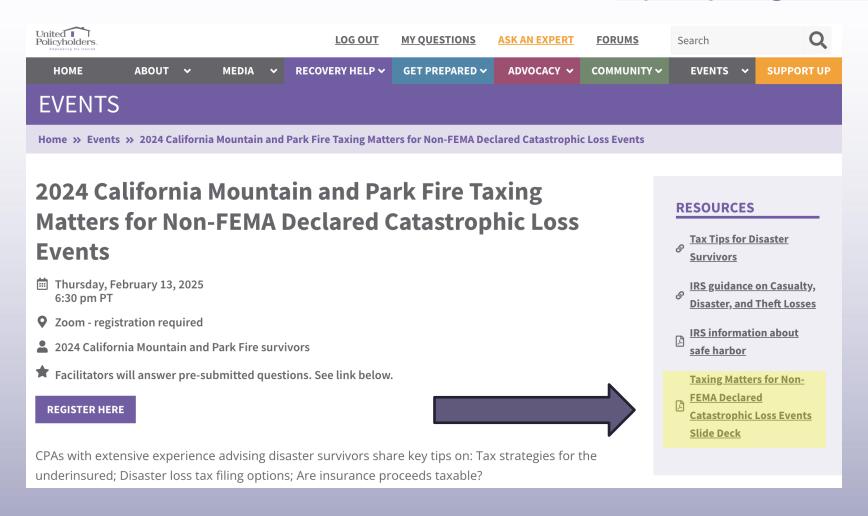


# Taxing Matters for Non-FEMA Declared Catastrophic Loss Events

February 13, 2025 2024 California Mountain and Park Fires Roadmap to Recovery® Webinar

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#### Download and follow the slide deck here: Uphelp.org/Feb13



## United Policyholders (UP) and the Roadmap to Recovery® Program

- UP is a national 501(c)3 not-for-profit organization based in California that is a trusted information resource and respected voice for insurance consumers in all 50 states and the District of Columbia.
- A 34-year track record and expertise assisting wildfire-impacted households and communities through information, tools, resources, events and advocacy work.
- The Roadmap to Recovery® program = Post disaster guidance and services focused on financial, insurance, real estate and construction decision-making and emotional recovery.
- UP's work is funded by donations and grants, volunteers/pro bono. You can't hire us; our services are free but limited.
- Our partners include other non-profits, state and federal agencies and professional and trade associations.

#### Team UP

- Professional staff
- Government and nonprofit partners
- Volunteers
  - Previous catastrophic loss survivors
  - Consumer-oriented professionals
    - Attorneys that specialize in insurance
    - Claim Adjusters (Public and Independent)
    - 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

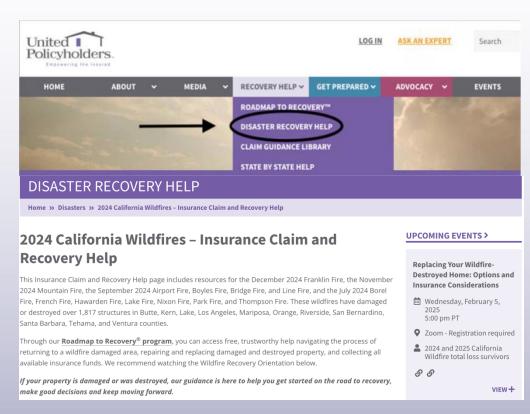
#### Advocacy and Action

- Fighting for insurance consumer rights and protections

## Disaster Insurance Help Libraries

#### uphelp.org/recovery/disaster-recovery-help

- State 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 <u>www.uphelp.org/survivorsspeak</u>
- Upcoming Workshops and Resources <u>www.uphelp.org/events</u>



#### The Fine Print

- This workshop is intended to be general guidance only, not legal advice.
- We do not 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.
- If you have a specific legal question, we recommend you consult an experienced attorney.



#### Today's Presenters

Valerie Brown

Program Specialist, United Policyholders

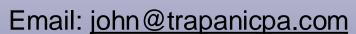
John Trapani, CPA

Trapani, Certified Public Accountant

### John Trapani, CPA

- Licensed in California, Colorado, and Hawaii
- Disaster survivor
- 30+ years of disaster tax reporting
- For 30+ years, presents educational seminars to fellow professionals
- Has assisted hundreds of taxpayers with the income tax reporting requirements of disasters

www.trapanicpa.com www.accountantfordisasterrecovery.com/ p/contact-us.html



Voice: 805.497.4411



#### 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

Goal of today's presentation: To help you understand tax compliance requirements and benefits available for households experiencing a catastrophic fire loss (with no Major FEMA disaster declaration) and make good financial decisions, including:

- When to file / timelines for reporting
- What your tax-related options are for insurance claims
- What an Involuntary Conversion Gain is
- Why you need help

#### Today's Topics

#### 1. How disaster impacts your taxes

- a) Episodic reporting of disaster recovery and activities over many years
- b) Important tax terms
- c) Annual reporting
- d) Time limitations / Filing extensions

#### 2. Other considerations

- a) Tax treatment for ALE
- b) Purchase of temporary home w/ALE funds
- c) Business losses
- d) Second home tax implications
- e) Rental property tax implications

### Prop 19 (CA Only)

- Enacted via 2020 ballot measure. Significant property tax savings for many homeowners, especially those that have experienced the devastation of losing a home in a wildfire. Took effect 4/1/21
- Under Proposition 19, homeowners who are 55 and older, severely disabled, or victims of a wildfire or natural disaster may transfer their property tax base of their existing home to a new home anywhere in California without a price restriction (no DR requirement)

#### **Common Tax Questions**

- Are some or all of my insurance proceeds taxable?
- Will my insurance company send me a tax document?
- How can I have had such a devastating loss and have my insurance proceeds be considered a gain?
- Are there "tax exclusions" available?
- If I'm underinsured in one or more categories, can I offset the losses on my tax return?
- Are litigation proceeds taxable?
- What tax considerations are there if I sell my lot without rebuilding?

#### Tax relief...Timing matters

- While all of this is new loss of your home, dealing with an insurance claim, decisions on rebuilding and more...
- It is "easy" to ignore the need to deal with the tax reporting of the event and resolution of your situation
- Tax reporting is part of the recovery process, and the Tax Code provides a number of opportunities to save taxes – now and in the future
- The notices you see on the IRS website (below) with extended deadlines do not apply to Park or Mountain Fires. You can file an amendment if needed, but file on time

https://www.irs.gov/newsroom/tax-relief-in-disaster-situations

#### How do I find copies of prior tax returns?

- Start with your CPA, bookkeeper, or online filing service as they should have records to provide (Turbo Tax, Tax Act, etc.)
- Submit Form 4506 to obtain copies directly from the IRS.
- The IRS has information for taxpayers in reconstructing records after a disaster. Go online to:

<u>https://www.irs.gov/newsroom/reconstructing-records-after-a-disaster-irs-provides-tips-to-help-taxpayers</u>

#### Purpose of tax rules

- To collect money for the operation of the government
- Everything you receive of value has a tax consequence and is taxable, unless specified in the tax code
- In a disaster situation, the tax code is totally reversed
- To take advantage of most of these rules, the major disaster declaration (Event Designations starting with "DR") must be in place. Other designations - "EM" or "FM" are not relevant (Neither Park nor Mountain Fires were DR). Both Park and Mountain were Fire Management (FM) Assistance Declarations: California Park Fire (FM-5519-CA) and California Mountain Fire (FM-5545-CA)

These are rules that look simple until you start to apply them

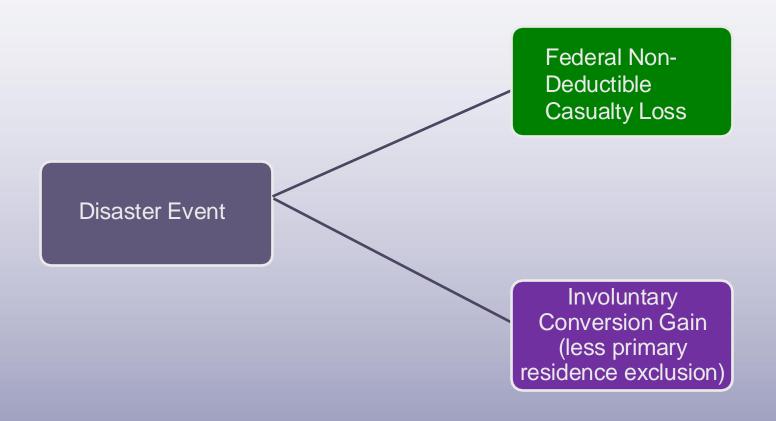
#### In what tax year should I claim a loss?

- Generally, losses can only be deducted in the year in which the loss occurs and <u>all claims for reimbursement are settled</u>
- For losses that occurred due to a federal major disaster declaration (DR, neither Park nor Mountain meet this criteria), you can elect to take the loss on an original or amended return for the year preceding the year the loss is settled
- For 2024 losses, there is no possibility of claiming a casualty loss on your federal return for these disasters on personal losses, only business or rental losses. Consult a knowledgeable CPA about the state casualty loss deduction (FTB Pub. 1034)

## Do you have a Federal Non-Deductible Casualty Loss or Involuntary Conversion Gain?

- Start with the Cost Basis. Have the proceeds you've received, or expect to receive, exceeded the Cost Basis of the home you lost?
- If they don't exceed the Cost Basis, you MAY have a Federal Non-Deductible Casualty Loss
- If they do exceed the Cost Basis, you have an Involuntary Conversion Gain

# Path to a Federal Non-Deductible Casualty Loss (primary residence)



#### What do I need to know NOW?

- Consider requesting a "Filing Extension" before the deadline to file for your 2024 return
- File your return or extension timely and report what you know – Be aware there is no Federal Casualty Loss to claim, but potentially at the state level. Depending on your insurance, you may have an Involuntary Conversion Gain
- Maintain records of all insurance proceeds, costs expended related to the event – extra expense, related to property lost. Document!
- Keep a journal of all conversations, information

# Stage 1: Document the Cost Basis for Real Property

Your next step is to document, and preserve for later, the Cost Basis for your Real Property (home). You need to determine a reasonable, good faith computation of what your "Cost Basis" was at time of loss

- How much you paid tax records, ask your realtor, check Zillow for purchase price
- If you have plans, you can get a bid on what was built at time of construction (minus code upgrades); then depreciate construction costs back to time of construction
- If you have an adjuster's report/scope of loss, make sure the details are correct (room dimensions, SF, finishes, fixtures)
- Include home improvements, additions and enhancements.
   Improvements also include landscaping, trees, other structures, not just remodeling

## Stage 2: Identify and document your insurance proceeds

Document and continue to track what you receive in insurance proceeds to use in determining what insurance proceeds decisions mean for income taxes

- Track all coverages Dwelling, Ordinance & Law, Landscaping & Trees, Debris Removal, Extended Coverage, Other Structures, Contents, Scheduled Property, ALE
- If you purchase Real Property with ALE, track that expense / purchase as well. It could lead to a taxable Gain
- Documentation can include settlement letters and checks
- UP's sample Insurance Accounting spreadsheet can help you track both your max limits and insurance proceeds <a href="https://www.uphelp.org/pubs/insurance-accounting-spreadsheet">https://www.uphelp.org/pubs/insurance-accounting-spreadsheet</a>

#### Stage 3: Document your recovery costs

Your goal is to capture all costs of rebuilding your home or purchasing a replacement home (permits, architect, required testing, etc.) and the costs of replacing your lost personal property

- If rebuilding, document contractor costs, permits, fees, architect costs, required testing, etc.
- If buying a replacement home, document the purchase price, fees, inspections, required "fixes", etc.
- The reporting for contents is similar and separate from the <u>Real</u> <u>Property</u> reporting

## Why does it matter that my disaster was not a Federal Designated Disaster

It impacts your cash position and tax options

- Insurance proceeds and grants or gifts specifically designated for "contents" damaged or destroyed related to a primary residence are potentially an involuntary conversion gain
- Contents losses can be considered when calculating deductions for "Casualty Losses" (state return only)
- Without a Federal Disaster Designation (DR), the insurance proceeds you collect for contents/personal property are "reportable" and may or may not be taxable

#### Which payments MAY be taxable by IRS?

For those impacted by a disaster loss regardless of disaster declaration, taxable reimbursements will include:

- Unemployment compensation
- Payments for real estate can be treated the same as if they are proceeds paid by the insurance company
- Some ALE insurance proceeds, if used to purchase an asset rather than to pay for temporary living expenses
- Some insurance proceeds related to contents

#### Non-taxable payments/proceeds

For those impacted by a disaster loss regardless of declaration, non-taxable reimbursements may include:

- Insurance payments for ALE or Additional Living Expenses (to the extent they are being used to pay for additional living expenses)
- Payments from social welfare agencies, charitable organizations, and in-kind services such as free meals, medical supplies, and shelters

## Deep Breath



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## How to determine Cost Basis for IRS purposes?

- "Purchase cost" or "inherited cost" is used, not market value
- Certain upgrades and additions can add to the Cost Basis
- "Integral nature" rule for personal use real estate (land, fences, home combined) can be combined and added to your Cost Basis

## If I'm underinsured, do I automatically have a loss for tax purposes?

- No, because you may have actually had a Gain (in the IRS's view) if you paid less for your home than the amount of your dwelling insurance claim payment
- Your fire would need a Federal Disaster Declaration DR for you to be able to claim a Casualty Loss on your tax return
- You may be subject to a Gain if your insurance proceeds/ payments are greater than the Cost Basis of your property

There are ways to "offset" and/or "convert" these Gains

#### Do I have a Casualty Loss?

(FOR STATE ONLY)

Probably not, it is very rare that this is established and documented (if insured)

Other provisions of the disaster tax code can be of assistance in reducing any potential tax burden – good news, not bad

# A personal Casualty Loss (FOR STATE ONLY) is the lesser of

- The Cost Basis of the damaged or destroyed property OR
- The decline in "Fair Market Value" (FMV)
  using before and after the casualty

...reduced by all insurance reimbursements, payments and proceeds

#### What about Form 4684?

- If you don't have a State Casualty Loss, then you don't file Form 4684 (not relevant for Federal return; state uses Federal forms)
- While this is the only form the IRS provides for disaster taxes, Publication 547 explains that if you have a Gain, you must provide a statement attached to tax return with all circumstances reported (15 items to be addressed)
- Don't think you don't have to report something just because there aren't forms for it

In other words, this area is so complex that the IRS cannot even provide a form for reporting

## How to substantiate a State Casualty Loss?

- Similar to what is required for insurance companies
- Must be able to show the following:
  - Type of loss and date that it occurred
  - Loss was a direct result of the casualty
  - Proof you owned the property, or, for leased property, you were contractually liable for the damage
  - Whether a claim for reimbursement exists for which there is a reasonable expectation for recovery
  - Documented evidence to support the claimed loss

#### **Determining Amount of Loss**

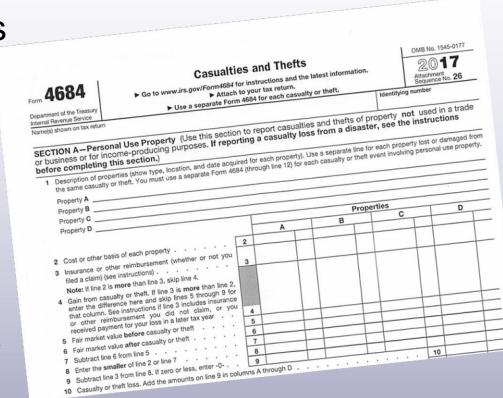
- Appraisal method
- Cost of repairs method
  - Subsequent receipts
- "Safe Harbor" computations

Year to deduct – Loss sustained or prior year (only on State return)

Loss cannot exceed Cost Basis (less insurance proceeds)

# What information is needed to report a State Casualty Loss?

- Cost Basis or other basis of each property
- Insurance or other reimbursement
- FMV of property before casualty
- FMV of property after casualty (not necessarily zero if completely destroyed since land remains)



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### What to know about reporting

- Gain on Contents/Personal Property If there
  is a Gain, then there is a requirement that the
  property be replaced to avoid tax and there is a
  tax reporting / disclosure requirement
- If reimbursements for business property or personal residence are not received until the year following the disaster in a Gain situation and there is no intention to reinvest, report in the year reimbursement is received

### Do I have an Involuntary Conversion Gain?

- It is very possible, especially if your home was purchased many years ago and values have risen
- You can have a Gain, even if underinsured
- IRS regulations provide help to "offset" or "defer" Gains from "Involuntary Conversions"

There are ways that you can reduce the taxable Gain while following the regulations

### If I have a Gain, can I defer it?

- An Involuntary Conversion Gain may occur if payments/reimbursements exceed the Cost Basis of the property
- For personal, primary residences, it may be possible to utilize an Exclusion to offset the Gain under sale of personal residence rules (IRC Section 121)
- It is possible to defer the Gain if reimbursements are reinvested in rebuilding home or to acquire a replacement home or homes within 2 years (not from the event but end of first year you first realize a Gain)

# What are the rules for using the Primary Residence Exclusion (IRC 121)?

- You may exclude up to \$250,000 per individual or \$500,000 per married couple of an Involuntary Conversion Gain on a personal use primary residence
  - "Complete Destruction"
  - "Unforeseen Circumstances"
  - "Modified" General Rules
- Must have been your personal residence 2 out of the last
   5 years (pro-rata exclusion amount if less than 2 years)

# How long do you have to replace property on Involuntary Conversion Gain?

- Deadline is two (2) years for all others
- Extensions may be available and must be filed

Note: At the end of the 2-year period, you may ask for a 1-year extension and continue to ask for 1-year extensions as needed until you are finished

Replacement period time limits of the 2 years from the date the *Gain is realized* must be followed or formally extended

# Can I buy multiple properties to offset an Involuntary Conversion Gain?

- Buying multiple, smaller properties
- There is no limit on the number of "replacement properties" to avoid the taxation on an Involuntary Conversion Gain
- Must be "similar or related"
  - Any personal use real estate generally qualifies
- Acquisition of "replacement contents" (not necessarily identical) also counts
- Replacement period time limits must be followed or formally extended

# If I sell my lot, will the proceeds be taxable?

- The sale of the residual land can, in most cases, be treated the same as if it is proceeds received from insurance
- It will likely be substantially all Gain
- If the \$250,000/\$500,000 Exclusion has not been fully used prior to the sale, it can be applied to the land sale, but only if the sale is closed within 2 years of the date of the loss

### Reporting an Involuntary Conversion Deferred Gain

- Reporting is required annually detailing the overall and current status of the reimbursement process, the replacement / reinvestment process as well as other data and information
- Accuracy and completeness of this reporting is the key to communicating with the IRS and state tax offices in order to meet all requirements. No pre-printed form is provided by the IRS
- Reports are part of the regular income tax return and are included starting in the year of the loss and end upon the completion of the replacement process

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### **OTHER CONSIDERATIONS**

### What are your circumstances?

Rental property?

Second home?

Number of replacement properties?

Trust?

Lawsuit settlement?

Divorce or death?

Change of use?

Business loss and taxes?

#### Tax treatment of funds for ALE

- In all cases, insurance proceeds for ALE and other funds received for temporary rent are not taxable to the extent that they are used toward actual temporary/additional living costs (expenses incurred after the event, not part of the disaster itself)
- Not part of "Casualty Loss" calculations
- Excess ALE insurance proceeds are taxable in the year taxpayer no longer incurs additional living costs
- Out of pocket payments for ALE that insurance did not cover and were not eligible are not deductible

HOWEVER,...

### Purchase of a temporary home or RV (Real Property) with ALE proceeds

The purchase of temporary housing is not considered an Additional Living Expense (ALE). The acquisition of a Capital Asset (Real Property) results in a substantial portion of ALE proceeds becoming taxable

- The temporary residence may be treated as part of the replacement property. This will spread the deferred gain over more properties. If you reside in the temporary residence for at least two years and sell it to move into the permanent home, you can apply the \$250,000/\$500,000 Exclusion, eliminating allocated deferred gain
- Once you move into the Capital Asset you purchased as a temporary residence, you are no longer incurring temporary living costs/ALE since you are living in your Capital Asset. Whatever is left over becomes taxable at that point most of the time
- What if I do a lease/purchase agreement, or buy a temporary home through my business and lease it to myself?

#### What about legal / litigation proceeds?

These require complex analysis and depend on type of litigation. It can take years for these actions to play out to a final outcome

- Generally, non-physical injury claims that align with Real Property, ALE, and Contents should be treated in same manner as insurance reimbursements, so could be considered taxable (goes into your calculations for loss/gain)
- Emotional distress and personal loss of income are taxable
- Compensation for medical care and bodily injury are not taxable
- Rental property loss of income, you can deduct the legal fees as ordinary, necessary business expense (like mortgage interest)

### Is the reporting for business-related losses different than personal losses?

There is a different standard for qualified replacement property for business losses. Gain on Involuntary Conversion calculation is similar to personal property with the following differences:

- Land is not included (unless land is sold due to it no longer being economically viable to owner)
- Loss must be substantiated, similar to individual losses
  - Providing an inventory
  - Cost basis will be based on your depreciation schedule,
     computed up through the date of your event

# Can I defer a Gain for a Business Involuntary Conversion?

- If the Gain results from proceeds in excess of Cost Basis for your business, you treat the reimbursements as proceeds to be reinvested
- You have two years after realizing a Gain to reinvest or use in repairs/rebuilding the damaged/destroyed property

### Tax implications from losing a "second home"

- The reporting for a vacation/second home is exactly the same for these two fires as a personal primary home
- Combine the land, landscaping, building improvements, building itself – all one integral unit/one number

# Tax implications from losing a rental property

- Rentals are considered investment property
- No loss of rental income, you just don't pay taxes on the rental income you didn't receive
- If not insured, most likely have a Casualty Loss
- Have rental property's depreciation schedule from previous tax returns to use in tax calculations –
  - identify items lost (since land is not lost, not part of Casualty Loss)
  - Landscaping, building becomes basis for determining Loss
- Loss is simply adjusted basis of property at time of disaster (potentially skip before/after appraisals)

### Do I want/need professional help?

- Adhering to time limits, allowances established by the Tax Code, and reporting are extremely important to protect your resources
- Failing to report a disaster loss event on a tax return could result in totally avoidable penalties and loss of valuable tax opportunities
- It is difficult to correctly calculate and successfully claim a "Casualty Loss". Reporting an "Involuntary Conversion" is even more difficult
- Changing rules and complexity often make it wise to seek advice from a qualified, vetted expert

https://uphelp.org/recovery/professional-help-directory/

https://uphelp.org/claim-guidance-publications/hiring-professional-help-for-an-insurance-claim/

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### Stay informed – Sign UP

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

Encourage friends to sign up: uphelp.org/2024CAwildfires

To request a copy of today's slides or video, email: <a href="mailto:info@uphelp.org">info@uphelp.org</a>

### 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: <a href="http://www.uphelp.org/events">http://www.uphelp.org/events</a>



# CALIFORNIA DEPARTMENT OF INSURANCE



Wildfire resources and insurance information

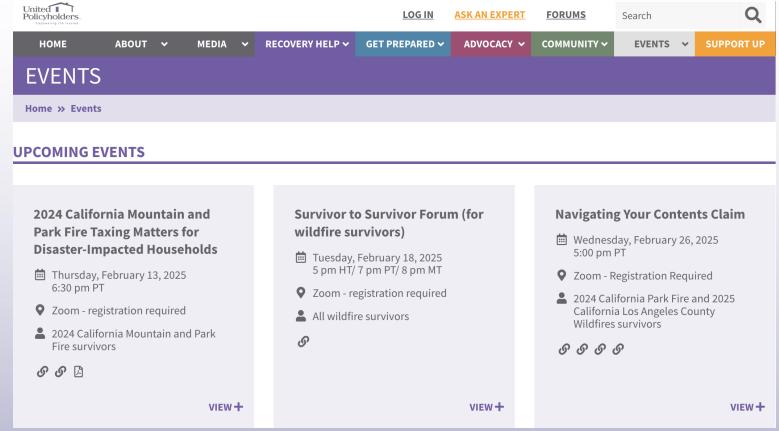
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### Upcoming Roadmap to Recovery® Events



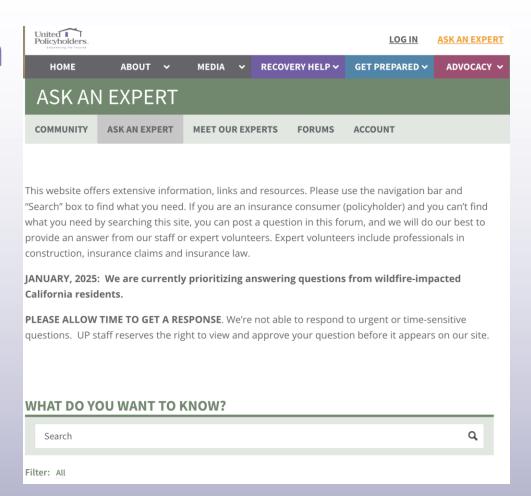
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