

Resolving Claim Disputes Q&A

DATE: June 14, 2023

www.uphelp.org

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.

 We don't endorse or warrant any of the sponsors listed at <u>www.uphelp.org</u> or speakers at our workshops.

Our speakers are volunteering their time as educators.



Today's Presenters

Amy Bach, Esq.

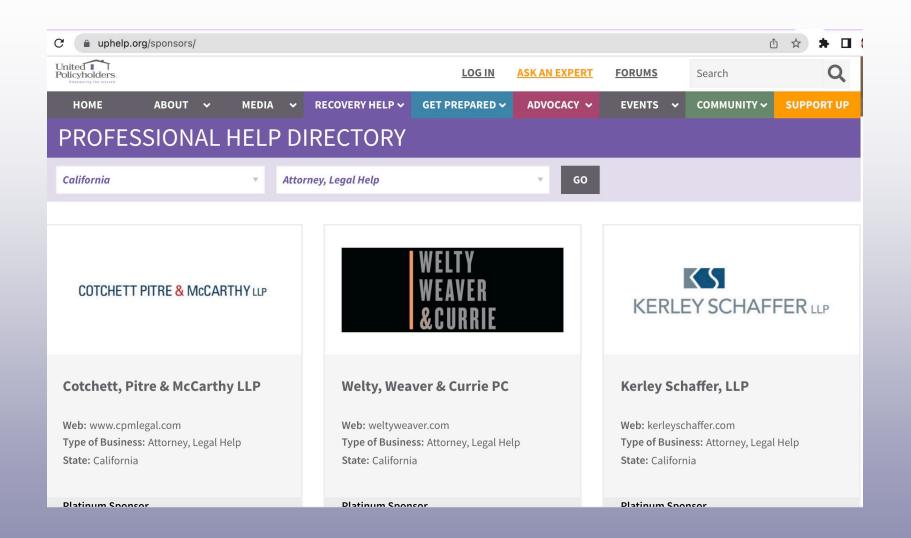
Executive Director, United Policyholders

Sandra Moriarty

Insurance Specialist, ResolvedSF

Dan Veroff

Attorney, Merlin Law Group



To request a copy of today's slide deck:

Email Carolyn Winter, Carolyn@uphelp.org

PRE-SUBMITTED QUESTIONS

Copyright 2023. United Policyholders.
All rights reserved.

Since 2018, California has required insurers to cover losses from mud slides triggered by fire scars, even though the basic policy excluded mudslides. Who is responsible for a structure, the insurer at the time of the fire (2020), or our new insurer in 2023? Our original insurer, Foremost, refused to give us insurance after the fire, so we now have USAA. The slide currently threatens a new structure, and our expense is in removing the slide and putting in a strong retaining wall. [DE]

I lost my home in the Camp Fire, 11/8/18. Had Farmers Insurance. I am just getting ready to rebuild now. Can I make a claim for code upgrades even though it's 4.5 years after the loss? Rebuild has been severely delayed due to underinsured, COVID supply chain issues, waiting for contractor, etc. [SM]

After 3 years- finally my Building Permits for CZU Lighting storm tree fall damages are being processed by the County- unreasonable delays beyond my control...I did not touch a dime of my ALE until I got word from the County and immediately informed Farmers I was now needing to move- as soon as possible as work was going to start (I had not moved due to fear of running out of ALE by this time). Farmers has only now advanced three months and says my deadline to collect my is the 3-year mark (Aug 16, 2023) and they will not pay more-- MY WORK HAS NOT STARTED and my policy has ALE \$85,200 coverage. I live in the Bay Area and very expensive-- so I had to wait. My deadline to file suit against Farmers also expired on May 30th, 2023-- So I was forced to file suit against them on that date to protect my rights. They have completely lowballed the claim, and they have now stopped talking to me because I filed suit. (I hired an attorney to try to get Farmers to do the right thing before the deadline-- but ultimately he filed suit for me in proper-- as I will need to find firm that can represent me on contingency basis- as he does offer that service-- Attorney says I have kept excellent documentation for the bad faith unfair dealings and should prevail. Right now, Farmers is not responding to me. Farmers had claimed I had no structural damages per their hired engineer-- but although Farmers was notified of severe cracking in roof beam, Farmers Adjuster refused to look at beam when here. Now, however the contractor cannot allow worker on roof to do any repairs until structural engineer says is safe....and this is causing additional County permit delays. HELP!!!! I did previously contact Dept of Insurance-- they had advised me to seek assistance from Attorney as they found issues also. [SF]

According to the State Insurance Commissioner insureds are allowed up to 24 months ALE with two 6 months extensions if required. Must insurance companies adhere to this rule? How much leverage do you have as an insured when negotiating for an extension? [PA]

State Farm is curtailing our ALE in violation of CA Insurance Code sect. 2051.5(b)(2). It alleges we are responsible for delays in the permitting process because the design for our rebuild is a one-story home rather than the one and 2 story home which was destroyed.

This allegation has been denied by the Chief Building Official of the City of Santa Rosa, who accepted all responsibility for delays in the permitting process. State Farm denied our appeal and we have made a formal complaint to the California Dept. of Insurance.

What options do we have if the Dept. of Insurance can not resolve the issue? What advice can you provide regarding selecting a lawyer and going to court if needed? Lawyers seem reluctant to get involved in ALE issues. [VS]

Someone else filed a claim on my property who isn't a resident of that property. Fraud verified by FBI but under 500,000 so won't prosecute. I need legal help and want to know how it will affect my case since insurance wants their money from settlement. [JL]

We suffered a fire loss on our 120+ year old home. Our insurance company has made things extremely difficult. They have now started to disregard even simple rules like the 15-day time limit to respond to a claimant's communications. I'll restrain myself from listing the numerous other issues we have had with State Farm and focus on a single issue. The building inspector in our city has stated we need to make certain code upgrades throughout the house due to the fire damage. The city stated that it's hard to believe that making the necessary upgrades and repairs will be cheaper than tearing down and rebuilding.

The city put its position in writing, and I shared it with State Farm. The State Farm adjuster also called the city and was given the same info over the phone.

State Farm hired an engineer who is disputing that code upgrades are required. The building inspector has stated that the city will not approve any permit without the upgrades it previously detailed. How can we resolve this without spending money to have an architect draw up two sets of plans, one without the upgrades and one with? It seems like that's one costly way to prove to State Farm that the city will not approve the plans for the limited repairs our insurance company has approved. We have 50% code upgrade coverage, and we haven't reached any policy limits.

It seems like State Farm is saying, "Go ahead! Sue us!" It seems State Farm is very aware of the economics of hiring an attorney. Is there any way to compel an insurance company to comply with the terms of the policy and "do the right thing" without spending money on an attorney?

Thank you for all of your hard work! [BL]

My mortgage company held over a large portion of my insurance payout for some time and did not pay me interest on it. Do they owe me interest payment; is there a statutory interest rate; and how long do I have to ask/demand the interest? [CW]

https://uphelp.org/claim-guidance-publications/getting-your-mortgage-company-to-release-insurance-proceeds/

After a complete loss in the CA Fawn Fire in Sept 2021, we decided not to rebuild on our site and instead moved to Oregon to be closer to family. After about a year's search, we were able to purchase another place with the understanding that our insurance provider (Nationwide) would help with improvements toward Like Kind and Quality. What we did not understand, and what I would like to verify, is that before any help with the remodel, they would conduct an appraisal of our new place and deduct the value of the land – which in this case appraised for more than half of what we paid for the new place. I am assuming that this important detail was an oversight on my part, but I would like to verify that it is correct and ask if you have any related guidance/insights. [NB]

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. Your insurer *is not allowed to take a deduction* for the value of land under the replacement home you purchase. [Cal Ins. Code 2051.5 (c)(2)]

Farmers hired their own engineer (a civil engineer) in Dec 2021 to evaluate and do a loss report re my structural damages from 8/16/2020 CZU Lightning Storm. This was AFTER I had an architect look at the damages to my house from a Lightning Struck tree thrown down atop my roof, which pushed the front wall of the small house out of plumb.

The architect reported major structural issues, However, the Farmer's consultant reported as merely "cosmetic."

I questioned Farmers numerous times about the structural damages, and asked for reinspection investigation -- But Farmer's did not want to pay for engineer to revisit and review damage, as they said it was "unnecessary." Also, on April 20, 2023, Farmers adjuster refused to look at beam damages when directly asked to do sowhen here on site.

After county's 2 1/2 years delay- when finally allowed to submit for permits- my roofing contractor says he cannot put a worker on the roof due to obvious cracking/damage to support roof rafter beam and requires Structural Engineer clearance first. I contacted Farmers about this AGAIN-- on May 26--- demanding that they resolve this -- and produce their engineer's statement that damage is not unsafe --or how to repair to be safe.

So far (more than 15 days later) no response from Farmers! HELP! [SF]

My house is 60 years old and my insurer, Pacific Specialty, only offers 10% for code upgrades. I have had 2 scope of losses done, second one as they required modification. I have moved the house on the same property and made it a one story instead of 2 story in my quest to save money. I have exceeded my Dwelling coverage and have 50% replacement cost that they will not pay at this time (3 years after the fire). They will not commit to paying after build is complete. Most aspects of my rebuild have been "disqualified" and labeled as code upgrades. Windows, foundation, electrical etc. Shouldn't they be paying partial on these?

My scope included redwood paneling inside etc., and yet they are only paying for what I replace it with. Is this normal? I thought I was supposed to get paid on what I had pre-fire. [CS]

Your Rights

Three primary sources dictate how your insurance company should be handling your claim:

- 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)

Documentation is KEY!

- Present your requests clearly
- Make all requests in writing
- Explain what you need, when you need it, and why
- Keep a Claim Journal
 - Take notes on who you talked to, the number you called, date and time, what was said. Keep all your paperwork organized and together

Track your claim payments



Homeowners

https://uphelp.org/claim-guidance-

publications/insurance-accounting-spreadsheet/

< SHARE

PRINT.

PDF

номе	ABOUT 🗸	MEDIA	¥	RECOVERY HELP~	GET PREPARED~	ADVOCACY ~	EVENTS	SUPPORT UP
								14
-								
CLAIM GU	HDANCE	LIDDAD	V					
CLAIM GC	JIDANCE	LIDKAK	1					
Home » Claim Gui	idance » Insuranc	ce Accounting S	oreads	heet				

Insurance Accounting Spreadsheet

This is a spreadsheet to help you keep track of your insurance payments. It includes columns that allow you to track expenses by type of coverage and payments received, as well as line item tracking of your coverage limits.

This document was donated by a Woolsey Fire survivor.

Coverage			A Dwelling			B Other		C Personal		D Loss of Use		E - Additional Coverages								
											Ordinance		Debris		Trees, Shrubs		Total			
		Str	Structure 100%		Replacement		Structures		Property	(ALE)	of Law		Removal		& Plants		Total			
		1																		
Coverage (Declarations Page)				\$		\$		\$	-			\$	-	\$	-	\$	-	\$	-	
Construction Estimate				\$	3441					1								\$	-	
Limit of Coverage		\$	73	\$	350	\$	970	\$		\$		\$		\$		\$	-	\$,	
2	Payme	ents Received																		
Date	Check#	Purpose																		
																			\$	-
																			c	

Journaling and a good paper trail

- Your communications with insurer should:
 - Use good grammar, punctuation
 - Concise, bullet points, avoid rambling
 - Confirm you are cooperating w/their investigation
 - Tell them what you need/want and why
 - Document conversations, commitments, open items
 - 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 again...

Negotiation - Best Practices

- Keep it professional
- No harm in asking for flexibility/concessions
- Use leverage
- Promptly respond to reasonable requests
- Confirm your willingness to cooperate, explain why you can't fulfill an unreasonable request
- Avoid venting frustrations and emotions

Negotiating via Paper Trail (Lowballing/Disparity in Loss Estimates)

Dear (name of adjuster),

Please provide an update on the dwelling portion of my claim. On (Date) I submitted a contractors estimate to you from (XYZ Contractor) in the amount of \$xxx,xxx. There is a (\$xxx,xxx) dollar difference between your original dwelling payment and this estimate.

Please send payment for the replacement cost amount of (\$ difference between original amount and replacement cost amount) within 2 weeks.

The facts and your leverage (Underinsured so please pay faster)

As you know, I paid for extended replacement cost *and* coverage for required code upgrades. The estimate from XYZ Contractor shows that even with (ERC ____%) and code upgrade coverage I am underinsured by at least \$xxx,xxx.

I look forward to receiving my full dwelling coverage limits including all extended and additional benefits by the end of the month so I can make the decisions I need to make on how to get back home.

and...

If you will not be issuing payment of full policy limits, please explain in detail why.

It is my understanding my first ACV payment was calculated using real estate appraisal method. If you do not plan on paying my policy limits based on my contractor's replacement estimate, please confirm that you are willing to pay for a "scope of loss" to be prepared.

A Good Paper Trail Provides Leverage

- Document unreasonable delays, claim handling regulation/law violations
- Clearly explain the balance of benefits owing and why you're entitled to them
- Document rotating adjusters and why it's a problem (3 in 6 months = status report)
 - Refer to your claim journal
 - Be as specific as possible
 - Cite to laws/regs that give you rights
 - Go up the chain of command

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/ill, etc.)
- You lost a life's worth of possessions
- Good help is extra hard to find now, prices are much higher
- Records are all gone and painstaking to recreate

Your legal/political leverage

- Regulations related to claims, deadlines, etc.
- Statutes related to claims, coverage, deadlines, etc.
- The right to file a lawsuit/hire an attorney
 - If insurer breached duty of good faith/fair dealing (be reasonable)(duty to settle fairly)
 - Pay undisputed amounts promptly
 - Insurer \$ interests on par with yours
 - Contingency fee option makes hiring a lawyer feasible

Go "up the chain" ... to get attention and results

- If you are unable to resolve an issue with your adjuster, go above his/her head "up the chain" within the insurance company
- 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

If possible, meet in person with with your adjuster and your contractor

- Your contractor should be able to stand behind his/her numbers
- Make sure you have as much detail on subcontractors as possible
- If your contractor cannot/won't put the time in to prep a detailed scope and estimate w/sub-bids to compare against the insurers' estimate(s), hire a Scope pro. Ask insurer to pay for it as a claim prep expense



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

Copyright 2023. United Policyholders. All rights reserved.

Filing a complaint with the DOI boosts your leverage

- Filing a complaint elevates your situation / "squeaky wheel," insurer can't penalize you
 - 48% of UP survey respondents reported having a problem with their insurance company.
 - Of those respondents only 16% have filed a complaint with Department of Insurance.
- Include a summary to help DOI staff
- Insurers are subject to fines and penalties,
 Market Conduct Examinations.

EXAMPLES OF COMMON CLAIMS DISPUTES

Copyright 2023. United Policyholders. All rights reserved.

Replacement Cost vs Actual Cash Value

- Understanding the difference between Replacement Cost and Actual Cost regarding Dwelling
- How insurance companies arrive at the figures
- ACV IS negotiable

https://uphelp.org/events/how-to-read-and-understand-your-insurance-policy-2/

ACV with RC paid when repairs completed – Most common

How We Settle Covered Loss.

Covered accidental direct physical loss or damage will be settled as follows.

- a. Coverage A (**Dwelling**) and Coverage B (**Separate Structures**). We will only settle covered loss or damage on the basis of use as a private residence.
 - (1) Settlement for covered loss or damage to a specific component part(s) of the dwelling or separate structures, except for roof materials and fences, will be settled at reasonable and necessary replacement cost, without deduction for depreciation, for the lesser of the costs to repair or to replace the specific damaged component part(s), but for no more than the lesser of the following:
 - the applicable stated limit or other limit of insurance in this policy that applies to the damaged or destroyed dwelling or separate structure(s);
 - ii. the reasonable repair or replacement cost of that specific component part(s) damaged for equivalent construction with materials of like

- kind and quality on the **residence premises**, determined as of the time of loss or damage;
- iii. the reasonable and necessary amount actually spent to repair or replace the specifically damaged component part(s) of the dwelling or separate structure(s); or
- the loss to the interest of the insured in the property.

When the cost to repair or replace damaged property is more than \$2,500, we will pay no more than the actual cash value of the damaged specific component part(s) of property until actual repair or replacement is completed. If the damage to the dwelling should be a total loss, then the actual cash value payment will be no more than the lesser of the stated limit or the fair market value of the dwelling until actual repair or replacement of the dwelling is completed.

If the **dwelling** or a **separate structure** is rebuilt or replaced at a different location, the costs described in subsection ii. above are limited to the costs which would have been incurred if the **dwelling** or **separate structure** had been rebuilt or replaced at its location on the **residence premises**.

Excessive depreciation is a common claim problem

- Don't accept excessive depreciation of your property by the insurance company.
- Depreciation guides can help you determine the value of your contents.
- Visit <u>www.uphelp.org/samples</u> for consumer-oriented depreciation guides. *Claimspages.com* offers a list of standard depreciation amounts that you can view or print out free from their website, www.claimspages.com. Look under the "Documents" tab, then search "Depreciation Guide".

Resolving a dispute involving depreciation

- Negotiate depreciation and ACV hold-backs on a case-by-case basis to reflect the condition of each item.
- If your insurer applies a fixed percentage across all items, you can challenge this by negotiating a much lower percentage (3-5%, for example).
- Make a specific request for what you feel is a fair resolution and back it up with documentation and your best arguments to support your position.
- Go up the chain of command at the insurance company, (www.uphelp.org/speakUP).
- File a complaint with the Department of Insurance.
- Mediation and/or Litigation.

"Reasonable" progress?

- What is reasonable?
- What are the issues YOU have encountered?
- Explain specifically what you are doing towards rebuilding or replacing your home
- Be prepared to do this monthly
- How does buying change the situation?
- Try to estimate a timeline and ask for a cash out
 It's a gamble but can provide a set amount

Examples

- Difficulty finding/retaining professionals
 - Architects, engineers, contractors
- Cost increases due to increased demand
- Housing Market issues
- COVID 19
- How long did it take the carrier to pay the Coverage A benefits? This is a delay in the overall process and extends your ALE needs

Underinsurance

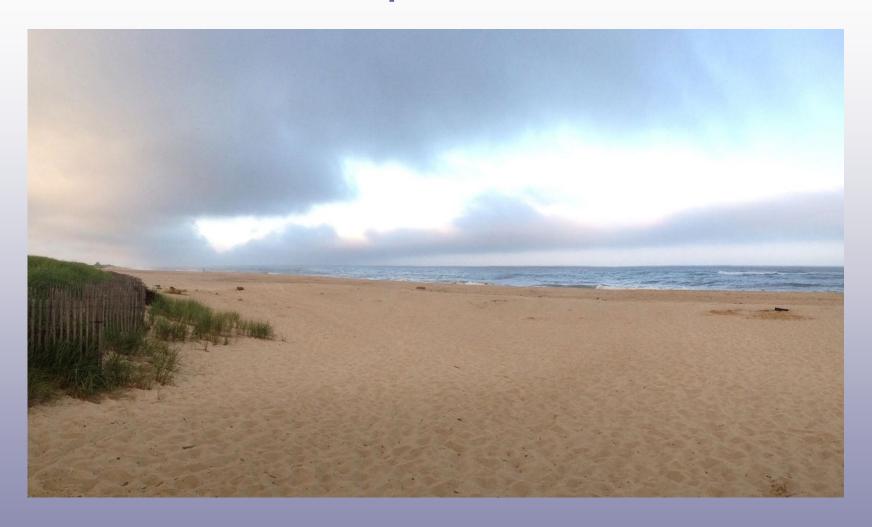
 Rebuilding estimates often exceed policy limits, especially due to increased material costs

Code upgrades

Are code upgrades included in RCV? Can the insurance company deny inclusion until "cost is incurred? What if purchasing a replacement home, not rebuilding?

 https://uphelp.org/claim-guidancepublications/building-code-ordinance-orlaw-compliance/

Deep Breath



Copyright 2023. United Policyholders.
All rights reserved.

MEDIATION & APPRAISAL

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.

You must PREPARE.

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

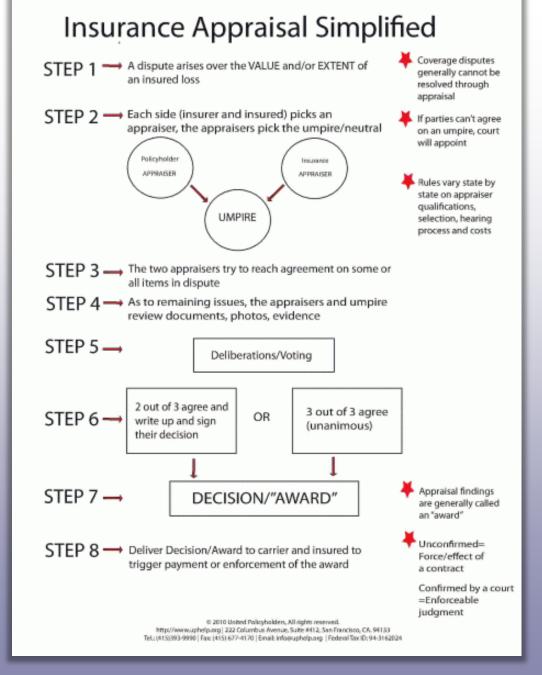
DEPT OF INS. MEDIATION



Appraisal

- Most property insurance policies contain wording that allows disputes over the amount/value of a loss to be resolved by a process called "appraisal." Public adjusters often use appraisal for leverage and to settle.
- An insurance appraisal is a mini-arbitration of sorts.
 Each side picks an appraiser then there's one umpire.
- An insurance appraisal can determine the scope and severity of a loss (what was damaged and how badly) and the value of the loss (how much repairs should cost). You wouldn't use appraisal to determine fault for underinsurance, e.g.

Copyright 2023. United Policyholders. All rights reserved.



PROFESSIONAL HELP

Types of Professional Help

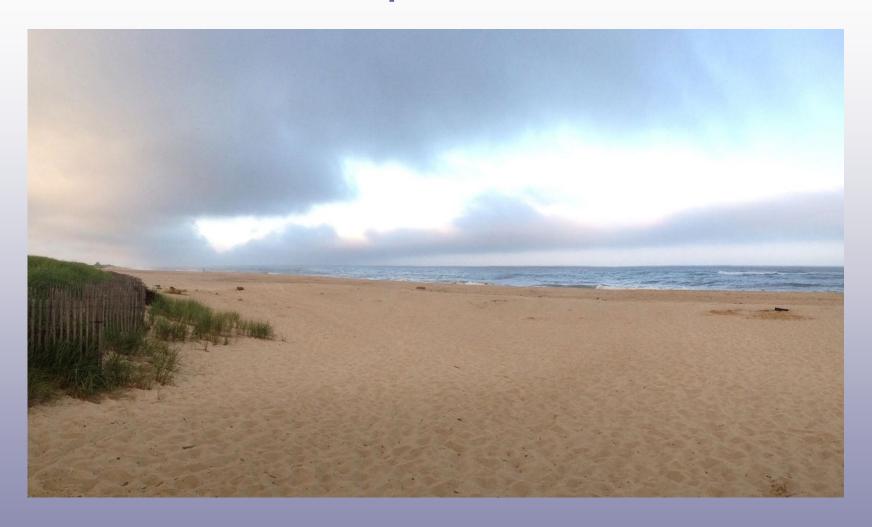
- Licensed Attorney (33%-40% std)
- Licensed Public Adjuster (7-15% std)
- Licensed Contractor
- Licensed or Unlicensed Construction Estimator/Consultant/Scope preparer
 - Fees range from free to \$4k to % of project
 - Can they defend/negotiate on your behalf?
 - Is their work better than Xactimate, how/why?

Litigation

- Individual
 - E & O claim vs. agent/broker
 - Breach of contract/Breach of the covenant of good faith and fair dealing ("bad faith")
- Multi-plaintiff/class action/Unfair practice/Fraud
 - Systematic underinsurance, improper software
 - Systemic fraud
 - Improper depreciation
 - Disparate treatment
 - Utility negligence/liability

Best to check w/an attorney at the 24 month mark if claim unresolved to avoid missing lawsuit deadline

Deep Breath



Copyright 2023. United Policyholders.
All rights reserved.

ADDITIONAL RESOURCES

Your California Wildfire Help Library www.uphelp.org/2020Wildfires

- California Specific Help
- 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 <u>www.uphelp.org/survivorsspea</u> k
- Upcoming Workshops And Resources <u>www.uphelp.org/r2r</u>



Guidance available in the UP Claim Help Library at 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 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/r2r



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

Copyright 2023. United Policyholders. All rights reserved.