarily a “like” dwelling but that would prevent the homeowner from having to move hundreds of miles away in order to secure such a dwelling and then still have to commute to and from work. While many insurance companies were willing to come around on this point, it took some time to get there.

After last year’s wildfires, questions arose concerning whether ALE coverage is triggered by a mere threat of physical damage i.e., the costs of homeowners who are displaced because of mandatory evacuation orders and have to find alternate living arrangements but whose homes were not destroyed as a result of the fire). Again, for those property owners who retained experienced insurance recovery lawyers following the 2017 wildfires, these issues were negotiable. Finally, many homeowners’ policies contain time limits related to ALE expenses while other policies have dollar limits. As a result, it is very important for the homeowner to fully understand which type of ALE coverage their policy includes so that they can maximize their benefits and avoid spending too much for alternative housing or staying for too long.

Another lesson learned from insurance claims filed after the 2017 California wildfires, is that the costs associated with debris removal from impacted properties can often exceed the coverage limits of the policy. A number of impacted communities, including the Santa Rosa area in Northern California, coordinated debris removal efforts to minimize the costs charged to individual homeowners and policyholders had to decide whether or not to sign on to such efforts. Because these coordinated community efforts helped to reduce the contributions individual property owners needed to make and, therefore, reduced the amount insurers were required to pay under debris removal coverage, most insurance companies were amenable to allowing policyholders to participate in such a process. However, before agreeing to participate in alternate arrangements like community clean-up efforts, it is best for homeowners to communicate this options to their insurers and to obtain carrier permission before doing so.

Of all the lessons learned from last year’s devastating wildfires, perhaps the most important one is that, in order to both maximize insurance payouts and to obtain those benefits more quickly, policyholders should obtain a full copy of any potentially applicable insurance policies from their broker and seek the assistance of professionals to help understand the specific terms, conditions and exclusions set out in those policies. The language of insurance policies can be archaic and arcane and, as a result, it can often be confusing. Because of this, homeowners and businesses trying to recover from and rebuild their lives following devastating wildfires may want to consult with an insurance recovery lawyer who has experience in dealing with natural disasters to assist them in making sure that their insurance benefits are maximized.

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