



## Insurance Claim Rules in California – 2020

Your insurance company, and its employees, are required to follow California law when handling your property damage claim. Some laws are triggered by a declared state of emergency; they change how and when claims must be paid. Adjusters, especially those who come from out of state after a disaster, don't always know or follow the rules, so it's often up to you to understand and enforce them for yourself. You can use the guidance and sample letters you'll find at [www.uphelp.org](http://www.uphelp.org) to help you navigate this process.

### Voluntary Claim Handling Practices

When a wildfire becomes a "declared disaster", the California Insurance Commissioner issues a notice calling on all property insurance companies to implement claim procedures to help residents and businesses recover more quickly. The following is a set of rules instructing them how they SHOULD act after a declared state of emergency.

You can view the CDI Bulletin for the August 2020 Lightning Complex Wildfires at: [www.uphelp.org/082620CDIBulletin](http://www.uphelp.org/082620CDIBulletin). This bulletin gives you leverage to ask for the following.

### **Cash advances**

Additional Living Expenses - Your insurance company *should* give you cash advances while working with you on calculating your losses and benefits. If your insurer agreed to abide by a set of "Voluntary Claims Handling Reforms" created by the California Department of Insurance, they should give you a **4-month advance** on your Additional Living Expense ("ALE") or Loss of Use benefits.

Personal Property (Contents) - Insurance companies *should* provide a standard of **at least 25% of your Personal Property/Contents** limits as an advance payment. Insurance companies have also been asked to provide 75%, and up to 100%, of personal property limits, after a disaster, without requiring an itemized list.<sup>1</sup> Even if your insurance company didn't sign on to this agreed set of reforms, they may abide by them if you ask them to.

### **Personal Property Inventory**

Insurance companies *should* agree to accept home inventory software (or paper alternatives) rather than requiring a company-specific inventory form. Moreover, they should also agree to accept reduced itemization, or "bulking" of items (i.e. "15 books" instead of listing all titles).

### **Debris Removal**

Insurance companies *should* agree to cooperate with a consolidated debris removal in the wake of a state of emergency where a consolidated effort would provide a more rapid debris removal.

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<sup>1</sup>See [http://www.insurance.ca.gov/01-consumers/140-catastrophes/upload/Scanned-Image\\_November2018FiresNotice.pdf](http://www.insurance.ca.gov/01-consumers/140-catastrophes/upload/Scanned-Image_November2018FiresNotice.pdf) (December 3, 2018)

In addition to the Voluntary Claim Handling Practices, there are Regulations and Laws that insurers must follow. Communicating with your adjuster in writing will help you make sure your adjuster is following the following California insurance claim handling laws.

### **Claim Handling Laws and Time Frames**

Your insurance company must disclose all benefits, coverage, time limits, or other provisions of any insurance policy that may apply to the claim presented. When additional benefits might reasonably be payable under an insured's policy upon receipt of additional proofs of claim, the insurer must immediately communicate this fact to you, and cooperate with and assist you in determining the extent of their liability.

Below are additional timeframes and claim handling practices to be aware of.

#### **Processing your claim**

15 days - Your insurance company must acknowledge that they have received your claim within 15 days after you give them notice. They must provide you with the forms you're required to complete and explain how you're supposed to complete them.

#### **Investigating your claim**

15 days - Your insurance company must begin any necessary investigation within 15 days of receiving your claim.

Every insurer shall conduct and diligently pursue a thorough, fair and objective investigation and shall not persist in seeking information not reasonably required for or material to the resolution of a claim dispute.

#### **Communicating information to you**

15 days - Your insurance company must answer your questions and reply to your communications, including phone calls, emails, and letters within 15 days.

15 days - Upon request, your insurance company must produce a copy of your claim-related documents within 15 days.

30 days - Upon request, your insurance company must provide you with a complete copy of your policy within 30 days.

6 months - If, within a 6-month period, your insurance company assigns a third (or subsequent) adjuster to your handle your claim, the insurance company must provide you with a written status report. This report must include a summary of losses and payments made, the amount of coverage, and whether they have hired any professionals to assist with the claim. [Cal Ins. Code 2071] If the claim arises from a state of emergency and you are assigned a third or subsequent claims adjuster, the insurer shall provide the insured a primary point of contact and a direct means of communication. [Cal Ins. Code 14047]

### **Paying or denying your claim**

**30 days** - *If the insurance company accepts your claim*, they must pay the undisputed portion of the claim immediately but not later than 30 days.

**40 days** - The insurance company must accept or reject your claim in whole or in part within 40 days of receiving proof of claim. If they reject your claim, they must list all factual and legal bases for doing so with explanation of any applicable statute or other law.

### **Preserving your rights**

**60 days** - Your insurance company must provide written notice to you within 60 days of deadlines that cut off your rights to collect additional benefits or file a lawsuit. The notice must clearly state the time limit and how it will impact your rights. Look for language that says, “Suit Against Us” or similar language, as this may start the clock ticking.

### **Fair Depreciation**

Almost every policy allows an insurance company to depreciate your property to reflect the condition it was in at the time of the loss. They must consider both age and condition of the property. [Cal. Ins. Code 2051(b)]. You generally have the right to collect the difference between that depreciated amount and what it costs you to replace the property, depending on the policy language. You have the right to know how your insurance company calculated depreciation and how they calculated their settlement offer. [Cal Ins. Code 2071; CCR 2695.9] There is no “official” depreciation schedule, insurance companies vary on these calculations, so you should advocate for fair valuation of your property.

### **Actual Cash Value (ACV)**

ACV can be measured in many ways. Two of the most common methods to determine actual cash are: (1) fair market value, and (2) replacement cost minus depreciation. Effective January 1, 2020, ACV must be calculated as “the amount it would cost the insured to repair, rebuild, or replace the thing lost or injured less a fair and reasonable deduction for physical depreciation based upon its condition at the time of injury.” This definition applies to both **total** and **partial** losses. [Cal Ins. Code 2051]

### **Important Rules for a loss relating to a “state of emergency”**

#### **Collecting Full Replacement Cost**

For claims relating to a state declared emergency, you have *at least 36 months* from the date that the first payment toward actual cash value is made to collect your full replacement cost. [Cal Ins. Code 2051.5(b)(1)] Additional extensions of six months should be provided to policyholders for good cause. CA law also allows you to use your full replacement benefits, including any building code upgrade costs and any extended replacement cost coverage you may have, to:

- rebuild your home at the current location,
- rebuild at a new location, or
- purchase an already built home at a new location.<sup>2</sup> [Cal Ins. Code 2051.5(c)].

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<sup>2</sup> See: United Policyholders – Buy or Rebuild? (<http://uphelp.org/pubs/buy-or-rebuild>); and Legal Opinion of General Counsel for the California Department of Insurance, Adam Code, April 3, 2008 (<http://uphelp.org/sites/default/files/publications/435314cicsection2015.pdf>)

### **Additional Living Expenses**

For claims relating to a state declared emergency, insurers must offer Additional Living Expenses (ALE) for a period of at least 24 months. An insurer shall grant an extension of up to 12 additional months, for a **total of 36 months**, if an insured acting in good faith and with reasonable diligence encounters a delay or delays in the reconstruction process that are the result of circumstances beyond the control of the insured. [Cal Ins. Code 2051.5(b)(2)]. This coverage stops when you rebuild or relocate permanently. Additional extensions of 6 months must be granted for good cause.

Your insurer must give you, upon request, a list of items normally classified as reimbursable ALE expenses. [Cal Ins. Code 2060] Typically, ALE is paid via an advance off of future payment to get you situated after the shock of the loss, then on an “as incurred” basis as you submit receipts and document expenses.

### **Complaints, Attorneys & Litigation**

For claims relating to a state declared emergency, the time limit to bring suit is **24 months** from the date your claim is paid (or denied). [Cal Ins. Code 2071]

Your insurance company cannot:

- retaliate against you for making complaint to the California Department of Insurance,
- withhold payments until the complaint is withdrawn,
- threaten or intimidate you to keep you from making a complaint, [CCR 2695.7]
- unreasonably deny a claim, which in turn forces you to have to sue to recover benefits, or
- owed [Cal Ins. Code 790.03], or directly advise you against obtaining the services of an attorney.

### **Non-Renewal/Cancellation**

For total loss claims caused by a disaster, the insurer shall offer to renew coverage for the next two annual renewal periods. The insurer also cannot cancel coverage while a structure that suffered a total loss from a disaster is being rebuilt.

The information presented in this publication is for general informational purposes, and should not be taken as legal advice. If you have a specific legal issue or problem, United Policyholders recommends that you consult with an attorney. Guidance on hiring professional help can be found in the “Find Help” section of [www.uphelp.org](http://www.uphelp.org). United Policyholders does not sell insurance or certify, endorse or warrant any of the insurance products, vendors or professionals identified at our website. United Policyholders respects and protects the privacy of all individuals who communicate with us. We do not sell or share our membership or mailing lists.