

Sandy insurance settlements won't make homeowners whole

Newsday

The flood-insurance settlements being brokered for superstorm Sandy victims may be a victory for thousands of homeowners who have long waited for money to rebuild. Yet many, if not most, are still apt to come out behind.

Federal law limits how much the National Flood Insurance Program can pay to settle lawsuits over disputed claims, even in cases of alleged fraud. Homeowners can't collect damages for pain and suffering, lost income, rent, construction-loan interest and other items not explicitly covered by their policies. It's not even clear they can recoup lawyers' fees.

"Sandy victims will certainly not get rich off these settlements," said Amy Bach, executive director of United Policyholders, a San Francisco nonprofit that helps homeowners file insurance claims after disasters. "Most are not even going to be made whole."

The problem, in part, lies in the nature of the flood-insurance program, which was never intended to pay homeowners every dollar they lost. Congress designed the initiative as a limited safety net, riddled with exclusions and restrictions that lawsuits cannot bend.

By and large, the payouts for the roughly 2,000 suits in New York and New Jersey will be capped at the limits of homeowners' insurance policies, according to people close to the negotiations.

That means their total settlements — including what they were already paid on insurance claims before filing suit — are unlikely to exceed \$250,000 for damage to houses and \$100,000 for ruined furniture, appliances or other contents.

In many instances, homeowners say they've already spent more than that to rebuild.

"We definitely didn't win the lottery," said Gail Mero, 53, a bookkeeper who said she spent upward of \$300,000 to rebuild her Bay Park home and is waiting on a settlement over her disputed insurance claim.

Debts pile up

Some homeowners, including Mero, took out loans from the U.S. Small Business Administration to fund the work while awaiting the outcome of lawsuits. Now a chunk of any settlement will go toward that debt

and its interest.

Others received grants from the state's storm recovery program, New York Rising, and may have to return that money if those expenses are now covered by insurance. The effort, funded by the U.S. Department of Housing and Urban Development, is forbidden from paying for anything covered by another federal initiative, including flood insurance.

To be clear, Mero and other homeowners said they were grateful for any additional money. The settlements, they said, are a welcome breakthrough after more than two years of denials and deadlock.

"My clients were underpaid and are now getting what they are owed," said Denis Kelly, a Long Beach lawyer who is part of the team negotiating the settlements. "For them there is finally some relief." That relief comes, in part, because the flood-insurance program is now on the defensive. Over the last several months, storm victims have accused companies that processed claims for the program of forging documents and using other means to intentionally underpay homeowners.

Those allegations have led to a criminal investigation by the New York attorney general's office. And they have prompted the Federal Emergency Management Agency, which runs the flood-insurance program, to initiate talks that have led to tentative deals to resolve about 600 of the 2,000 pending lawsuits. Federal officials, meanwhile, say they are looking for ways to pay homeowners as much as possible within the law.

That may include legal fees, which homeowners have been barred from collecting after past storms. But no deal has been reached, according to people close to the talks. So homeowners may ultimately owe up to a third of their settlements to lawyers.

"While we can't discuss any details of ongoing litigation, I can say that we are committed to doing everything we can to ensure these survivors get every penny they are legitimately owed," FEMA spokesman Rafael Lemaitre said.

HUD, meanwhile, is working to clarify what, if any, New York Rising funds may need to be repaid, said Holly Leicht, the agency's regional administrator for New York and New Jersey. "If there is flexibility, we are looking for it," Leicht said. "But there are pretty stringent legal requirements."

For some homeowners, the settlements come too late to recover what they lost.

Deborah Ramey and her husband, Bob Kaible, bought a two-story house in Long Beach adjacent to their own home in 2005. They rented out the place to cover the mortgage. Someday, they hoped to knock it down to make room for a backyard.

"We wanted a little slice of heaven in Long Beach, with a garage and everything," said Ramey, 51, an elementary school teacher.

Then Sandy swamped the house with 4 feet of water.

When the flood subsided, the floors had shifted so dramatically that Kaible had to break open the front door with a sledgehammer. They received \$79,000 from their \$250,000 policy, based on an engineering report that blamed most of the damage on long-term structural defects rather than flooding.

Ramey and Kaible appealed, but lost. So they sued, hoping to someday recoup enough to rebuild.

Meanwhile, the house remained gutted. Without rental income, it was hard to pay the mortgage. Five months after the storm, they sold to a developer.

“We couldn’t afford to fix it. So we couldn’t afford to keep it,” Ramey said.

Over the next several months, their lawsuit slowly rolled forward. Late last year, it took a dramatic turn. A federal magistrate judge, Gary Brown, concluded the engineering report for their insurance claim had been secretly changed. The judge’s finding — based largely on a photograph Kaible managed to snap of the original report — set in motion the now widespread allegations that homeowners were cheated.

“Somebody has to be held accountable,” said Kaible, 59.

The pending settlements may not be storm victims’ last opportunity for restitution.

Class-action lawsuits

Since the fraud allegations surfaced, at least eight homeowners have filed class-action lawsuits against the flood-insurance program and the companies that processed the claims.

If judges allow those class-actions to proceed, they may provide a way for homeowners to be paid for pain, hardship, lost income and other damages beyond the limits of their policies, lawyers said.

But there may be a catch: The proposed settlement terms would require homeowners who accept a payout now from FEMA to waive their right to join one of the class actions.

That would leave storm victims with a choice: Walk away with a limited settlement. Or hold out for something bigger from the class actions, which may or may not succeed.

Twenty nine months after the storm, some homeowners are still swamped with debt that poured in with the flood.

Liam and Katie Fazekas’ two-bedroom bungalow in Freeport was deluged with 6 feet of water.

Contractors said it would cost \$170,000 to fix.

Yet the settlement from the company that handled their flood-insurance claim, Hartford Insurance Co., came to \$86,000, said Liam Fazekas, 36, a carpenter. After appealing, he and his wife sued. They took out a federal disaster loan and rented a place nearby. Meanwhile, the house they owned stood gutted.

Months passed. The Fazekases, who were then paying rent and a mortgage, fell behind on the latter.

Eventually, they sold the house through a state program that acquired properties damaged in Sandy. Yet

they still had to tap their savings to pay off the mortgage.

The couple, who have a 21-month-old son and 3-year-old daughter, now live in a rental in Point Lookout. They don't know how much they will receive from their settlement. But much will go to paying off the \$16,000 they owe on the disaster loan.

"Financially we are pretty much ruined," said Katie Fazekas, 37, a paraprofessional at a Queens school. "For so many people, Sandy is a distant memory. But we are still living it."