Your Insurance Legal Rights: An overview of the California Unfair Claims Settlement Practices Act and Related Statutes

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About United Policyholders

- Not for profit 501(c)(3) organization
- A respected voice and trusted information resource for insurance consumers in all 50 states and the District of Columbia
- Founded in 1991, focused on disaster recovery
- Funded by donations and grants, fueled by volunteers (attorneys, professionals, survivors)
- Partnering with government agencies, non-profits, faith-based, and legal aid providers in long-term recovery for Sonoma County
Three Programs

• Roadmap to Recovery
  – *Helping people solve insurance problems after disasters.*
    • See: http://uphelp.org/blog/north-bay-fires-insurance-claim-help

• Roadmap to Preparedness
  – *Increasing insurance literacy and promoting financial preparedness for adverse events*

• Advocacy and Action
  – *A voice for consumers in legislative, regulatory and court proceedings and in the media.*
    • See: http://uphelp.org/programs/advocacy-and-action
    • See also: http://www.uphelp.org/resources/amicus-briefs
Roadmap to Recovery™

- Workshops, webinars and meetings, staffed the local assistance center at the Press Democrat

- Distributing tools and resources, answering questions by phone, online, and in-person

- 24/7 help on the web: http://uphelp.org/blog/north-bay-fires-insurance-claim-help
What are the insurance company’s basic obligations to me during the claim process?

• They must respond to your written communications within 15 days. Cal. Code Regs 2695.5(b)

• They must acknowledge the claim, provide you with the necessary claim forms, and start their investigation within 15 days. Cal. Code Regs 2695.5(e)

• They must accept or reject your claim within 40 days. If they accept your claim, they must pay an undisputed amount (typically fair market value minus depreciation) within 30 days. Cal. Code Regs. 2695.7(b) and (h)
• Your insurance company must disclose all benefits, coverage, time limits or other provisions of any insurance policy applicable to your claim. Cal. Ins. Code 2695.4(a)

• Your insurance company shall not discriminate in its claims settlement practices based upon the your age, race, gender, income, religion, language, sexual orientation, ancestry, national origin, or physical disability, or upon the territory of the property or person insured. Cal. Ins. Code 2695.7(a)

• Your insurance company has a duty to act in good faith, and effectuate a prompt, efficient and equitable settlement of your claim. Cal. Ins. Code 2695.1(2)
Policy benefits

• Cal. Ins. Code 2071 is the bottom line – an insurance policy in the state cannot provide less coverage than what’s in the California standard form fire policy

• Cal. Ins. Code 2051.5 and 2060, specify additional benefits and standards applicable to your claim

• There will be many underinsured policyholders (you may be one of them). Unfortunately law is not great on duty to set specifically adequate limits. See, e.g., Everett v. State Farm, 162 Cal.App.4th 649 (2008).
  
  – See also Cal. Code Regs., §2695.183 (minimum criteria insurance companies must use when setting coverage limits)
What documents am I allowed to ask for?

- You are entitled to a complete copy of your insurance policy (not just dec. page). If you request one, they must provide it to you within 30 days. California Standard Form Fire Policy – Cal. Ins. Code 2071 “Requirements in Case Loss Occurs”

- You are allowed to see “all documents that relate to the evaluation of damages, including, but not limited to, repair and replacement estimates and bids, appraisals, scopes of loss, drawings, plans, reports, third-party findings on the amount of loss, covered damages, and cost of repairs, and all other valuation, measurement, and loss adjustment calculations of the amount of loss, covered damage, and cost of repairs.” Id.
Sample Letter for Requesting Copies of Claim-Related Documents

• Use this letter to request copies of documents related to your insurance claim such as inspection reports, estimates, measurements, notes, and damage assessments.
• Use this letter to request a complete copy of your claim file from your insurance company.

NOTE: This letter is a sample that must be customized to fit the facts of your individual situation and claim. All bracketed and underlined portions must be completed or revised before sending.

(Date)

(Name of adjuster or highest-ranking ins. co. employee you can identify)
(Name of Insurance Co.)
(Address)

Re: Claim Number ___________
Date of Loss: ___________
Name of Insured: ________________
Address of Insured Property: _______________________

Dear [INSURANCE COMPANY],

As part of your investigation of our claim, your adjuster and people associated with or hired by your company may have inspected our property, taken notes and written or obtained reports and estimates on the damage. We need to see those reports and estimates so we can be informed and continue cooperating with you on our claim. Thank you in advance for your return cooperation.

Please provide complete copies of our claim file and/or all claim-related documents. For purposes of this request, "claim-related documents" means all documents that relate to the evaluation of damages,
Actual Cash Value v. Replacement Cost

- Most insurance policies pay actual cash value (depreciated fair market value) up front and play replacement cost as repairs are completed (Coverage A – Structure) or as items are replaced and receipts are provided to the insurance company (Coverage C – Personal Property).

- Almost every policy allows an insurance company to depreciate property to reflect the condition it was in at the time of the loss. CA law is they must consider both age and condition of the property [Cal. Ins. Code 2051(b)] but adjusters often shortcut w/just age.

- However, you have the right to know how your insurance company calculated depreciation and how they calculated your settlement offer [Cal Ins Code 2071; CCR 2695.9].
How long do I have to collect full replacement cost?

  - In the event of a loss relating to a "state of emergency," … no time limit of less than 24 months from the date that the first payment toward the actual cash value is made shall be placed upon the insured in order to collect the full replacement cost of the loss, subject to the policy limit. Nothing in this section shall prohibit the insurer from allowing the insured additional time to collect the full replacement cost.

- In other words, you have two years from the first payment made by your insurance company to collect full replacement cost, regardless of what the policy says.
To: All Admitted Property & Casualty Insurers, Licensed Independent Insurance Adjusters, Insurance Agent/Brokers, Public Insurance Adjusters and other Interested Parties

Subject: Important California Laws that Pertain to Property Insurance Policies after a Declared Disaster

Date: November 17, 2017

On October 9-10, 2017, California Governor Jerry Brown proclaimed a state of emergency in several counties in California due to the numerous wildfires. On October 13, 2017, California Insurance Commissioner Dave Jones declared an emergency situation in connection with those wildfires. He therein authorized out-of-state non-California licensed claims adjusters to adjust claims in the fire areas as reasonably necessary and in conformity with the requirements of California Insurance Code section 14022.5 and all other insurance laws.

Permitting out-of-state non-California licensed claims adjusters to adjust claims has resulted in a more effective response by insurers to expedite initial payments to those impacted by the wildfires. However, the Insurance Commissioner has received feedback from wildfire survivors, public officials, and other stakeholders that some of the representations made (by out-of-state non-California licensed claims adjusters and claims adjusters employed by the insurance company or by a California licensed independent adjuster), conflict with California law.

For example, several survivors who suffered a total destruction of their home have advised us that the claims adjuster told them they only had 6 months (or in some cases only 12 months) to collect full replacement cost to rebuild. Under California law, no policy may have a time limit of less than 12 months to rebuild and collect replacement cost. Further, after a loss relating to a “state of emergency” (which these wildfires were declared by Governor Brown) this time period can be no less than 24 months.

Notice is hereby given that all claims adjusters, whether California-licensed or not, who are assigned to wildfire claims must be properly trained on the California Unfair Practices Act, Fair Claims Settlement Practices Regulations, and all laws relating to property and casualty insurance claims handling. Some insurance laws are specifically triggered by a declared disaster and impact how claims are paid and the various timeframes for payment of claims that supersede policy provisions to the contrary. Further, insurance companies and agent-brokers should also take steps to ensure that underwriting transactions (i.e. cancellations, non-renewals), and representations made on underwriting issues, comply with laws in place to protect insureds after a total loss or declared disaster. All property and casualty licensees must be knowledgeable about these laws and provide guidance to insureds that is consistent with these laws. The laws referenced include but are not limited to the following:
Other important timelines

- You are entitled to *at least* 24 months or two years of additional living expenses (sec. 20600)
  - Per agreement with the Insurance Commissioner, you should have already received a 4 month advance
    - Note: this does not increase your stated coverage limit

- Thus, you have *at least* 24 months or two years to prepare your home inventory and seek reimbursement for replacement cost
  - Per agreement with the Insurance Commissioner, you should have already received 30% of your coverage limit without submitting an itemized inventory
What if you want to buy or rebuild elsewhere?

• Even if you decide not to build at the same place after a total loss (Cal. Ins. Code 2051.5)

• Important if the actual cash value (which includes depreciation) is less than the policy limits

• Insurance Commissioner says you get all code upgrades and extensions if you buy or build elsewhere

• Note: purchase of a new home as a replacement cuts off you additional living expenses/loss of use.
April 3, 2008

Councilman Brian Maienschein
202 C Street
San Diego, CA 92101

Re: Request for Legal Opinion of the General Counsel of the California Department of Insurance Regarding Application of California Insurance Code Section 2051.5(c)

Dear Councilmember Maienschein:

Thank you for your letter of February 25, 2008 requesting that I provide a legal opinion on the following three questions regarding the application of California Insurance Code Section 2051.5(c):

1. Does replacement cost insurance provide coverage if a homeowner decides to purchase an already built home at a new location?

2. If a homeowner has an extended or guaranteed replacement cost policy and rebuilds in a new location, is the homeowner entitled to the “extended” or “guaranteed” portion of the coverage?

3. If a homeowner purchases a home at a new location for less than the cost to rebuild at the original location, is the homeowner entitled to recover the full amount it would cost to rebuild at the original location?
Complaints, attorneys, and litigation

• Your insurance company must notify within 60 days of a deadline expiring which would cut off any rights to collect benefits or file suit. Cal. Ins. Code 2695.7(f)

• Your insurance company cannot retaliate against you for making complaint to the California Department of Insurance or withhold payments until the complaint is withdrawn or threaten or intimidate you to keep you from making a complaint. Id.

• Your insurance company cannot attempt to settle your claim with an unreasonably low offer. Id. at (g)
Continuing duty of good faith

• An insurer has a continuing duty of good faith to you even after litigation has been filed. *White v. Western Title*, 40 Cal.3d 870 (1985).

• The duty of good faith is found in the regulations and statutes discussed herein, but the cause of action for “bad faith” (tortious breach of contract) arises from common law. See, e.g., *Egan v. Mutual of Omaha Ins. Co.* , 24 Cal.3d 809 (1979)
Review of Common claim "hot spots"

- Excessive depreciation based only on age
- Low-balling the amount required to rebuild
- Underinsurance
  - Again, hard cases to prove, agent-duty law not favorable
- Out-of-state adjusters unaware that California law has many special protections for disaster survivors
  - Access to the claim file Cal. Ins. Code 2071)
  - 24 months to claim replacement cost
  - Your right to replace home by buying or rebuilding elsewhere but still collecting full replacement cost including coverage extensions. Ins. Code 2051.5
How to “Speak UP”

- Strong as possible
- Paperwork organized
- Empowered
- Assertive but polite
- Keeping a claim diary
- Insurance educated
- Networking with others
- Getting professional help when needed

- Unwilling to be short-changed
- Pro-active
Helpful resources

• For more information on legal rights, see: http://www.uphelp.org/library/resource/guide-your-insurance-legal-rights

• United Policyholders’ North Bay fires website: http://www.uphelp.org/blog/north-bay-fires-insurance-claim-help

• California Department of Insurance: https://www.insurance.ca.gov/01-consumers/101-help/index.cfm