



## Insurance Claim Rules in California – 2021

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, which changes 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 insurance laws and regulations, so it's often up to you to understand and enforce them for yourself. The rules in this publication apply to claims occurring *after* January 1, 2021.

### Claim Handling Practices in the Event of a Government-Declared Disaster

Following the wildfires in recent years, the California Insurance Commissioner has issued notices calling on all property insurance companies to implement claim procedures to help you recover quickly. Many of these "voluntary guidelines" have now been adopted into law. The following is a set of rules that outlines how insurance companies **MUST** act after a declared state of emergency. Asserting these rules may give you leverage to help you better resolve your claim.<sup>1</sup>

**Loss of Use/Additional Living Expenses (ALE)** – If you have suffered a total loss relating to a declared state of emergency, your insurance company **must** give you a cash advance of **no less than four months** of living expenses while working with you on calculating your losses and benefits. Additional payments for ALE shall be payable upon proper proof following the initial advance. ([CA Ins. Code 2061 (a)(1)].

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 as an advance of future payments from your insurance company to get you situated after the shock of the loss. After the advance of ALE is paid, additional ALE is disbursed on an "as incurred" basis as you submit receipts and document expenses.

**Restricted Access by Civil Authority (ALE)** – In the event of a state of emergency related to a covered peril that, by an order of civil authority, restricts access to the insured property ALE coverage shall be provided for at least two weeks. Additional extensions shall be provided for good cause but are subject to other policy provisions. ([CA Ins. Code 2060(c)] **Effective July 1, 2021**)

**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/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/upload/Significant\\_California\\_Laws\\_Pertaining\\_to\\_Residential\\_Property\\_Insurance\\_Policies-Declared\\_State\\_of\\_Emergency-2021-FINAL.pdf](http://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/upload/Significant_California_Laws_Pertaining_to_Residential_Property_Insurance_Policies-Declared_State_of_Emergency-2021-FINAL.pdf) (April 2, 2021)

**Buying or Rebuilding** – In the event of a total loss (disaster or non-disaster) CA law [Cal Ins. Code 2051.5 (c)] allows you to use your full replacement benefits, *including any building code upgrade costs and 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>

**Land Value Deduction** – In the event of a total loss to your property, the amount owed to you by the insurer is the cost to rebuild your home at its original location, including building code upgrade coverage and extended replacement cost coverage. A deduction for the value of land at the new location shall not be permitted. [Cal Ins. Code 2051.5 (c)(2)]

**Combining Coverages** – In the event of a claim related to a declared emergency, an insured shall be permitted to combine payments for losses, up to the policy limits, for the primary dwelling and other structures, to pay for expenses reasonably necessary to rebuild or replace the dwelling, if the policy limits for Coverage A are insufficient. [CA Ins. Code 10103.7(a)]

**Personal Property (Contents)** – In the event of a covered total loss resulting from a declared state of emergency, your insurance company **must** offer payment of no less than **30%**, up to \$250,000, of the policy limit applicable to the covered dwelling structure if your home was furnished at the time of loss. [CA Ins. Code 10103.7]

### **Personal Property Inventory**

If you are making claim for contents related to a total loss of your primary residence, your insurer shall not require you to use a company-specific inventory form. They **must** agree to accept any home inventory that you provide, if that form contains substantially the same information. Moreover, they **must** also agree to accept reduced itemization, or “bulking” of items (i.e., “15 books” instead of listing all titles). [CA Ins. Code 2061(a)(2)(3)]

## **Claim Handling 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. [10 CCR 2695.7(a)]

### **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 provide you with reasonable assistance. [10 CCR 2695.5(e)]

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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>)

### **Investigating your claim**

15 days – Your insurance company must begin any necessary investigation within 15 days of receiving your claim. [10 CCR 2695.5(e)]

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. [10 CCR 2695.7(d)]

### **Communicating information to you**

15 days – Your insurance company must answer your questions and reply to your communications, including phone calls, emails, and letters, *immediately* but in no event more than 15 calendar days. [10 CCR 2695.5(b)]

15 days – Upon request, your insurance company must produce a copy of your claim-related documents within 15 days. [Cal Ins. Code 2071]

30 days – Upon request, your insurance company must provide you with a complete copy of your policy within 30 days. [Cal Ins. Code 2071; 2084]

75 days – California currently requires 75-day notice of an insurer’s intent to non-renew a policy. [Cal Ins. Code 678 (c)(1)]

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**

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. [10 CCR 2695.7(b)] If your insurer is not able to determine coverage within the 40 days, they must provide you with written notice of the need for more time, including the reason for the delay, what information they need to decide, and an estimate of the additional time needed. [10 CCR 2695.7(c)(1)]

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. [10 CCR 2695.7(h)]

### **Preserving your rights**

60 days – Your insurance company must provide written notice to you within 60 days of deadlines that cut off your right 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. [10 CCR 2695.7(f)]

## Fair Depreciation

Almost every policy allows an insurance company to depreciate your property to reflect its value at the time of the loss. They must consider both age and condition of the property. [Cal Ins. Code 2051 (b)]; [10 CCR 2695.9] 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 also have the right to know how your insurance company calculated depreciation and how they calculated their settlement offer. [Cal Ins. Code 2071]; [10 CCR 2695.9] There are no “official” depreciation schedules, insurance companies vary on these calculations, so you should advocate for fair valuation of your property.

## Actual Cash Value (ACV)

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.” A deduction for depreciation can only be applied to things that normally “wear out” and cannot be applied to labor. This definition applies to both **total** and **partial** losses. [Cal Ins. Code 2051]

## SPECIAL TIME LIMITS for losses relating to a “State of Emergency”

### Collecting Full Replacement Cost

For claims relating to a state declared emergency, you have *no less than 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)] Additional extensions of six months *shall* be provided to policyholders for good cause.

### 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]

### 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. [Cal Ins. Code 675.1(a)]

For claims relating to a state-declared emergency, insurers also cannot cancel or refuse to renew a policy of residential property insurance for a property located in a ZIP code within or adjacent to the fire perimeter for one year. The ZIP codes impacted are published in a bulletin by the Insurance Commissioner. [Cal Ins. Code 675.1(b)]

You can use the guidance and sample letters you’ll find on United Policyholders’ [website](#) and in our print materials to further help you navigate the claims process.

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](#). 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.