



UNDERINSURANCE 101

Q: I think I'm underinsured. I don't seem to have enough coverage to replace my home, contents or to cover my temporary living expenses. What should I do?

A: First, recognize that you're not alone. In recent years, most property owners who suffer large and total losses learn the hard way that they're not fully insured. Our organization is working hard to solve this problem and help underinsured property and business owners get retroactive policy upgrades. We're working hard on it now. Many property owners have succeeded in getting the coverage they thought they had but didn't, but many have given up. Insurers count on you giving up. We hope you won't.

Underinsurance is such a common problem after large scale disasters that United Policyholders has an entire section of our website devoted to the subject. (See "Claim Tips" section, subsection "Underinsurance Help") But it is a challenging problem and there is no "one size fits all" solution. Documentation, research, strategic negotiation and litigation are your options.

Here are the basic steps to take if you suspect or know that you're underinsured:

Step 1: 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 will have a strong case for increasing your limits to where they should have been.

Step 2: Calculate and document your total losses in each major category:
(Dwelling, Contents, ALE, Other Structures, and Debris Removal).

If your insurer sold you a "replacement cost" policy, your total losses are what your coverage limits should have been. Make sure you get an *independent scope of loss* from a qualified professional on the total cost of replacing your home with one of like kind and quality, to current building codes. You will probably have to pay between \$3,000-\$7,000

to get that independent scope of loss prepared. It's painful but well worth it. Why? Because you need to establish the real replacement cost of your home.

Then get at least two reputable, local builders to price out the job at what they'd actually charge you if you were going to replace your destroyed home exactly as it was. That is the replacement cost amount your insurer/agent should have covered you for. Your independent scope and price estimates should look professional and be in a very detailed format that can be compared side by side with an Xactimate or other type of standard construction cost estimate

Step 3: Remember and reconstruct as best you can the history of how your limit were set.

- How often did you speak with your agent/insurer or did you buy your policy online?
- What kind of coverage did you ask for/did he or she say you should have?
- 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?

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 Two, above. *If your insurer responds by sending you a written questionnaire with questions that get at how your limits were set, see Step 6.*

Step 6: Consult with an experienced policyholder attorney 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. This is particularly important if you are underinsured. Your own words can unintentionally harm your chances of getting paid in full. Visit the “Find Help” section of United Policyholders website, www.unitedpolicyholders.org as a starting point to find the right lawyer.

Getting an insurer to pay more than their contract says they owe you is not easy. 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 the State of California and most other states, 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.

Step 7: File a complaint with your state Department of Insurance. Keep your complaint simple and general. Don’t go into specifics about your dealings with the agent/broker/insurance company. Identify your company and the approximate amount of the shortfall.

Many journalists have written articles over the years about people learning after the fact that they’re short on coverage; “Underinsured Homeowner Problem Revisited on Anniversary of Calif. Wildfires”, Insurance Journal, November 8, 2004, Sylvia Beisiegel, http://www.unitedpolicyholders.org/news_articles/pdfs/News_110804.pdf (2007) “After Fires, Homeowners Feel an Insurance Pinch”, New York Times, November 13, 2007, Solomon Moore. <http://query.nytimes.com/gst/fullpage.html?res=9D0DEEDB1131F930A25752C1A9619C8B63>

FAQ’s :

Q: How can United Policyholders help me?

A: We can help you get educated, use self-help, and find professional help.

United Policyholders’ publishes information and historical information on our efforts to solve the underinsurance “plague”. We also publish articles written by lawyers who have experience representing underinsured policyholders. You can read them free of charge at our website. See, for example, “*Liability of Agent and Brokers for Underinsuring Residential Properties*”. This article will give you a basic understanding of the law on this topic.

http://www.unitedpolicyholders.org/pdfs/underinsurance_article.pdf

Q: What approaches have convinced insurers to step up and increase underinsured people’s limits in the past?

Property owners and their lawyers have used a variety of approaches to get insurance companies and agents to pay above policy limits. There is no “one way” or path that works for everyone. Each insurer has a different approach to handling underinsurance claims.

Q: How can I take “all steps necessary” to enforce my insurance company’s promise to put me back where I was before the loss?

A: Get educated by reading the articles at the UP website under “Underinsurance Help.” Consult experienced professionals with the goal of getting a realistic assessment of your chances of convincing your insurer to pay more than your stated policy limits. If you gave your insurance company/agent all the information they asked for prior to the loss, and if you followed their recommendations on keeping your policy limits current, you are “innocently underinsured” and others in your position have succeeded in getting paid above their stated limits. But never without a fight.

If you refused to follow recommendations from your agent or insurer to increase your limits, or if you have made major improvements to your home without notifying your agent or insurer, it is unlikely your insurer will agree to pay above the amounts stated in your policy contract.

Your effort must be organized and strategic. You’ll need to convince your insurance company that it is their fault, not your fault, that you are underinsured, and that if you sue them you have a reasonably good chance of winning.

Q: How can I try and get my company to pay above my stated limits?

A:

- Network with others insured with your same company
- Read the articles on underinsurance at United Policyholders’ website
- Consult with qualified professional help
- Pursue all avenues to get the insurance company to cooperate informally
- Use our civil justice system – it’s a cornerstone of our democratic system

Q: But won’t my insurance company stop talking to me after I hire a lawyer?

A: Your insurance company has a continuing legal duty to process your claim – even after you hire a lawyer and even after you sue them. But yes, they will be reluctant to speak with you directly if you’ve hired counsel. If your lawyer agrees, he or she can notify your insurer that they’re permitted to continue talking with you directly. If you have only consulted with an attorney but you have not hired one, you have no obligation to tell your insurance company about the consultation.

Q: But a lawsuit will take years, won’t it?

A: Most lawsuits settle through informal negotiations or “mediation”. Those that go to trial do take years. But your lawyer’s doing the work, not you. And consulting with or hiring a lawyer doesn’t mean you’ll end up in a lawsuit.

Insurance policies are contracts written by insurance company lawyers. Doesn’t it make sense to get legal advice for yourself before taking the insurance company’s word that you’re not covered? Your goal is to be effective in claim settlement negotiations. Legal arguments can really strengthen your negotiating position. You can consult with a lawyer to discuss the situation and develop a strategy, and then use his or her advice and arguments to convince your insurance company to change its position without getting involved in a lawsuit.

Mediation and informal settlement negotiations can be the fastest and cheapest way to resolve insurance claim disputes. Having your own lawyer involved means the scales won’t be so tipped in the insurance company’s favor. Just make sure the lawyer you hire is qualified and skilled. The right lawyer can make your life a whole life easier and the wrong one will have the opposite effect.

Q: I don’t want to get involved in a lawsuit. Isn’t there something else I can do?

A: YES.

Use your insurance CLAIM DIARY to create a record of everything that’s happened between you and the insurance company. Write short and to the point letters to your adjuster that outline issues that need to be resolved and problems that are delaying settlement of your claim. Always put a reasonable deadline in the letter that tells the insurance company when you expect a reply. (i.e., “Please respond no later than fourteen business days from the date on this letter).

Write letters to your adjusters’ supervisors, their supervisors, and even the President or CEO of the insurance company. Follow up with phone calls. Take the time to read the wording of the specific exclusions or limitations that the

insurance company is relying on. Make sure to read the whole policy and whatever brochures or sales materials you can get your hands on. You may find words that show they promised or owe more benefits than they're offering.

If you were impacted by a disaster that also impacted your neighbors, share information, problems and solutions. Follow UP's claim tips by keeping a claim diary, staying organized, writing to higher-ups in the company, and getting help from your state Insurance Commissioner's office. Don't take "no" for an answer until you've run out of options and that won't be for a long, long time.

Although you may feel discouraged and in no mood for fighting, it doesn't make economic sense to take "no" for an answer from your insurance company for damage you honestly feel should be covered.

Following any major disaster, your fellow Americans, elected officials and the media are paying attention to how insurance companies treat survivors. That pressure will help you get a fair shake. Don't give up if it's still very early in the process – or you may under-settle your claim.

Q: Are there "good" and "bad" insurance companies?

A: Some insurance companies have the reputation of being fairer and more prompt in handling claims than others, but it's hard to predict what's going to happen in this unprecedented situation. Working together with neighbors, following UP's claim tips and staying organized by using a claim diary and a three-ring binder will really increase your chances of getting treated well.

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>.

The information presented in this publication is for general informational purposes, and should not be taken as legal advice. If you have a specific legal issue or problem, United Policyholders recommends that you consult with an attorney. Guidance on hiring professional help can be found in the "Find Help" section of <http://www.uphelp.org>. United Policyholders does not sell insurance or certify, endorse or warrant any of the insurance products, vendors or professionals identified at our website. United Policyholders respects and protects the privacy of all individuals who communicate with us. We do not sell or share our membership or mailing lists.