



Deadlines and Decisions at the One-Year Anniversary

Roadmap to Recovery™ workshop

July 15, 2021

California 2020 Wildfires

About United Policyholders (UP)

- 501(c)3 nonprofit organization
- A voice and an information resource for people in all 50 states
- A 30 year track-record and subject matter expertise in insurance and disaster recovery
- Not for profit...not for sale
- Funded by donations and grants
- A volunteer corps with personal and/or professional expertise in disaster recovery and insurance

Team UP

- Professional staff
- Government and nonprofit partners
- Volunteers
 - Previous catastrophic loss survivors
 - 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*

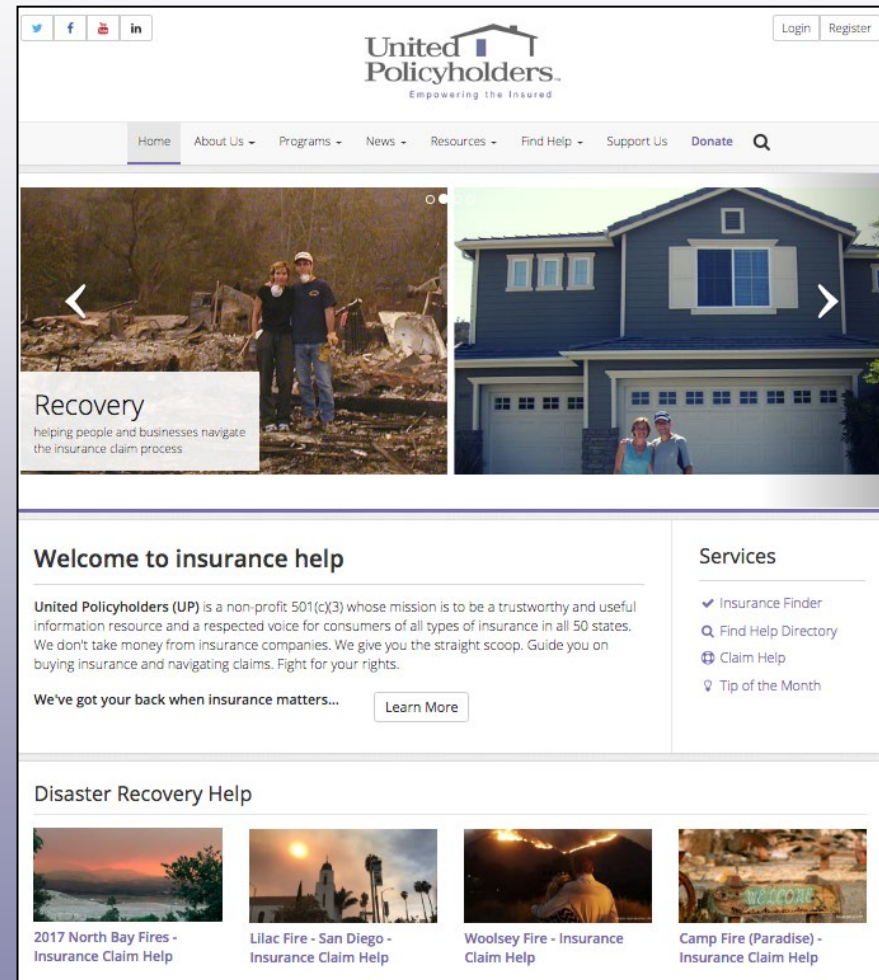
The Fine Print

- 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

24/7 Help on the Web:

www.uphelp.org/2020Wildfires

- Claim Help for Disaster Survivors
www.uphelp.org/2020Wildfires
- Links to pro-consumer Professional help: www.uphelp.org/findhelp
- Sample Letters & Claim Forms
www.uphelp.org/samples
- “Survivor’s Speak” Tips from past disasters
www.uphelp.org/SurvivorsSpeak
- Upcoming workshops and resources
www.uphelp.org/2020wildfires





Today's Presenters

Amy Bach, Esq.

Executive Director, United Policyholders

Tony Cignarale, Esq.

Deputy Commissioner, California Department of Insurance

Dan Veroff, Esq.

Merlin Law Group

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**

Tony Cignarale

- **Deputy Commissioner,
California Dept. of Insurance
since 2007**
- **35 Years Insurance Experience**
- **Admitted to the State Bar in 1999**
- **Oversees Disaster Response,
Consumer Hotline/ RFAs and
Market Conduct Examinations**
- **Helped enact many of the laws in
place that help disaster
survivors collect insurance
benefits timely**



Dan Veroff

- Merlin Law Group, a national firm with offices in SF and LA
- Specializes in counseling and representing policyholders in claim disputes and litigation
- Member, UP Board of Directors
- “Super Lawyer – Rising Star” in insurance law



We recommend...

- Recognize that disaster anniversaries tend to bring up emotions and renewed anxiety.
- Request a complete claim summary of all amounts paid to date. Correct any errors in payments or allocations (to Coverage A, B, C, etc.).
- Organize and turn in receipts for reimbursement of ALE benefits.
- Communicate with your insurer in writing and get confirmation that there are no policy deadlines you need comply with at the one year anniversary.

To do before (Anniversary Date)

- Keep documenting your cooperation and diligence in a claim journal and in short written communications to your insurer. Where needed, seek deadline extensions by customizing and sending one or more of our sample letters. Most insurers will grant deadline extensions for good cause. If your insurer says no, contact the California Department of Insurance.
- If you are substantially underinsured, review our guidance and consult with an experienced policyholder attorney. [Visit www.uphelp.org/underinsurance](http://www.uphelp.org/underinsurance) and uphelp.org/sponsors/California

Policy deadlines

- Vary by company and policy form
- Some are extended by operation of law
- 12 mo suit limitation (non declared disaster)
- All ***can*** be extended by insurer voluntarily
- Some will not be extended
- Clarify with your company and adjuster ASAP

Deadlines that should not matter yet

- ALE (you have 36 months if being reasonably diligent in trying to repair/replace your dwelling + extensions for good cause)
- Collecting RCV (you have 36 months)
- Filing a lawsuit alleging breach of contract or bad faith related to lowballing, delays, unfair claim handling (Declared disasters only)

Deadlines that may matter

- Submitting ***proof of your losses***: 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%
- 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.
- Cal Ins. Code § 2071

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.

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, [CCR 2695.7]
- Withhold payments until the complaint is withdrawn, [CCR 2695.7]
- Threaten or intimidate you to keep you from making a complaint, [CCR 2695.7] ; or
- Unreasonably deny a claim, which in turn forces you to have to sue to recover benefits owed, or directly advise you against obtaining the services of an attorney. [Cal Ins Code 790.03]

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. *Cal Ins Code 2051.5(c)*.

Sample request for deadline extensions

Dear _____,

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 “Suit Against Us” clause: Please confirm that you will “toll” the “Suit Against Us” clause while our claim is 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;
- 2) The one-year deadline to submit proof of our losses (Contents. Dwelling, other) Please confirm that you will grant us an extension of time to submit required proof.

Get your proof in...

- If no extensions have been granted and there is a one year deadline for your inventory/proofs of loss, get them in!

Unreasonable adjuster requests, delays

I submitted a third-party rebuild estimate to State Farm on 5/27/21 that contained a cover letter with clear requests to review the estimate and agree upon the measure of indemnity. If, after review, my adjuster disagreed with the estimated costs, I requested that he return to me, in writing, the questions or issues he had with the estimate. I initially requested a June 10 'review by' date, on which date the Dwelling adjuster asked for an .esx file. I provided that .esx file and requested a new 'review by' date, June 29. On that date, the adjuster requested a "required" sketch. I responded with the following questions:

If you have a process or guidelines for submission of proof of loss, why haven't you shared them with me?

What exactly are you basing your request for sketches and .esx files on?

I requested response to these questions by July 6, and the adjuster emailed me on 7/2 to inform me he needs additional time.

I have not heard from them since. Luke B.

Submission of Inventory

- We have not submitted our inventory of personal items lost and are being asked for a ball park on replacement costs. Just not ready on that. This is a partial loss and all items in a detached workshop are gone. (Glyn R)
- <https://uphelp.org/claim-guidance-publications/sample-letter-requesting-extensions-of-policy-deadlines/>

Later Discovered Damage

- I have discovered sweating and and 'mottling' in some of our windows (dwelling) where heat has compromised seals. I have not called out a contractor on that yet. Could you please clarify deadlines on Federally declared disasters. I believe it's 2 years? (Glyn R.)

Deep Breath



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Remedies for the Underinsured

- Find/use leverage and convince insurer to pay above limits
 - Their fault, they gave you reason to believe your limits were adequate
 - Their mistake, their faulty underwriting
 - They undertook duty to set limits adequately
 - Seek a “retroactive reformation” of policy limits and offer to pay the difference in premiums
- Sue your agent/broker/insurer as an individual or in a group suit
- Sue another at-fault party

Step 1

Check your policy for obvious errors

Your insurer may have insured the wrong address or the wrong square footage. If you can establish the error was not your fault, you will have a strong case for increasing your limits to where they should have been.

Step 2

Calculate cost to rebuild as-was (what your home *should* have been insured for).

Step 3

Review history of how/when your dwelling limits were set

- Did you remodel? Re-finance? Change insurers/agents?
- Did something trigger you to contact insurer to seek reassurance?
- Did you get reassurance of adequacy of your limits?
- Language in your policy or any sales materials or letters where insurer undertakes duty to set limits/keep them accurate?

Step 4

If possible, seek out and compare notes with other property owners who are or were underinsured by your same agent and/or insurance company.

- If others got your agent or insurance company to retroactively increase their limits, find out what evidence and arguments won the day for them.

Step 5

Make a clear, written demand that your insurance company and/or agent or broker honor the promises that were made to put you back where you were before a loss. Go up the chain of command, and take all steps necessary to enforce that demand.

- Let your insurer know that you are underinsured through no fault of your own.
- Tell them the exact amounts by which you are underinsured.
- Provide them with the documentation outlined in Step 2 above.
- *If your insurer responds by sending you a written questionnaire with questions that get at how your limits were set, see Step 6.*

Step 6

- **Consult with an experienced policyholder attorney. Ideally, before allowing your insurer to interview you, take your recorded statement, examine you under oath, or get you to answer a series of written questions about the history of your policy.**
- **Visit the [“Find Help”](#) section of United Policyholders website as a starting point to find the right lawyer.**

13. If you did not complete your application for Homeowners insurance, who filled out the application for you?
14. Regarding this property, at the time the application for coverage was completed; did you provide all the information to the Sincere Insurance agent, or any member of his/her staff? If another individual provided information regarding the property during the application process, who assisted you?
15. To your knowledge, did Sincere Insurance Agent Abner Doubleday, or any member

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CLAIM NUMBER: 0000000000
DATE OF LOSS: 10/9/2017
INSURED LOCATION: xyz Rd.
NAMED INSURED: John & Jane Doe

of his staff, ever inspect your property? If so, how often and when was the last time?

16. How were the specific limits established for this Homeowners policy?
17. Did you know what those limits were before your fire loss on 10/9/2017?
18. When you first sought insurance from Sincere Insurance, did you complete an application for homeowners or rental dwelling insurance? How was that original application taken, over the phone or in person? If in person, where did you meet the Sincere Insurance agent or any member of his/her staff?
19. Did you ever describe the construction of this dwelling to any Sincere Insurance agent or any member of his/her staff?
20. Please provide the following basic information regarding the loss location:
 - o What was the living area square footage for the main dwelling? Is this the same square footage of living space your home has been assessed by the County of Sonoma?

21. Did your original Sincere Insurance agent, or any member of his/her staff, ever ask you about any special features of this property?
22. Did you ever provide photographs of your property to your Sincere Insurance agent?

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CLAIM NUMBER: 0000000000
DATE OF LOSS: 10/9/2017
INSURED LOCATION: xyz Rd.
NAMED INSURED: John & Jane Doe

If so, please describe the photographs to the best of your recollection.

23. Have you ever made any additions, remodels, or major repairs to your property? If so, when and what did you do? What were the costs of these additions, remodels or major repairs? Who did the remodeling? Was there a permit pulled for any addition or remodeling project with either a city or county agency?
24. If you made any additions, remodels, or major repairs to your property did you ever advise your Sincere Insurance agent, or any member of is staff of those changes?
25. If so, were your policy limits increased? If not, why not? If so, how was the new limit calculated?
26. After your original purchase of this Homeowners policy, you received in the mail a copy of your policy and the Declarations page which explained the specific limits established for your policy. Did you read your Homeowners policy? Did you read

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DATE OF LOSS: 10/9/2017
INSURED LOCATION: xyz Rd.
NAMED INSURED: John & Jane Doe

If so, please describe the photographs to the best of your recollection.

23. Have you ever made any additions, remodels, or major repairs to your property? If so, when and what did you do? What were the costs of these additions, remodels or major repairs? Who did the remodeling? Was there a permit pulled for any addition or remodeling project with either a city or county agency?
24. If you made any additions, remodels, or major repairs to your property did you ever advise your Sincere Insurance agent, or any member of his staff of those changes?
25. If so, were your policy limits increased? If not, why not? If so, how was the new limit calculated?
26. After your original purchase of this Homeowners policy, you received in the mail a copy of your policy and the Declarations page which explained the specific limits established for your policy. Did you read your Homeowners policy? Did you read your Declarations page and note the specific limits for your property? Did you believe those limits were appropriate?
27. Every year since you have had this Homeowners policy, you have received a Renewal Certificate in the mail showing each specific limit for this policy. Did you read these Renewal Certificates and note the specific limits for your property?
28. Did you think the limits established for your home and contents were adequate? If not, what did you do?
29. Did you think these limits were enough to replace the home and personal property if there were a total loss? If not, did you tell your Sincere Insurance agent or any member of his staff? If you did, did your Sincere Insurance agent increase your limits?
30. Have you ever had a policy review with your Sincere Insurance agent or any member of his staff? If so, how often? When was the most recent policy review? Did you discuss the policy limits for this event at any time during the policy review?

Fitzpatrick v. Hayes (1997)

“.[A]s a general proposition, an insurance agent does not have a duty to volunteer to an insured that the latter should procure additional or different insurance coverage. The rule changes, however, when – but only when – one of the following three things happens:

- (a) the agent misrepresents the nature, extent or scope of the coverage being offered or provided;*
- (b) there is a request or inquiry by the insured for a particular type or extent of coverage; or*
- (c) the agent assumes an additional duty by either express agreement or by “holding himself out” as having expertise in a given field of insurance being sought by the insured.”*

Helpful policy language

“The limit of liability shown on the Policy Declarations for ‘Coverage A – Dwelling Protection’ *will be revised* at each policy anniversary to reflect the rate of change in the *replacement cost of your dwelling* as identified in the Policy Declarations”. (emphasis added)

Arguably this insurer has contractually obligated itself to increase the policy limit to keep pace with the rate of change in the replacement cost of the dwelling.

“New Tool Used to Estimate Your Home's Rebuilding Cost”

“We've made a change that goes into effect with this policy's renewal date. We're using a new replacement cost calculation tool provided by Xactware Solutions, Inc., to estimate your home's rebuilding cost. We chose Xactware to provide a consistent experience between your selection of coverage limits and the adjustment of a claim in the event of a loss. Xactware already provides an outstanding estimating tool for our claims department. Review Your Policy Documents for More Information. We used this tool to estimate the minimum cost to rebuild your home, which may differ from prior estimates”

Bivin et al v. USAA, suit filed on behalf of 2017 North Bay fire survivors by Shernoff, Bidart & Echeverria. View at www.uphelp.org/underinsurance to see full lawsuit/complaint.

“He said, she said”

“I asked for full replacement coverage, the agent said that’s what I was buying.” [no written record of conversation]

If this is your fact scenario, and your policy language is not helpful, it will be hard to find a good lawyer to take your case.

You can elect to replace (versus rebuild)

If you have Replacement value coverage on your dwelling, you can buy a replacement home instead of rebuilding.

California law gives that right. Ins. Code 2051.5

Out of state adjusters don't always know CA law.

Overview of buying a replacement home

- You need to 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.
- This includes code upgrade coverage and extended benefits should be available.
- Generally, that is what the insurer owes you (up to policy limits).

CA Ins. Code 2051.5

(c) In the event of a total loss of the insured structure, a policy issued or delivered in this state shall not contain a provision that ***limits or denies, on the basis that the insured has decided to rebuild at a new location or to purchase an already built home at a new location,*** payment of the building code upgrade cost or the replacement cost, including any extended replacement cost coverage, to the extent those costs are otherwise covered by the terms of the policy or any policy endorsement. However, the measure of indemnity shall not exceed the replacement cost, including the building code upgrade cost and any extended replacement cost coverage, if applicable, to repair, rebuild, or replace the insured structure at its original location.

“Replacement cost”

- Should include all available coverage extensions applicable to the dwelling
- Should include Ordinance or Law compliance costs if:
 - Policy includes that coverage; and
 - O/L upgrades would be required for new home

Issues

- Tax consequences
- Inclusion of extended coverage, O/L in amount available to buy new home
- Land value deduction
 - Land not insured, should be irrelevant
 - Unjust enrichment should not be an issue
 - If new home (including land) is same price as cost of rebuilding old home (not including land), it's arguably a lesser home anyway...

CDI Counsel's 4-3-08 letter

Question 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?

Answer: Yes.

CDI counsel's 4-3-08 letter

Question 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?

Answer: No.

For more information

- <http://www.uphelp.org/pubs/buy-or-rebuild>
- CDI Counsel's letter: <https://uphelp.org/wp-content/uploads/2020/09/435314cicsection2015.pdf>
- <http://www.uphelp.org/pubs/samples-damage-and-proof-loss-documentation>

Fire families have celebrated with groundbreaking parties...



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Fire families have celebrated with framing or “stud” parties...



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PEACE BE WITH
THIS HOUSE AND
WITH ALL WHO
LIVE HERE.

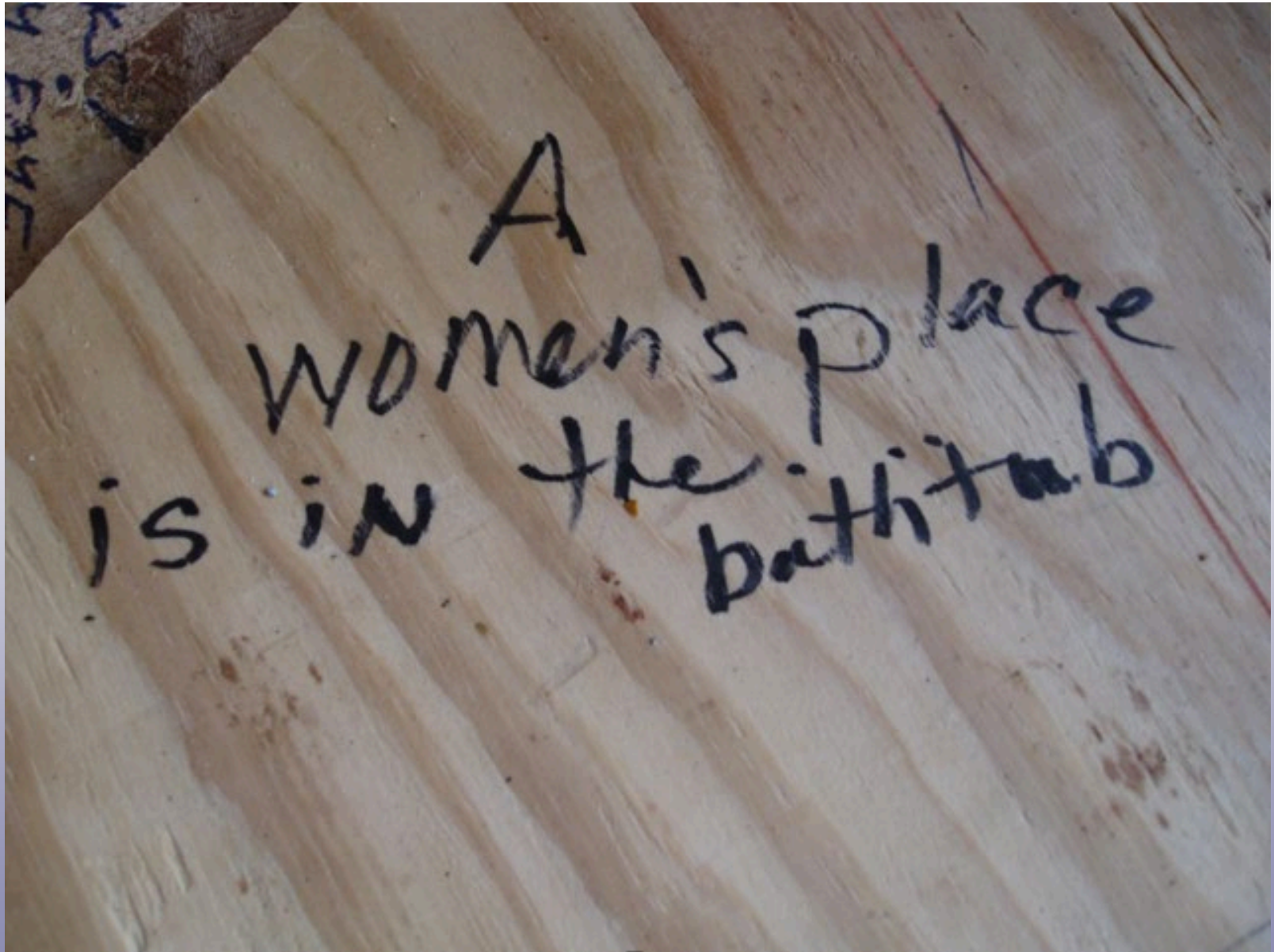
NANITA

Bill

KISNER

9/21/

2008



May you have walls for the wind,
And a roof for the rain, and drinks
beside the fire, laughter to cheer you
And those you love near you, and all
that your heart may desire.

Celtic Blessing

Rand

Stay informed – Sign UP

To be added to our mailing list for notices of future events and updated guidance:

- Encourage friends to sign up:
www.uphelp.org/signup
- To request a copy of today's slides or video,
email: info@uphelp.org

Upcoming Roadmap to Recovery™ Events

Survivor to Survivor Forum

Tuesday, July 20, 7:00 p.m. PT

Register: www.uphelp.org/july20

Roadmap to Recovery Q&A

Wednesday, July 21, 5:30 p.m. PT

Submit your question: www.uphelp.org/r2rhel

Register: www.uphelp.org/july20

www.uphelp.org/events

Register for upcoming events.

View recordings of past events and related resources.

Stay connected to other disaster survivors – S2S Forums

- Great Source of Information About:
 - Insurance and Rebuilding
 - Negotiation and Financial Strategies
 - Referrals and Warnings re: professionals
 - 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/events>



CALIFORNIA DEPARTMENT OF INSURANCE



**Wildfire resources
and insurance
information**

**FOR FREE, PERSONAL ASSISTANCE WITH YOUR
CLAIMS OR UNDERINSURANCE ISSUES**

CALL US AT: 1 800 927 4357

OR GO ONLINE: insurance.ca.gov

THANK YOU FUNDERS



Center for Disaster Philanthropy

For more information

If you still have questions, visit UP's website and search for more claim tips, articles and helpful information at:

www.uphelp.org