Dealing with Underinsurance

CA CO 2021 Wildfires

March 9, 2022
Virtual Workshop #8 (CA 2021 R2R)/ #6 (CO 2021 R2R)
www.uphelp.org/2021wildfires
Dealing with Underinsurance

CA CO 2021 Wildfires
March 9, 2022
Virtual Workshop/Webinar #8 (CA)
Esta reunión cuenta con interpretación al español

Para activar la interpretación, vaya a la parte baja a la derecha de su pantalla y haga clic en el ícono o símbolo global titulado Interpretación/Interpreting.

Haga clic y seleccione “español.” Automáticamente escuchará en español.

Gracias
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
  – Fired UP Survivors - 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
- Fighting for insurance consumer rights and protections
California 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
www.uphelp.org/samples

Survivors Speak Tips
www.uphelp.org/survivorsspeak

Upcoming Workshops And Resources
www.uphelp.org/events

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2021 Marshall Fire Help Library
www.uphelp.org/MarshallFire

- 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 www.uphelp.org/samples
- Survivors Speak Tips www.uphelp.org/survivorsspeak
- Upcoming Workshops and Resources www.uphelp.org/events

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• Our speakers are volunteering their time as educators
Today’s Presenters

Amy Bach, Esq.
Executive Director & Co-Founder, United Policyholders

Marcia Belforte, 2017 Wildfire Survivor

Neal Bordenave, JD, CPCU, 2018 Wildfire Survivor
Pro Insurance Services, Inc.
Amy Bach, Esq.

- Dedicated to advancing the interests of insurance policyholders since 1984
- Published author, experienced trial and regulatory attorney
- Co-founder, UP
- Official consumer representative to NAIC since 2009
- Member, Federal Advisory Committee on Insurance (US Treasury)

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Marcia Belforte

- Total loss, 2017 Tubbs Wildfire
- Attended Roadmap to Recovery events, used UP resources
- Underinsured, negotiated an above-limits settlement subject to a confidentiality agreement
- Fire Inspector, Sonoma County Fire and Emergency Services
- Retired Firefighter, Seattle FD
Neal Bordenave, JD, CPCU, RPLU, ARM, AIC

- Total loss (primary home and investment property), 2018 Camp Fire

- President/CEO, RiskPro Insurance Services

- Expert witness in underinsurance litigation

- Adjunct Professor, Chico State Univ.
Underinsurance is a recurring and challenging problem that surfaces after disasters.

**2017 North Bay Fires Survey Results**

*24 Month Survey Results - North Bay Fires*

*Summary and Highlights:*

- 64% of survey respondents reported they do not have enough insurance to cover the cost of repairing, replacing or rebuilding their home by an average amount of $367,000.

**2018 Camp Fire Survey Results**

*12 Month Survey Results - Camp Fire*

*Summary and Highlights:*

- Underinsurance persists. 60% of survey respondents reported being underinsured by an average of $163,000.
Underinsurance:

Q10 Do you have enough insurance to cover the cost of repairing, replacing or rebuilding your home?

- 64% of survey respondents reported they do not have enough insurance to cover the cost of repairing, replacing or rebuilding their home.
50-66% is the consistent figure of homes destroyed in wildfires that are underinsured.
Solutions attempted to date in CA:

- CA Legislature has twice mandated standardized disclosures of ACV, RCV and GRC differences
- CDI regulations say *if* carrier estimates RCV at point of sale, must include enumerated features. Insurers sue, regs are upheld
- Legislature then says carrier *must* estimate
Effective the first of July 2019, the CA Ins. Code at section 10103.4 states:

(a) An insurer that provides replacement cost coverage...shall, on an every other year basis, at the time an offer to renew a policy of residential property insurance is made to the policyholder, provide an estimate of the cost necessary to rebuild or replace the insured structure that complies with Sections 2695.180 to 2695.183, inclusive, of Article 1.3 of Subchapter 7.5 of Chapter 5 of Title 10 of the California Code of Regulations,
The estimate shall include...

(1) Cost of labor, building materials and supplies;
(2) Overhead and profit;
(3) Cost of demolition and debris removal;
(4) Cost of permits and architect's plans; and
(5) Consideration of components and features of the insured structure, including at least the following:
   (A) Type of foundation;
   (B) Type of frame;
   (C) Roofing materials and type of roof;
   (D) Siding materials and type of siding;
   (E) Whether the structure is located on a slope;
(F) The square footage of the living space;
(G) Geographic location of property;
(H) Number of stories and any nonstandard wall heights;
(I) Materials used in, and generic types of, interior features and finishes, such as, where applicable, the type of heating and air conditioning system, walls, flooring, ceiling, fireplaces, kitchen, and bath(s);
(J) Age of the structure or the year it was built; and
(K) Size and type of attached garage.

(b) The estimate of replacement cost shall be based on an estimate of the cost to rebuild or replace the structure taking into account the cost to reconstruct the single property being evaluated, as compared to the cost to build multiple, or tract, dwellings.
(d) This section is not intended to change existing law with respect to the duty of the policyholder or applicant to select the coverage limits for a policy of residential property insurance.
In Colorado…

- Underinsurance has gotten widespread coverage in the media
- A very significant percentage of Marshall impacted homeowners are underinsured
- Pressure is building on insurers to take responsibility and remedy the situation
- Legislation is being considered but unlikely to be retroactive/helpful
Division of Insurance - Marshall Fire
2022 Data Call currently underway

Insurance Commissioner Michael Conway
Louisville City Council Meeting - March 1, 2022
Data for Analysis - Collecting Claim-Level Data, by Policy & Company

We requested policy limits for total losses and square footage covered by the policy (among other information).

Allowing calculation of insurance coverage limits by square footage to begin to assess underinsurance.

Requesting information on Law and Ordinance, Extended Replacement Cost, and Guaranteed Full Replacement Cost benefits to calculate available amounts for rebuild.
What software program is used to establish Coverage A and B values?
Comparative Inception Date

By claim and by policy

- Was property owner-occupied?
- City name and zip code
- Original Policy inception date – e.g. when was the policy first written on the property for that policyholder?
- Dollar amount of Coverage A & B at inception date
- Total square footage at inception date
Data Elements of Survey

Date of Loss

By claim and by policy

- Dollar amount of Coverage A & B at date of loss
- Total square footage at date of loss
Data Elements of Survey

Contents Coverage and Endorsements

● Dollar amount of Contents/Personal Property (Coverage C) shown on Declarations page at time of loss
● Percentage Law and Ordinance Benefit
● Percentage of Extended Replacement Cost Benefit
● Whether policy is Guaranteed Full Replacement Cost Benefit?
Questions or concerns?
Contact the Division of Insurance
303-894-7490
DORA_Insurance@state.co.us
doi.colorado.gov
Underinsurance overview

• Current laws don’t reflect reality of how the transaction really occurs
• Leverage *may* convince insurer to pay above limits
  – Errors insurer and/or agent made in issuing policy
  – Evidence, records of communications, history of how limits were set
  – Political pressure, media pressure/PR
  – Assistance from DOI
• Seek a “retroactive reformation” of policy limits and offer to pay the difference in premiums
• Sue your agent/broker/insurer individually or in a group
How do limits get set in real life?

- Software that agents are required to use
- Agents experience in setting limits
- Replacement cost calculators
• Getting an insurer to pay more than their contract says they owe you is not easy, but can be and has been done.

• But although a contract is a legal written document, there are “invisible” terms that our laws add to them to make sure they’re enforced fairly.

• Every insurance policy sold in California and Colorado has an invisible clause that the insurance company must act in good faith and deal fairly with you.

• Insurance companies and their agents cannot deceive or mislead you, and they must live up to promises they made to you.
• How often did you speak with your agent/insurer or did you buy your policy online?

• What, if any, specific conversations do you remember?

• How did your insurer/agent explain your coverage (including ads, mailers, orally and in writing)?

• Did you fully cooperate with all requests for information and requests for inspection from your agent/insurance company?

• Did you ever refuse a recommended increase in coverage? –

• Did you notify your insurer of major improvements or remodeling?
Current law: Insurer only has a “general duty” to procure insurance


Reality: Insurers and their sales reps (agents and brokers) represent themselves as experts and they are the ones that set dwelling limits. Property owners reasonably rely that their insurer/agent has used their expertise put adequate dwelling coverage in place. It’s not until after a loss that they’re told otherwise.
Enter “underinsurance” in the search box at www.uphelp.org
One household’s story:
Oct 2017
Tubbs Fire
Sonoma County, California
+5,000 homes lost
Oct 2020
3 years after Tubbs Fire
A few claim handling reminders…
Keeping paperwork organized = $

- Claim/Recovery Journal
- Save all receipts (scan or photocopy and email, so you have a copy for your records)
- Open a separate bank account for insurance funds received and asset replacement spending
- Establish a special email account for your claim
- Document and track all insurance communications
- Track expenses and $ matters: 
  https://www.uphelp.org/pubs/insurance-accounting-spreadsheet)
Journaling and a good paper trail

- Your communications with insurer should:
  - Confirm you are cooperating w/their investigation
  - Tell them what you need/want and why
  - Ask what they need from you to resolve your claim
  - Point out specific things they have/haven’t done that are holding up resolution of your claim
  - Politely remind them about your challenging situation
  - Give them a specific time frame to reply/comply
  - Follow up…follow up….follow up again…
Negotiation - Best Practices

• Keep it professional
• Be concise and specific
• Bold or bullet point your requests
• Avoid long paragraphs
• Use good grammar and punctuation
• Promptly respond to reasonable requests
• Confirm your willingness to cooperate, explain why you can’t fulfill an unreasonable request
• Avoid venting frustrations and emotions
Your personal leverage

• Sudden tragedy turned your life upside down
• You’re doing your best with the MANY details
• Special circumstances (Senior Citizen, commuting worker, working parent, young kids, business owner, disabled/illness, etc.)
• You lost a lifetime of possessions and memories
• Good help is extra hard to find now, labor and material prices are high
• Records are all gone and painstaking to recreate
• Insurers have made concessions to others
Go “up the chain” … to get attention and results

• If you are unable to resolve an issue with your adjuster, go above their head
• The higher you go…the greater your chances of success in resolving your dispute
• At the same time, open a complaint/RFA with your state insurance oversight agency
• Vague threats to sue are rarely effective
An expert and a survivor’s perspective:
What is the standard of care for an insurance broker or agent?

Reasonable care, diligence and judgment to procure the coverage requested
No duty to volunteer

“As 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.”

But when they do volunteer…

They take on a professional responsibility…
“Helpful” facts

1. Insurer or agent/broker misrepresented nature, scope or extent of coverage;
2. Insurer or agent/broker failed to obtain requested limit;
3. Insurer/agent/broker can be held to have taken on a special duty through words and/or actions that the insured can prove through evidence. (not just “he said she said”)
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 may 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)

<table>
<thead>
<tr>
<th>Site Work and Foundations</th>
<th>QTY</th>
<th>UNIT PRICE</th>
<th>TAX</th>
<th>O&amp;P</th>
<th>RCV</th>
<th>DEPRECE.</th>
<th>ACV</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dwelling</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Footings - labor &amp; materials</td>
<td>36.63 CY</td>
<td>498.49</td>
<td>502.87</td>
<td>3,752.52</td>
<td>22,515.08</td>
<td>(0.00)</td>
<td>22,515.08</td>
</tr>
<tr>
<td>NOTE- This is a concrete grade beam foundation tied to underlying, drilled friction piles. Grade beam foundation estimated to be 30” x 14”</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Concrete Piles - 18” diameter</td>
<td>300.00 LF</td>
<td>86.10</td>
<td>316.45</td>
<td>5,229.30</td>
<td>31,375.75</td>
<td>(0.00)</td>
<td>31,375.75</td>
</tr>
<tr>
<td>NOTE- Drilled 18” concrete friction piles underly concrete grade beam foundation. Piles spaced 6'-0” OC. Average depth to bedrock estimated at 8'-0” deep.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Steel rebar - j-bar - #4, 2’ 6”</td>
<td>289.00 EA</td>
<td>3.92</td>
<td>23.18</td>
<td>231.22</td>
<td>1,387.28</td>
<td>(0.00)</td>
<td>1,387.28</td>
</tr>
<tr>
<td>NOTE- For concrete stem wall</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Concrete wall - labor &amp; materials</td>
<td>3.65 CY</td>
<td>380.87</td>
<td>44.11</td>
<td>286.86</td>
<td>1,721.15</td>
<td>(0.00)</td>
<td>1,721.15</td>
</tr>
<tr>
<td>5. Steel rebar - #4 (1/2”)</td>
<td>638.41 LF</td>
<td>1.26</td>
<td>22.02</td>
<td>165.28</td>
<td>991.70</td>
<td>(0.00)</td>
<td>991.70</td>
</tr>
<tr>
<td>6. Steel rebar - #4 (1/2”)</td>
<td>650.20 LF</td>
<td>1.26</td>
<td>22.43</td>
<td>168.34</td>
<td>1,010.02</td>
<td>(0.00)</td>
<td>1,010.02</td>
</tr>
<tr>
<td>7. Steel rebar - #4 (1/2”)</td>
<td>1057.67 LF</td>
<td>1.26</td>
<td>36.49</td>
<td>273.84</td>
<td>1,642.99</td>
<td>(0.00)</td>
<td>1,642.99</td>
</tr>
<tr>
<td>8. Backhoe loader and operator</td>
<td>8.00 HR</td>
<td>118.75</td>
<td>0.00</td>
<td>190.00</td>
<td>1,140.00</td>
<td>(0.00)</td>
<td>1,140.00</td>
</tr>
<tr>
<td>NOTE- This is to dig new 12” x 24” footings in newly compacted earth</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Backfill foundations</td>
<td>593.41 LF</td>
<td>4.69</td>
<td>0.00</td>
<td>556.62</td>
<td>3,339.71</td>
<td>(0.00)</td>
<td>3,339.71</td>
</tr>
<tr>
<td>NOTE- New stem wall foundations and grade beams will require backfilling on both sides after form removal</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>
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?
- Do you have any communication in writing?
  - Emails/texts/letters
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 (what your home should have been insured for)
Step 5 Cont. - Best Practices

- Keep communication professional
- Be concise and to the point
- Bold or bullet point your requests
- Avoid long paragraphs
- Use good grammar and punctuation
- Cite to things the insurer did wrong when adjusting your claim as support for reforming your limits
- Be professional and/or get professional help
- If your insurer responds by sending you a written questionnaire with questions that get at how your limits were set, see Step 6
Step 5 Cont. - Best Practices

• Keep communication professional
• Be concise and to the point
• Bold or bullet point your requests
• Avoid long paragraphs
• Use good grammar and punctuation
• Promptly respond to letters and reasonable requests
• Point out unreasonable requests – common sense is on your side
• Avoid venting frustrations and emotions to your adjuster
• Use your personal leverage
Step 5 Cont. - Your Personal Leverage

- Was your home damaged from a federally declared disaster?
- How long have you lived in the home?
  - Decades (quite a history in this home)
  - A few years (were your limits recently set?)
- Retired senior citizen
- Busy professional
- Empty nester
- Trying to get your family back home
- Health factor
Step 5 Cont. - How a paper trail factors in during negotiations and settlement discussions

- Confirm you are cooperating
- Tell them what you need
- Any missed time frames (on their part)
- Why you are requesting what you need
- Remind them of your leverage
- Give them a specific time frame to reply/comply

Follow up again at that time…

*If your insurer responds by sending you a written questionnaire with questions that get at how your limits were set, see Step 6*
1. When did you purchase the property located at xyz Rd. Santa Rosa, CA, California (hereafter referred to as the “property”)?

2. Are you the original owner of this property?

3. What was your original purchase price of the property?

4. What structures were on this property at the time of your purchase?

5. If you built the home on this property, who was the General Contractor? What was the full construction cost of your home?

6. You have made an inquiry regarding your policy limits. What specific concerns do you have regarding your policy limits?

7. Do you believe your concerns are the responsibility of Sincere Insurance Agent Abner Doubleday or any member of his staff? If you do believe Agent Abner Doubleday, or any member of his staff, are responsible for your concerns, please be specific in your explanation?

8. Do you believe you have any personal responsibility in establishing the limits of coverage for your property? Why or why not? Please be specific in your response.

9. Has Sincere Insurance insured this property since you purchased it?

10. Have you had any other insurance coverage (from any other insurance carrier) provide coverage on this property since your purchase? If you have had other insurance coverage what other insurance company(ies) insured this property?

11. If you have had other homeowners or rental dwelling insurance on this property, for what policy period was the home provided coverage and what were the limits to replace the dwelling?

12. Did you meet with a Sincere Insurance agent, or any member of his/her staff, in regard to your current homeowners policy? Please be specific and identify the agent and his/her name and any other relevant information.
Step 6

Consult with an experienced policyholder attorney. Ideally, do this 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.

- You can visit the “Find Help” section of United Policyholders website as a starting point to find the right lawyer.
The logical sequence

• Get a reasonable idea of how much your home should have been insured for
• Notify DOI that you’re underinsured, file an official complaint/RFA
• Collect all evidence that gives you leverage
• Make a written request to the insurer to retroactively reform limits
• Consult or retain an attorney
• Go to mediation if available
• Litigate if necessary and feasible
Mediation

- Mediation is an informal, voluntary, non-binding process for conducting settlement negotiations between you and your insurance company.

- Can be fast and inexpensive if your dispute is ripe for mediation and you’re prepared and empowered.
Mediation ‘Pros’

- Inexpensive
- If you don’t like the result, you can walk away
- Efficient way of putting the dispute behind you and moving forward
- Educates both sides about the strengths and weaknesses of their positions
Mediation “Cons”

- Insurance company may not be seriously interested in settling, but uses mediation to gather evidence and test the strength of your legal case
- Mediator may inappropriately discourage/scare the policyholder to force a settlement
- Mediator may tell insurance company things you ask them to keep secret
- Insurance rep may take advantage of your inexperience with the mediation process and legal concepts
- You may leave the mediation feeling it was a waste of time and money

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Litigation

Multi-plaintiff/class action/unfair practice/fraud
  • Systematic underinsurance, improper software
  • Systemic fraud
  • Improper depreciation
  • Disparate treatment
  • Utility negligence/liability

Individual
  • E & O claim vs. agent/broker
  • Breach of contract/covenant of GFFD
Filing a complaint with the DOI

- Reference your state’s regulations
- Elevate your situation (“squeaky wheel”) and make sure a summary letter is at the top of your claim file
- Insurers are subject to fines and penalties, Market Conduct Exams

54% of survey respondents reported having a problem with their insurance company.
Of those respondents only 25% have filed a formal complaint with the California Department of Insurance.
| SHERNOFF BIDART ECHEVERRIA LLP |
| 600 South Indian Hill Boulevard |
| Claremont, California 91711 |
| Telephone: 909-621-4935 |
| Facsimile: 909-625-6915 |
| STEPHEN G. LARSON #145225 |
| ROBERT C. O’BRIEN #154372 |
| LARSON O’BRIEN LLP |
| 555 South Flower Street, Suite 4400 |
| Los Angeles, CA 90071 |
| Telephone: 213-436-4888 |
| Facsimile: 213-623-2000 |

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA

ROBERT A. BIVIN and KATRINA J. BIVIN, husband and wife; WILLIAM L. EDELEN III and ROXANNE G. EDELEN, as trustees for the WILLIAM L. EDELEN and ROXANNE G. EDELEN TRUST; LAURA T. MILLS and PAUL R. KITZEROW, wife and husband; KENNETH L. MORSE and PATRICIA L. MORSE, husband and wife; LEO QUINN and MAUREEN QUINN, husband and wife; SCOTT STANFIELD, an individual; ANNE B. SHEPPERD and CHARLES SHEPPERD, wife and husband; STEVE DIEHL and NIESSIA DIEHL, husband and wife; LYNN VAN FLINT, an individual; ISAAC “SKIP” EFFERLY and MERRI BETH CALLENDER, husband and wife;

Plaintiffs,

v.

CASE NO.
COMPLAINT AND DEMAND FOR JURY TRIAL:
1. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
2. FRAUD—INTENTIONAL MISREPRESENTATION;
3. FRAUD—FALSE PROMISE;
4. NEGLIGENT MISREPRESENTATION;
5. NEGLIGENCE;
6. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW;
7. REFORMATION
GREGORY L. BENTLEY #151147 (gbentley@bentleymore.com)
BENTLEY & MORE LLP
4931 Birch Street
Newport Beach, California 92660
Phone: (949) 870-3800
Facsimile: (949) 732-6291

CHRISTOPHER L. KREEGER #148949 (chris@rosenthalkreeger.com)
ROSENTHAL & KREEGER LLP
2251 Douglas Blvd., Ste. 120
Roseville, CA 95661
Phone: (916) 774-7200
Facsimile: (916) 774-7203

Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

Case No.: SCUV 203694

COMPLAINT AND DEMAND FOR
JURY TRIAL

1. Breach of the Implied Covenant of
   Good Faith and Fair Dealing
2. Breach of Contract
3. Negligence
4. Negligent Misrepresentation
5. Fraud
6. Unfair Competition
7. Reformation

Plaintiffs, vs.

CSAA INSURANCE EXCHANGE, an
unincorporated association domiciled in
California, and DOES 1-100, inclusive,
Deep Breath
LAWS & REGULATIONS IN YOUR STATE
Knowing Your Rights

There are three 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)
“When the amount claimed is adjusted because of... depreciation... all justification for the adjustment shall be contained in the claim file.

Any adjustments shall be discernable, measurable, itemized, and specified as to dollar amount, and shall accurately reflect the value of the... depreciation...

Any adjustments for... depreciation shall reflect a measurable difference in market value attributable to the condition and age of the property and apply only to property normally subject to repair and replacement during the useful life of the property.

The basis for any adjustment shall be fully explained to the claimant in writing.”
§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....
§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

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

Colorado Revised Statutes § 10-4-110.8 (11) (c) (I) 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.
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 at least 24 months of ALE vs standard 12 month limit  
- Consider a RC 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  

Note: This is a partial list of relevant bulletins
Tolling certain time limits of policyholder benefits in the event of catastrophic disaster

…“to protect homeowner policyholders who have suffered a loss during a catastrophic disaster…from insurers that cause unreasonable delays in claim handling, which may further delay rebuilding property. Such delays may be further exacerbated by labor and material shortages. Further, this regulation identifies specific acts or practices that may constitute unfair claim settlement practices…Insurers shall:

• Toll the ALE time limits for the duration of the time required to repair or replace the damaged property…

• Toll the policy time limits for the policyholder to complete the repair or replacement of the damaged part of the property necessary for issuance of the replacement cost value payment.”…

Emergency Regulation 22-E-01 Concerning Tolling Certain Time Limits of Policyholder Benefits.pdf - Google Drive
Equitable Payment of Claims Resulting from Natural Disasters

 “…While some insurance contracts offer more, all homeowner’s insurance replacement cost policies include at least twelve (12) months of Additional Living Expense coverage.” Note: This applies to primary homeowners

 “…in the event of a total loss of an owner-occupied primary residence that was furnished at the time of loss, the insurer shall offer the policyholder a minimum thirty (30) percent of contents coverage without completing an inventory…”

 “…Insurers should also adjust pricing to reflect the specific region the insured property is located, taking into account local conditions that may affect costs.”

 ➢ B-5.28 Equitable Payment of Claims Resulting from Natural Disasters - Google Drive https://drive.google.com/file/d/0BwMmWVFE3YMsmM1pcUIpQ1pINzg/view?resourcekey=0-Tdn5DcvGKYpUZQ59VO2ptQ
Concerning Extension of Policyholder Benefits in the Event of a Catastrophic Disaster

“…This Bulletin is intended for all insurers issuing homeowner insurance policies in Colorado that have total loss claims resulting from any catastrophic disaster, as defined in Section 10-2-103(1), C.R.S. This Bulletin solely applies to policy timelines that restrict the recovery of Additional Living Expenses (ALE) and Replacement Cost benefits…”

“…In the event of a catastrophic disaster, an insurer shall act in good faith and shall consider any adverse circumstances beyond the insured’s control that may require maintaining and extending certain policyholder benefits beyond those afforded by the timelines provided in the underlying insurance policy…”

“…If the insurer has caused delays in providing the initial estimate of damages and/or the actual cash value payment, the Division directs the insurer to act in good faith and toll the time period that the policyholder can recover ALE benefits and collect recoverable depreciation by a time period equivalent to the delayed action by the insurer.

  https://drive.google.com/file/d/1EK7Kf54-RibhB5HzW6vl4uzTAWJJ7udU/view

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In the event a fire damaged home suffers additional damage from frozen pipes, water or other weather-related damage, the Division directs insurers to consider this damage related to the fire and treat such losses as one claim, subject to one deductible…

When handling the smoke, soot, ash, or water damage claims, the Division directs insurers to consider the related long-lasting effects on electronics, furniture and other property when estimating the total damage. Merely cleaning the walls and property will not necessarily return the property to pre-loss condition. Companies must consider their policyholders’ concerns about faulty wiring, inoperable electronics, and soft material contamination. Health related issues, including respiratory difficulties, directly caused by exposure to smoke, soot, ash, or mold are damage and loss, and insurers shall consider reasonable substantiation to make appropriate coverage decisions…

Additionally, due to the housing shortage and other challenges, we anticipate that meeting the housing needs for the displaced policyholders will be difficult. The Division directs insurers to consider all available options for both short- and longer term housing, including Airbnb, VRBO and individual rooms for rent. The Division encourages insurers to allow agreed upon monthly housing allowances for those policyholders who move in with relatives or friends during the claim and rebuilding period…

B-5.43 Concerning Policyholder Benefits in the Immediate Aftermath of the Marshall and Middle Fork Fires.pdf - Google Drivehttps://drive.google.com/file/d/116YN4rpLaPbx3tTgnarjXWFvOaPX87/view

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“…Is there an ALE benefit limit?

- If your home was your primary residence, Colorado law requires that your homeowner’s policy cover at least 12 months of ALE. Your policy may provide more coverage so it’s important to understand the benefits available in your policy.
- If the home that was destroyed was not your primary residence (e.g., you are a landlord or it was a secondary home that you rent temporarily, ), State law does not require your policy to include ALE coverage. There may be loss of use coverage and you will need to review your policy and talk with your insurance company.
- **There cannot be a dollar limit for your ALE coverage for your primary home…**

“…If I end up staying with a friend who doesn’t charge me rent, would there be any requirement for the insurance company to reimburse ALE based on an average cost? ALE is for the increased costs you incur while you cannot be in your home. If your friend is not charging you rent, you would not be incurring increased costs while you are out of your home for your housing. However, if you are paying your friend or family rent, or for an increase in their utilities, you should submit this for consideration…”
Within ten (10) days of a policyholder’s request, insurance companies shall provide policyholders with a written explanation of the coverages and coverage limits applicable to the loss. This information is meant to supplement the information contained in the declarations page (the declarations page of the policy informs the policyholder of the coverage limits for each coverage under the policy). This explanation must include the following information:

- A description of each property coverage, including any special limits or additional coverages, applicable to the loss and consistent with the requirements in C.R.S. § 10-4-110.8(7)(a).
- Payment requirements or limitations under each applicable coverage;
- Documentation requirements for each applicable coverage; and
- Whether the additional applicable coverages are subject to or in addition to the applicable limit of coverage.
• The Division instructs carriers to provide information to their policyholders who have experienced a total loss about the Boulder County Debris Removal Program and its impact on their coverage limits.

• Due to the extent of the destruction for policyholders who experienced a total loss, the Division requests carriers to maximize the payout on additional coverages without requiring the policyholder to incur the actual costs before reimbursement.

• If applicable, policyholders must be notified that any payments issued under coverages requiring policyholders to incur costs could be subject to repayment should the policyholder elect to relocate and not rebuild...
What do I do with this information?
You can….

• Use these resources as a tool to get your claim paid promptly and fairly

• Politely and professionally remind your adjuster of these regulations and code sections if need be (quote in support of your claim request…)

• Provide proof of violations of the regulations which may allow the Commissioner to assess penalties on insurers

Note: Not meant to be a litigation springboard…
UP Claim Help Library
www.uphelp.org/disputeresolution

- Speak UP: Going up the chain of command
- Insurance Appraisal Simplified
- A Policyholders Guide to Mediation
- Hiring Professional Help
- Sample Letters (www.uphelp.org/sample)
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
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

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Upcoming Roadmap to Recovery® events
www.uphelp.org/events

Register for upcoming events.
View recordings of past events and related resources.
Upcoming Roadmap to Recovery®

Events

**Survivor to Survivor Forum**
Tuesday, March 15, 8:00 p.m. MT (www.uphelp.org/mar15)

**Collecting Every Dime (2020 wildfire survivors)**
Wednesday, March 16, 5:00 p.m. PT / 6:00 p.m. MT
Register: www.uphelp.org/mar9

**Navigating Your Contents Claim (CO 2021 wildfire survivors)**
Wednesday, March 30, 6:00 p.m. MT
Register: www.uphelp.org/mar30

www.uphelp.org/events
Register for upcoming events. View recordings of past events and related resources.

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Colorado Division of Insurance
Our Mission is Consumer Protection

Assistance available Monday-Friday
8:00 a.m. to 5:00 p.m. MT
Phone: 303-894-7499 | Toll free outside the Denver Metro Area: 800-930-3745
Email: dora_insurance@state.co.us

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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

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