

# What they don't know can help you:

## *California policyholder protections insurers and adjusters may “overlook”*

By Amy Bach and Dan Wade

California is way ahead of other states with regard to decisional, statutory and regulatory protections for policyholders ... especially in the aftermath of disasters. And while this has been the case for years, many catastrophe adjusters that come in from out of state and even national insurance companies remain in the dark about them. So much so that the California Insurance Commissioner had to issue a special alert in November 2017 listing the protections.<sup>1</sup>

### **24 months to collect full replacement value benefits**

A prime example is California Insurance Code § 2051.5(b)(1), which gives policyholders a full 24 months to collect Replacement Value benefits owed over and above what they've been paid for ACV (actual cash value).<sup>2</sup> In other states where 180 day deadlines are common, policyholders often miss out and leave money on the table because they can't replace property until they know what their living situation is going to be, and that takes more than 180 days.<sup>3</sup> Not so in California.

### **The right to replace a home by buying or rebuilding at a different location**

California Ins. Code § 2051.5(c) also gives policyholders the right to replace a destroyed home by buying or rebuilding at a new location.<sup>4</sup> Homeowners are entitled to the “extended” or “guaranteed” portion of their replacement cost policies (if applicable) even if they rebuild or replace in a new location.

Despite the fact that this code section became law in 2004, however, many of the adjusters working the North Bay wildfires in 2017 knew nothing about it and have been disputing its existence.

It's not just out-of-state adjusters that don't know about this California law. A consumer who lost his home in Arnold, CA, several years ago invoked 2051.5 in support of his claim to replace it by buying instead of rebuilding. He went up the chain at his insurance company. Every representative insisted he had no such right, until a senior executive promised to contact “legal” and get back to him. The executive called him back surprised to report that the consumer was right.<sup>5</sup>

In addition to asserting your client's right to buy or rebuild at a new location, you must help them obtain a package of documents that show *what it would hypothetically cost* to rebuild the destroyed home at its original location, including all coverages for code upgrades and extended coverages that would be required for that hypothetical rebuild.<sup>6</sup> If the insured proves they would have been entitled to full replacement cost plus extensions *had they rebuilt in place*, they are entitled to that full amount. The catch is, the insurer will not allow a windfall, meaning the insured must show they will need to spend that full amount buying or rebuilding elsewhere. In other words, they must prove it, then execute on it.

### **The right to get copies of claim file documents**

Disputes over the value and extent of damage and losses are extremely common, yet insureds are often in the dark as to how their insurer came up with the estimates and calculation of benefits owing. Thanks to a statute unique to California (Ins. Code § 2071 – *Requirements in Case Loss Occurs*), policyholders have the absolute right to obtain, upon request, copies of claim-related documents. That includes all documentation 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



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cost of repairs.<sup>7</sup> Again, this statutory right seems to come as a big surprise to many adjusters, despite it having been on the books since 2003. In fact, the Department of Insurance, at United Policyholders' request, issued a notice to insurers regarding this important obligation, after hearing numerous complaints from consumers.<sup>8</sup>

### The right to a minimum of 24 months of ALE coverage

Following a declared disaster, such as the North Bay Wildfires and the more recent southern California wildfires, policyholders are entitled to a minimum of 24 months of additional living expense coverage under Ins. Code 2051.5(b)(2).<sup>9</sup> This does not increase the total amount of coverage stated in the policy, but it gives breathing room to disaster survivors who have a long road ahead of them – many of whom will need more than two years to get home.

### Extended coverage amounts

Helping disaster survivor clients calculate every dollar of benefits their policy entitles them to is an important part of a policyholder attorney's job. It involves (gasp!) math and a bit of jigsaw puzzling. The starting place should always be a *certified, complete copy of the current policy*. Ins. Code § 2071 specifies the insured's right to receive a complete, current copy of their home insurance policy, no more than 30 days after requesting it.<sup>10</sup>

The first step is to piece together the endorsements/riders/features listed on the policy's Declarations page, and apply all formulae that increase the stated available maximum limits.

Those formulae include Extended Replacement Coverage and Inflation Adjustments. If a client has an Extended Replacement Coverage (or similarly worded) feature, first apply it to adjust the structure coverage limit, and any other categories of coverage it may apply to under a reasonable interpretation of the policy wording. Extended Replacement Coverage generally only applies to structure limits but in some cases, contents and other coverages may also get extended. Once you've done that math and applied the Extended Replacement formula to adjust the limits, *then* apply the inflation adjustment formula to increase those adjusted limits.

But you're not done with the math just yet. Home policies typically provide benefits for Building Code Compliance, Trees, Shrubs and Landscaping and Debris Removal. The maximum available coverage for these categories is often stated not as a dollar amount but as a percentage of the limit on the structure. Ten to fifteen percent of Coverage A is typical for all three categories. So, again, unless the policy unambiguously says you can't, you can calculate your client's max benefits for all three categories by using the adjusted Coverage A amount you figured out by applying the Extended Replacement and Inflation Adjustment.

### Conclusion

Regardless of the fact that insurers are responsible for knowing and abiding by the laws that govern the business of insurance and training their adjusters and agents accordingly, policyholder attorneys should get good results for disaster survivor clients by asserting all available rights. ■

<sup>1</sup> See <http://uphelp.org/sites/default/files/blog/notice-ca-disaster-ins-laws.pdf>.

<sup>2</sup> No time limit of less than 12 months from the date that the first payment toward the actual cash value is made shall be placed upon an insured in order to collect the full replacement cost of the loss, subject to the policy limit. Additional extensions of six months shall be provided to policyholders for good cause. In the event of a loss relating to a "state of emergency," as defined in Section 8558 of the Government Code, 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.

<sup>3</sup> See, e.g., *Sher v. Allstate Ins. Co.*, 2013 U.S. Dist. LEXIS 75363 (S.D.N.Y. May 28, 2013), citing *Woodhams v. Allstate Fire & Cas. Co.*, 748 F. Supp. 2d 211 (S.D.N.Y. 2010), aff'd, 453 F. App'x 108 (2d Cir. 2012) [Holding that the 180 day deadline to collect replacement cost benefits was not ambiguous or in violation of the NY Standard Form Fire Policy].

<sup>4</sup> "In the event of a total loss of the insured structure, no policy issued or delivered in this state may contain a provision that limits or denies payment of the replacement cost in the event the insured decides to rebuild

or replace the property at a location other than the insured premises. However, the measure of indemnity shall be based upon the replacement cost of the insured property and shall not be based upon the cost to repair, rebuild, or replace at a location other than the insured premises."

<sup>5</sup> See Request for Legal Opinion of the General Counsel of the California Department of Insurance Regarding Application of California Insurance Code Section 2015.5(c), Adam Cole, April 3, 2008. <http://uphelp.org/sites/default/files/publications/435314csection2015.pdf> citing *Conway v. Farmers Home Mutual Insurance Co.*, 26 Cal.App.4th 1185 (1994); Cf *Minich v. Allstate Ins. Co.*, 193 Cal.App.4th 477 (2011) [insured must provide evidence of repair in order to collect replacement cost].

<sup>6</sup> See <http://uphelp.org/pubs/buy-or-rebuild>.

<sup>7</sup> "The insurer shall notify every claimant that they may obtain, upon request, copies of claim-related documents. For purposes of this section, 'claim-related documents' means 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. However, attorney work product and attorney-client privileged documents, and documents that indicate fraud by the insured or that contain medically privileged information, are excluded from the documents an insurer is required to provide pursuant to this section to a claimant. Within 15 calendar days after receiving a request from an insured for claim-related documents, the insurer shall provide the insured with copies of all claim-related documents, except those excluded by this section. Nothing in this section shall be construed to affect existing litigation discovery rights."

<sup>8</sup> See <http://uphelp.org/sites/default/files/publications/claimrelateddocumentsnotice.pdf>.

<sup>9</sup> In the event of a covered loss relating to a state of emergency, as defined in Section 8558 of the Government Code, coverage for additional living expenses shall be for a period of 24 months, but shall be subject to other policy provisions, provided that any extension of time required by this paragraph beyond the period provided in the policy shall not act to increase the additional living expense policy limit in force at the time of the loss.

<sup>10</sup> After a covered loss, the insurer shall provide, free of charge, a complete, current copy of this policy within 30 calendar days of receipt of a request from the insured. The time period for providing this policy may be extended by the Insurance Commissioner.