

2020 Wildfires Webinar Deadline and Decisions at the One Year Anniversary

Roadmap to Recovery[™] Workshop Zoom Q & A Webinar July 21,2021

About United Policyholders (UP)

- Reputable, established 501(c)3 not-for-profit charitable organization, Platinum Guide Star rating
- A trusted information resource and respected voice for insurance consumers in all 50 states
- 30 year track record and expertise in disaster recovery
- Not for profit...not for sale
- Funded by donations and grants

Team UP

- Professional staff
- Government and nonprofit partners
- Volunteers
 - Survivor to Survivor previous catastrophic loss survivors paying it forward
 - Consumer oriented professionals
 - Damage and repair/rebuild cost estimators
 - Lawyers
 - Public Adjusters
 - Tax and Financial Planning experts
 - Construction and Real Estate professionals

Our Three Programs

Roadmap to Recovery™

 Guidance on insurance, restoring assets and getting back home after a catastrophic loss

Roadmap to Preparedness

 Helping households and communities reduce risk and be resilient to disasters and adversity

Advocacy and Action

- Enforcing insurance consumer rights and protections

The Fine Print

- This workshop is intended to be general guidance only, not legal advice
- If you have a specific legal question, we recommend you consult an experienced attorney
- We do not endorse or warrant any of the sponsors or the speakers at our workshops
- We are not creating a professional/client relationship with any individual

Amy Bach



- A professional insurance consumer advocate since 1984
- Published author, experienced trial and regulatory attorney
- Co-founder, UP
- Official consumer representative:
 - National Association of Insurance
 Commissioners
 - Federal Advisory Committee on Insurance (US Treasury)
 - American Bar Association Standing
 Committee on Disaster Response

Nelson A. Waneka

- Colorado attorney specializing in insurance recovery
- Extensive experience litigating delayed and denied insurance
- Instrumental in shaping Colorado insurance law through appeals in both state and federal courts
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We recommend...

- Recognize that disaster anniversaries tend to bring up emotions and renewed anxiety – this is normal
- Request a complete claim summary of all amounts paid to date https://uphelp.org/claim-guidance-publications/sample-letter-requesting-claim-payment-history/
- Correct any errors in payments or allocations (to Coverage A, B, C, etc.)
- Organize and turn in receipts for reimbursement of ALE benefits to keep the dollars flowinghttps://uphelp.org/claim-guidance-publications/sample-letterrequesting-information-about-insurance-benefits-for-temporary-livingexpenses-ale-or-loss-of-use/
- Communicate with your insurer in writing and get confirmation that there are no policy deadlines you need comply with at the one year anniversary. http://www.uphelp.org/library/resource/speak-how-communicate-your-insurance-company

To do before... (Anniversary Date of Loss)

- Where needed, seek deadline extensions by customizing and sending one or more of our sample letters
- Document delays caused by insurer, or other causes that are out of your control (Covid, labor/material shortages, weather, illness)
- Most insurers will grant deadline extensions for good cause (If your insurer says no, contact the Colorado Department of Insurance)
- If you are substantially underinsured, review our guidance and consult with an experienced policyholder attorney.

Generally, policy deadlines...

- Vary by company, policy form, and endorsements
- Some are extended by operation of law, such as minimum timeframes imposed by Statutes
- Some extensions may be encouraged by "Bulletins" issued from the Division of Insurance, but are not mandatory
- All can be extended by insurer, voluntarily
- Some will not be extended
- Clarify with your company and adjuster ASAP
- You must get extensions in writing in order to rely on them



Dora Division of Insurance - Bulletins

- Equitable Payment of Claims Resulting from Natural Disasters –B 5.28
- Homeowners' Right to Obtain Additional or Enhanced Coverages B5.35
- Notice of the Provisions Pertaining to the Payment of Claims for the Repair of Damaged Property –B5.04
- Actions to Protect Consumers with Property and Casualty Insurance Policies During the COVID-19 Public Health Emergency in Colorado –B5.38
- More Info at: <u>www.doi.colorado.gov</u>

Note: This is a partial list of relevant Colorado DOI bulletins....



Homeowners Insurance Reform Act of 2013 (HB 13-1225) Requires Insurers to

- Offer Extended Replacement Cost of at least 20% of dwelling coverage
- Offer Law and Ordinance Coverage of at least 10% of dwelling coverage
- Offer to sell you at least 24 months of ALE vs standard 12 month limit
- Consider a RCV estimate from a licensed contractor or architect, subject to UW approval
- Provide a copy of policy within 3 days of request, 30 days for a certified copy
- Issue 30% of contents without an inventory if dwelling is a total loss
- Allow 365 days after ALE expires to replace contents and receive withheld depreciation
- Prohibits limits to the Colorado Statute of Limitations for Breach of Contract

Note: This is a partial list of relevant bulletins

Colorado Policy/Legal Deadlines

- Most policies give only 1 year to provide your "Proof or Statement of Loss" and "Contents Inventory"
- ALE (you have 12 months minimum, or possibly 24 months based upon your specific policy language in CO) but you must be reasonably diligent in trying to repair/replace your dwelling and demonstrate efforts with documentation
- Collecting RCV (you have 365 days following the end of your ALE period to recover depreciation)
- Filing a lawsuit alleging "bad faith" 24 mth limitation
- Filing a lawsuit alleging "breach of contract" 36 mth

Colorado Revised Statutes § 10-4-110.8 (11) (c) (l) and (II): Contents claims deadlines

- 365 days after total loss claim to submit inventory
- 365 days from expiration of ALE coverage to replace property and receive recoverable depreciation

In accordance with C.R.S. 10-4-110.8 (11) (c) (I) and (II), an insurer shall:

- Allow the policyholder 365 days after a total loss claim to submit an inventory of lost or damaged property; and,
- Allow the policyholder 365 days from the expiration of the Additional Living Expense coverage to replace property and receive recoverable depreciation.

Questions?

- Do I have to actually incur and pay for code upgrades BEFORE my insurer will cover?
- What are the standards for "Bad Faith"? My insurer has literally left a voicemail saying it will take 45 days to return calls?
- Do I have to fill in "condition" on every item on my contents inventory? (State Farm, e.g.)
- Are there legal limits on how long my insurer can delay a payment?

Overview of buying a "Replacement Home"

- No specific law on this in CO, common sense and negotiations are required
- Use best efforts to calculate your max available dwelling and other structures limits and reach an agreement with your insurance company on the dollar amount it would theoretically cost if you did rebuild the exact same home that was destroyed up to current building codes. Limits should include code upgrades and all extended coverages in your policy.
- Look for a home in that price range, provide the adjuster with documentation and seek a settlement

Potential challenges/arguments:

- Adjuster not authorized to negotiate this accommodation
 - Common sense, insurer will save \$ on ALE
- Adjuster may argue unjust enrichment (two lots) and try and deduct land value from purchase price/settlement
 - Logic, purchased home including land is same value of original home excluding land, so its less valuable and there's no unjust enrichment
 - No land value deduction is authorized in the policy

Deadlines that may matter...

- Submitting your proof of your loss: What deadlines does your policy contain?
 - If one year, document your efforts and seek an extension agreement in writing
 - If you were paid a % of your contents benefits w/out an inventory but are considering itemizing to collect 100% (CO law provides for a 30% advance for primary residence total losses)
- Lawsuit limitation for suing an agent for underinsuring your home

Proof of Loss

- Your proof of loss provision lives in the conditions sections of your insurance policy.
- It tells you how long you have to report your loss to your insurer. Normally within 60 days.

Requirements in case loss occurs

The insured shall give written notice to this company of any loss without unnecessary delay, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within 60 days after the loss, unless the time is extended in writing by this company, the insured shall render to this company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required and obtainable, verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

Sample Letter – Extension of Deadlines

Dear Insurer,

We are continuing to do our best to document our loss and cooperate with your company to reach a fair and full settlement. We are writing to request the following extension(s):

- 1) The one-year deadline to submit proof of our losses for (Contents, Dwelling, other). Please confirm that you will grant us an extension of time to submit these. (clearly articulate/document reasons for need for extension)
- 2) The "Suit Against Us" clause: Please confirm that you will "toll" the "Suit Against Us" clause while our claim remains open, and that you will not enforce the that clause until one year after you have informed us in writing that you have completed the claim adjustment process and/or closed our claim.

Insurer caused delays...

- Unreasonable delays in responding to your communications.. (60 day regulation and resulting application of interest penalties)
- Unreasonable adjuster requests for information not expressly required in contract language....
- Shifting of responsibility to policyholder to do a full and thorough evaluation of damages...
- Requiring excessive detail and multiple estimates....
- Rotating adjusters requiring "start overs" in communications...
- Overburdened adjusters (voice recordings from insurer stating delays in responses)...

Get your proofs in...

- If no extensions have been granted and there is a one year deadline for your inventory/proofs of loss, get them in!
- Documentation is GOLD without it, you may not have any leverage...
- Do the work to keep your options open until the claim is settled to your satisfaction

Deep Breath



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Your Colorado Wildfire Help Library www.uphelp.org/colorado

- Colorado Specific Resources with Step by Step Guidance
- One Click Links to Sign UP for Events And Email Notifications
- Links to Pro-consumer Professional Help www.uphelp.org/findhelp
- Sample Letters & Claim Forms <u>www.uphelp.org/samples</u>
- Survivors Speak Tips <u>www.uphelp.org/survivorsspeak</u>
- Upcoming Workshops And Resources <u>www.uphelp.org/r2r</u>





https://www.co.grand.co.us/156/Office-of-Emergency-Management

Information Line: 970-725-3803

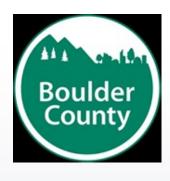
Joel Cochran, Director Emergency Management

Office: 970-725-3813 x 273

Email: jcochran@co.grand.co.us

Kristen Manguso, District 3 Commissioner
 Phone: 970-725-3106 Email: kmanguso@co.grand.co.us

- Vicki Ellis, Permit Tech, Grand County Building Dept Phone: 970-725-3078 Email: vellis@co.grand.co.us
 - ➤ https://www.co.grand.co.us/1357/Disaster-Assistance-Center
 - https://www.co.grand.co.us/1117/Codes-Amendments



https://www.boulderoem.com

Garry Sanfaçon, Recovery Manager
 Work Phone: 720-564-2642 Email: gsanfacon@bouldercounty.org

For information about approved regulations or to discuss your rebuilding project prior to submitting a building permit, please contact:

- Hannah L. Hippely, Long Range Planning Manager
 Boulder County Community Planning & Permitting
 Work Phone: 720-564-2298 Email: hhippely@bouldercounty.org
 - https://www.bouldercounty.org/disasters/wildfires/calwood-lefthand-canyon/
 - https://www.bouldercounty.org/property-and-land/land-use/planning/land-use-code/



https://www.larimer.org/emergency

Emergency Information Line: (970) 498-5500

- Lori R. Hodges, Director of Emergency Management
 Work Phone: Email: hodgeslr@co.larimer.co.us
- Bob Overbeck, County Assessor, overbebc@co.larimer.co.us
- Eric Fried, Chief Building Official Phone: (970) 498-7660 friedeb@co.larimer.co.us
 - ➤ https://www.larimer.org/wildfire-resources
 - <u>https://www.larimer.org/building/codes</u>

Knowing Your Rights

There are four primary sources that dictate how your insurance company must behave regarding claim handling:

- 1. Your State's Insurance Laws (Statutes and Case Laws that relate to fair/unfair claim handling)
- 2. Your State's Regulations, Bulletins and Notices (Often more specific than laws)
- 3. The language in your specific policy (including endorsements, exclusions and declarations)
- 4. The Covenant of Good Faith and Fair Dealing (read into insurance policies)



Colorado Division Of Insurance

For Free, Personal Assistance With Your Claims Or Underinsurance Issues

To File a Complaint Online: www.doi.colorado.gov

By Email: dora_insurance@state.co.us

Or Call: (303)894-7499



CO Fair Claims Settlement Practices Regulations

§ 10-3-1104(1)(h), C.R.S.

- **(h)** Unfair claim settlement practices: Committing or performing, either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:
- (I) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue; or
- (II) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies; or
- (III) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; or
- (IV) Refusing to pay claims without conducting a reasonable investigation based upon all available information; or
- **(V)** Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; or

Note: This is a partial list of relevant regulations....

CO Fair Claims Settlement Practices Regulations Continued 2

§ 10-3-1104(1)(h), C.R.S.

- **(VI)** Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear; or
- (VII) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds; or
- (VIII) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application; or
- (IX) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of, the insured; or
- (X) Making claims payments to insureds or beneficiaries not accompanied by statement setting
 forth the coverage under which the payments are being made; or

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Note: This is a partial list of relevant regulations....

Your insurance company cannot require you to have your property repaired by a specific individual or entity...

Bulletin B-5.4 Summary of § 10-4-120, Colorado Revised Statutes

The law prohibits an insurance company or its agent from:

- Requiring that appraisals or repairs to the real or personal property be made or not be made by a specific repair business
- Representing to a claimant that the use of or the failure to use a particular repair business may result in nonpayment or delayed payment
- Requiring the beneficiary or claimant to travel an unreasonable distance to choose a repair business
- Misinforming a beneficiary or claimant to induce the use of a particular repair business and
- Requiring a third-party claimant to have repairs done by a particular repair business

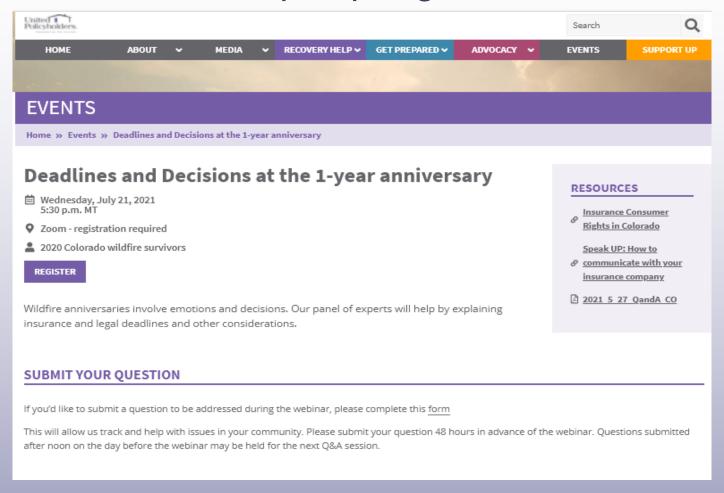
What does the CO law require?

Bulletin B-5.4 Summary of § 10-4-120, Colorado Revised Statutes

The law requires an insurance company or its agent to:

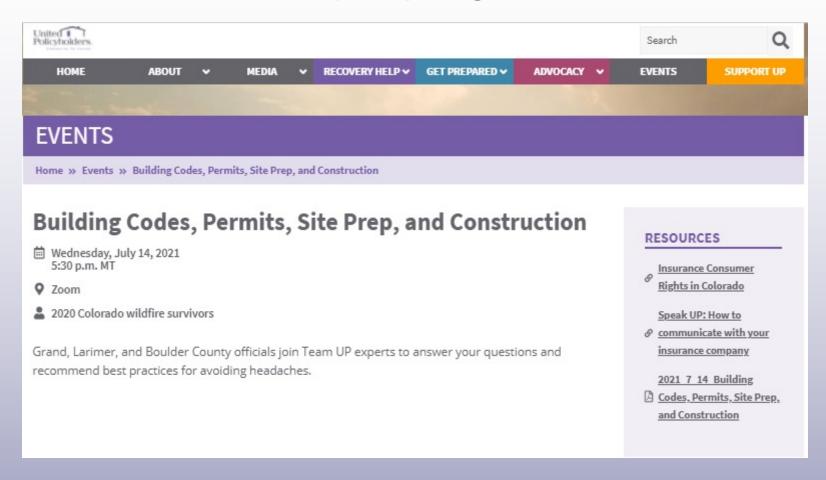
- Inform the beneficiary or claimant that they may select any repair business of their choosing
- Supply the beneficiary or claimant with a copy of the estimate upon which
 a settlement is based, when partial losses are settled based on an estimate
 prepared by or for the insurance company
- Confirm that any estimate prepared by or for the insurer to repair damages that
 are visible or evident at the time of inspection is adequate to restore the real or
 personal property within a reasonable time to its condition before the loss,
 in accordance with applicable policy provisions
- Promptly pay the cost of the real or personal property repair less the deductible
 according to the terms of the insurance policy at no less that the prevailing
 competitive market price in the same geographic area Disclose any
 ownership interest in, or affiliation with, a recommended repair business....
- https://uphelp.org/wp-content/uploads/2021/01/b-5.04 notice of the provisions pertaining to the payment of claims for the repair of damaged propert y.pdf

Upcoming Roadmap to RecoveryTM Events www.uphelp.org/events



Register for upcoming Colorado events

Recent Roadmap to RecoveryTM Past Events www.uphelp.org/events



View recordings of past events and related resources

Colorado Free Help Hotlines

- Colorado Statewide Crisis Services Hotline: 844-493-8255
- General Info Statewide: 211
- Larimer County Summitstone Mental Health Services: 970-494-4200
- Larimer County Mental Health Connections: 970-221-5551
- Grand County Public Health: 970-725-3288 http://co.grand.co.us/220/Public-Health
- Grand County Mind Springs Health: 970-887-2179
- Grand County Mountain Family Center: 970-557-3186

Note: Check your county Disaster Assistance Site for Longterm Recovery Resources

Stay Connected to Other Disaster Survivors – S2S Forums

- Great Source of Information About:
 - -Negotiation Strategies That Worked
 - Important Source of Emotional Support
 - No one else understands your challenges and emotions like another survivor
- Find upcoming Survivor 2 Survivor Forums and register at: http://www.uphelp.org/r2r

Dropped By Your Insurer?

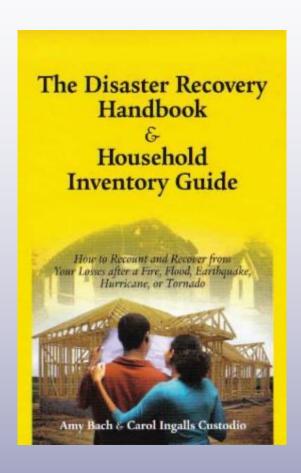
www.uphelp.org/dropped

- Don't panic, start shopping
- Follow our suggestions
- Seek out all your options, don't give up
 - Reputable independent agents
 - The Match UP Insurance Finder
- Ask good questions, keep good notes
- Contact your DORA Division of Insurance for help if needed: www.dora.colorado.gov/insurance
- https://uphelp.org/claim-guidance-publications/dropped-by-your-home-insurer-information-for-colorado-residents/

Questions to Ask Your Insurance Agent When You are "In Between"

- Will policy cover my stuff while in rental/transit/temp housing?
- What about liability coverage?
- Do I have flood insurance? Give me the details please.
- Can my policy be modified to reduce premium since I have so little after the fire?
- What types of policy coverages will help me be protected during construction of a replacement home?
- How long will additional living expenses be covered?
- What if??? Ask about specific scenarios of concern
 - https://uphelp.org/buying-tips/shop-smart-colorado-tips-for-insuring-your-home/

R2R Guidance and Tools



"The Little Yellow Book"

Email info@uphelp.org to have a copy mailed to you.

Thank You Colorado Funders





INSPIRING IDEAS, IGNITING ACTION.®



