



## Hiring An Attorney For An Insurance Claim *When, Why and How*

You've suffered a major loss from fire, theft, or some other calamity and you've filed an insurance claim. You're not sure what your rights are, and you're worried about trusting your insurance company. You should be. Your financial interests and your insurance company's financial interests are in a natural conflict – You want a maximum payout, your insurer a minimum. An insurance claim is a business negotiation, pure and simple. So although you paid good money for coverage *and* good claim service, you may have to fight for it. And you may need professional help in that fight. In an ideal world no one would need to hire a lawyer to get an insurance claim paid on time and in full, but in *this* world, many do.

To ensure a fair settlement of a large claim (in excess of \$10,000), educate yourself by reading our Claim Tips and taking advantage of the resources that United Policyholders offers. And you must be a “squeaky wheel” and know when and how to get the right professional help if you need it. If you're reading this publication, you're on the right track.

Do you need professional help? Do you need a lawyer? Do you need a public adjuster? What is a public adjuster? Can you handle it on your own? **The first thing you need before making these decisions is a complete copy of your policy, including the "Declarations Page" and all "Endorsements" and "Riders".**

Your Declarations Page is generally the first or second page of the policy. It states the dollar limits applying to each category of coverage, and lists the endorsements and riders, (extras) that you have in addition to the basic policy. Each such addition will be listed by a code number or letter, or combination thereof. Review your basic coverage categories; Dwelling, Contents (Personal Property), and Loss of Use (sometimes called "Additional Living Expenses".)

### QUESTIONS AND ANSWERS

**Q: I've filed a claim under my homeowners policy. I've met with adjusters from my company. A dispute has arisen. I'm getting frustrated. Do I need a lawyer?**

A: If you are communicating in writing and in person with your insurer with confidence, polite assertiveness, and insistence on your rights, keep going on your own. If you feel like you've “hit a wall”, are losing patience, feeling frustrated, angry or anxious, or are

worried about time passing and/or losing your rights, a qualified insurance attorney can help.

**Q: Once I hire an attorney, should I let them to do all the talking to my insurer?**

A: Not necessarily. You can try having an attorney give you advice on your rights and continue to communicate with your insurer. If an aggressive attorney contacts your insurer early in the claims process, it may aggravate and prolong a dispute that you might have resolved yourself. However, if you've given it your best shot and the insurance company won't treat you fairly; let a professional take over on your behalf. Once the insurance company has dug in its heels and you've hired an attorney, let the attorney communicate with the insurance company. Most attorneys will insist on this and it's for your own protection.

**Q: Can I hire my family lawyer to represent me...the one who did my will last year?**

A: You can, but you shouldn't. Your lawyer should be experienced in insurance coverage or bad faith litigation. Insurance companies generally hire very experienced insurance defense counsel to represent them and yours should be a worthy adversary. Insurance companies will assess the risk of not settling with you by considering the strength of your representative.

**Q: How can I find the right lawyer?**

A: Be an astute consumer; get referrals from friends, family members, or reputable attorneys who have personal contacts with an insurance specialist. Go to the "Find Help" section of <http://www.uphelp.org> and click on your state to find professionals who specialize in representing policyholders and who support United Policyholders' work. Interview potential candidates about their insurance expertise and trial experience and get references from former clients. Check references. A lawsuit is a major undertaking but may be the most effective way to fairly resolve a major claim. The attorney you select should have your utmost confidence...and deserve it!

**Q: Do I have to sue my insurance company to get what I am entitled to under my policy?**

A: Absolutely not. On most small dollar claims, your insurer will pay your claim with little fuss and bother. Basic negotiating will resolve most insurance disputes. There are laws and regulations in most states that make it illegal for insurance companies to force consumers to file suit to recover their policy benefits.

**Q: What are the alternatives to litigation?**

A: Mediation, Arbitration, Appraisal are three of the most popular alternatives to litigation.

In MEDIATION, the parties work with a third party to negotiate a resolution of their dispute in an informal, voluntary process.

An ARBITRATION may be binding or non-binding, and is more formal than a mediation. The arbitrator may dictate the result, or simply work with the parties to reach a result.

APPRAISAL is a procedure that can be used to resolve a dispute over the amount of an insured loss. It has no relation to real estate appraisals. It can be fast and economical or slow and expensive, depending on the appraisers and umpire selected by both sides.

**Q: How do I find a mediator or arbitrator?**

A: Look in your phone book under "Mediation Services" or "Attorneys - Mediators". Word of mouth.

**Q: If I do hire a lawyer, what will it cost?**

A: You can pay by the hour, or enter into a "Contingency Fee Agreement."

**Q: What is a "Contingency Fee Agreement?"**

A: Many policyholders in dispute with their insurer cannot afford to pay a lawyer by the hour. Most lawyers who represent policyholders in disputes with insurers will work under contingent fee agreements. Under such agreements, the attorney is only paid if the client recovers money in a lawsuit or settlement. Then, the lawyer takes a percentage of the recovery.

If a case settles before a case goes to trial, most attorneys set their contingency fee at 33% of the recovery. If a case goes to trial, the range increases to 33-40%.

**Q: What do lawyers charge by the hour?**

A: Hourly fees for lawyers vary according to firm size, experience of the attorney, and geographic location. Consumers retaining a partner in a law firm can expect to pay \$200-\$450 per hour. Rates for law firm associates range from \$125-\$300 per hour. Consumers retaining a rural attorney in private practice can expect to pay lower hourly fees. If you have to sue your insurance company, you'll want your attorney on a contingent fee agreement or your legal bills will add up very quickly.

**Q: Do I have to pay litigation costs on top of attorney fees?**

A: Some attorneys will advance litigation costs, but the client is generally ultimately responsible for them. Whether you pay hourly or on a contingency, you may have to pay costs, even if you lose your case. You can set a cost reserve in advance with your attorney, and request that he or she try to stay within that amount.

**Q: What do litigation costs run for an average case?**

A: That question cannot be answered with certainty. It depends on the facts of the case, the location of witnesses, and the complexity of the dispute.

**Q: How long can I wait to hire an attorney?**

A: That depends on your circumstances and but the safest course is to consult with an attorney *at least a month before the one year anniversary of the event that caused your loss*. There are hard and fast rules called “statutes of limitations” that cut off your right to sue when a certain amount of time has passed, and once that time passes – you can no longer file a lawsuit to right a wrong.

You generally have a shorter time window to sue an agent or broker than an insurer. Statutes of limitations are complicated and not to be taken lightly. Don’t wait too long to consult with or hire a lawyer or your options may be very limited. And, if your insurer wants to examine you under oath, (EUO), or have their lawyer question you, consult a qualified attorney before you proceed.

**Q: What recourse do I have if I am not satisfied with my attorney?**

A: A client has an absolute right to discharge their attorney at any time, and for any reason. You may be liable to pay your attorney for the reasonable value of their time, and, if you fire them soon before the case settles or is tried, you may have to pay them extra. You can hire a second attorney, but make sure you iron out the question of payments you may owe to the first attorney.

The State Bar of California has a Hotline to answer questions about attorneys. They will also process a complaint against an attorney, and if appropriate, may bring disciplinary proceedings. The Hotline number is 1-800-843-9053. If you’re outside California, check with the agency that licenses and regulates lawyers, every state has one.

United Policyholders is a national 501(c) (3) non-profit organization serving insurance consumers since 1991. UP helps solve insurance problems and advocates for fairness in insurance transactions. The organization is funded by foundation grants and donations. Our work is divided into 3 program areas: Roadmap to Recovery™, Roadmap to Preparedness, and Advocacy and Action. We offer free tips, information and resources in print and online at <http://www.uphelp.org>.

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