



Your Insurance Legal Rights as a Property Owner in Texas

Insurance policies are legal contracts, so legal rules come into play when you file a claim after a loss. If you arm yourself with basic knowledge about your rights and the claim process, you can speed up your settlement and improve your odds of getting paid what you're owed.

The Texas Department of Insurance ("TDI") created a Consumer Bill of Rights ("BOR") for homeowners and renters that gives you the basic knowledge you need. It's in the Texas Administrative Code at: 28 Tex. Admin. Code § 5.9970(d). Your insurance company is required by law to send a copy of the Bill of Rights with your policy and upon renewal. Review this Bill of Rights and keep a copy handy during the claim process so you can refresh your understanding. The Bill of Rights can also be found online at the Office of Public Insurance Counsel's website at: http://www.opic.state.tx.us/files/bor/1_bor-home-english.pdf

The tips and guidance included here will give you a basic understanding of your rights and the claim process in general. Consult a qualified attorney if you have questions about how the law would apply to your specific situation. What we mean by "qualified attorney" is one that has experience successfully representing insurance consumers in claim disputes and that is a member in good standing of the Texas Bar Association. To find one, click on the state of Texas in the "Find Help" section of www.uphelp.org.

COMMUNICATING WITH YOUR INSURER

It is a good idea to communicate with your insurance company and your agent in writing so that you have a clear record and a good paper trail. This does not mean you should stop talking to your adjuster during the claim process. It just means you should communicate in writing when possible and/or send follow-up email summarizing what was said or agreed to during a conversation. For suggestions on communicating effectively with an insurance company, read "[Speak UP...](http://www.unitedpolicyholders.org/pdfs/Effective_Claims.pdf)" (http://www.unitedpolicyholders.org/pdfs/Effective_Claims.pdf)

THE CLAIM PROCESS

To trigger many of your legal rights, you must give your insurer written notice of your claim. Once you provide this notice, your insurance company must begin investigating your claim within 15 days. Tex. Ins. Code § 542.055; BOR ¶ 30. The company may ask you for information related to your claim. You must cooperate with reasonable requests, but you have the right to refuse to provide information that does not relate to your claim. You may also refuse to provide your federal income tax records (unless your insurer gets a court order or your claim involved lost income or a fire loss). BOR ¶ 33; 28 Tex. Admin. Code 21.203. If you *do* refuse an insurer's request, it's always wise to politely explain your position in writing and give

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examples of how you've cooperated and/or already provided sufficient information to support your claim.

Once the insurer receives written notice of your claim, the company has 15 business days to accept or reject it. Tex. Ins. Code § 542.056. If the company agrees to pay, it must do so within 5 business days. Tex. Ins. Code § 542.057. If the company rejects your claim, it must explain its reasons in writing. Tex. Ins. Code § 542.059.

There are exceptions to the rules above. If an insurer needs more time, it may take 45 days to make a decision if it sends a notice to you explaining the delay. Tex. Ins. Code § 542.056. Also, if the company suspects arson, it has 30 days after receiving the required paperwork to either accept or reject a claim. *Id.* In addition, TDI can give companies an extra 15 days after a major natural disaster and surplus lines carriers have 20 days to pay your claim after agreeing to do so. Tex. Ins. Code § 542.059.

The company adjuster will prepare an estimate of the cost to repair or replace your home and any personal belongings that got damaged or destroyed. The company will make an offer based on this estimate. In the event of a partial loss, where the insured elects to repair or replace the property, the insurer should not deduct depreciation. *Farmers Mut. Protective Ass'n of Texas v. Cmerek*, 404 SW.2d 599, 600–601 (Tex. Civ. App. Austin 1966)(no pet.). If the company denies your claim in whole or in part, the company must give you the reasons why in writing. BOR ¶ 29, 28 Tex. Admin. Code § 21.203, and Tex. Ins. Code § 542.056.

If the insurance company takes too long to pay your claim, they may owe you interest at the rate of 18% per year plus reasonable attorneys fees if you sue and win. Tex. Ins. Code § 542.060. In a lawsuit, the insurance company has the burden of proving it was not obligated to pay.

Within 15 days after you report your loss, your insurer may request a signed, notarized proof-of-loss form. The company will probably ask you to estimate the replacement cost of your household items lost as well as the cost of repairing your home. Check out the free resources in the Property Damage section of UP's Claim Help Library. You'll find sample proof of loss forms for both Dwelling and Contents claims, as well as suggestions for shortcuts to help you find prices and document the value of what needs to be repaired and replaced. Remember to include even small items such as kitchen utensils and to include sales tax in your cost estimates. Keep a copy for your records. If your insurer is pressuring you to estimate your losses before you have time to do a thorough job, it's OK to insert "undetermined" and sign and submit a proof of loss form, then supplement it later.

UNFAIR CLAIM SETTLEMENT PRACTICES AND EQUAL TREATMENT

Your insurer is prohibited from using unfair claim settlement tactics. The legal term is "unfair practices". The Texas Administration Code defines these by listing prohibited practices. 28 Tex. Admin. Code § 21.203. The following are a few examples of tactics considered to be unfair settlement practices in Texas. (*See also* Tex. Ins. Code. Ch. 541):

1. Misrepresenting to claimants pertinent facts or policy revisions relating to coverages at issue; (lying)
2. Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability has become reasonably clear; (foot dragging)
3. Failing to affirm or deny coverage of a claim to a policyholder within a reasonable time; (stringing you along)
4. Refusing to pay claims without conducting a reasonable investigation based upon all available information; (cheating)
5. Failing to provide reasonable explanation of denial/settlement offer; and (keeping you in the dark)
6. Failing to promptly provide claim forms, when provided in the policy, if the insurer requires forms for settlement. (Stalling)

Generally (unless based on sound actuarial principles), an insurance company may not treat you differently from others “of the same class and essentially the same hazard.” BOR ¶ 38. If you lose money as a result of being unfairly discriminated against, you have the right to sue the insurance company. BOR ¶ 38. If you win your suit, you may recover the money you lost, plus court costs and attorney and necessary expert witness fees. If the court finds the insurance company *knowingly* violated your rights, it may award up to an additional \$25,000 per claimant. BOR ¶ 38.

Disagreements:

If you disagree with the adjuster’s estimate, let the company know. You may reject any settlement amount, including any unfair valuation, offered by the company. **You have the right to have your home repaired by the repair person of your choice.** BOR ¶ 28.

Generally, if the company refuses to make adjustments to the estimate, you can use a process called appraisal. *State Farm Lloyds v. Johnson*, 290 S.W.3d 886 (Tex. 2009). The majority of insurance policies contain an appraisal clause. *State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 889-890 (Tex. 2009). The appraisal process is used to determine the amount the company should pay. It is not used to “construe the policy or decide whether the insurer should pay.” *Id.* at 890. UP offers a simple explanation of the insurance appraisal process along with suggestions and options for resolving claim disputes in the **Claim Dispute Resolution** section of www.uphelp.org.

Time limitations: Your policy most likely has time limitations for submitting documentation, claiming benefits and filing a lawsuit. Depending on the wording of your policy, you may need to submit receipts to collect full benefits for the replacement value of items for which your

insurer has paid you “actual cash value.”

If you sue an insurance company, **you must file your suit on or before the second anniversary of the date you were denied insurance (or treated unfairly) or the date you reasonably *should have discovered the unfair denial or treatment.*** This rule is generally enforced strictly. If you “sleep on your rights” you will lose them.

If a court decides that your lawsuit is frivolous/filed without good cause or just to harass the insurance company, you will be required to pay the insurance company’s court costs and attorney fees. BOR ¶ 38.

Payments: After notifying you that your claim is approved (in whole or in part), the company must pay within 5 business days. BOR ¶ 30. If you do not receive your payment within 5 business days, contact the company. If you believe that the company is purposely delaying and ignoring your written requests for payment, contact TDI for help. If the delay goes on for a long time and involves a substantial sum of money, consult with a qualified attorney.

Note from Texas Department of Insurance website: “Most companies pay homeowners claims with two checks. The first, issued after the adjuster reviews your loss, is for the estimated cost of repairs, minus depreciation and your deductible. The company will issue the second check for the balance of your claim after it receives the contractor’s bill for the finished job, as long as the repairs or replacements are completed within 365 days of the date of loss. You may submit a written request for an additional 180 days extension.

When your home is financed: If you’re financing your home, the insurance company may require your lender to sign your claim check and therefore send the check to the lender. In that case, the lender must notify you within 10 days of receipt of the check. BOR ¶ 31. After your request the funds from your lender, within 10 days the lender must either (1) release the money to you; or (2) tell you in detail what you must do to receive the funds. “If the lender does not provide the notices mentioned above or pay the money to you after all requirements have been met, the lender must pay you interest on the money at 10% per year from the time payment or the notices were due.” BOR ¶ 31.

USING YOUR REPLACEMENT FUNDS

If your home was destroyed, you may use your replacement funds to buy or build in another location as long as what you buy or build is functionally similar to the property that was destroyed. [*Fitzhugh 25 Partners v. Kiln Syndicate KLN 501*, 261 S.W.3d 861 (Tex. App. 2008)]. In the case of your home, this simply means you must buy or build a new home and not spend the money on whatever you want. Your policy may limit your recovery to the lesser of the cost of rebuilding a similar building on the same site or the amount you actually spend to replace the property. Be sure to get an estimate to replace the home on the original property even if you intend to buy or build elsewhere.

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FINAL TIPS AND SUGGESTIONS:

Read UP's Top Twenty Tips (<http://www.unitedpolicyholders.org/pdfs/TopTwentyTips.pdf>) and What to Expect When You're Suing (<http://www.unitedpolicyholders.org/pdfs/Whattoexpectwhenyoursuing.pdf>), and follow these simple steps:

- **Keep in contact with your insurance company.** If you are not able to stay in your home, make sure the company has an address and phone number where it can reach you.
- **Inventory and document your losses:** Take pictures of items before they're destroyed or taken away for repairs, and of your lot before it gets cleared (if applicable.) Create detailed lists of damaged property. If your home was seriously damaged or completely destroyed, get at least one, ideally two, independent repair/replacement cost estimates.
- **Make only temporary repairs.** The company may deny your claim if you make permanent repairs before it inspects. So, if you're not sure if your company considers a repair to be permanent, ask your company (in writing) before starting any repair work. The cost of these repairs and for storing personal belongings is likely covered by your policy.
- **Be present for the inspection.** It's a good idea to be home when the adjuster performs his or her inspection. Feel free to ask your contractor to be there with you to discuss estimates with the adjuster or the company.
- **Keep all receipts.** You must provide evidence that you bought replacement items and incurred expenses due to losing the use of all or part of your property. Receipts will help you get reimbursed more quickly for out of pocket expenses.

COMPLAINTS AGAINST YOUR INSURANCE COMPANY

Remember that insurance companies are subject to penalties if they fail to settle claims promptly and fairly. You can first try to resolve the dispute by contacting the company. Read "Speak UP" (see above) and visit the UP Claim Help Library for tips on strategy.

If you are unable to resolve the problem, you can file a complaint with TDI. You may do so on TDI's website at www.tdi.state.tx.us/consumer/complfrm.html. You may also fax a complaint to (512) 475-1771 or send an email to ConsumerProtection@tdi.state.tx.us. Finally, you may file a complaint by mail at:

Texas Department of Insurance
Consumer Protection (111-1A)
P.O. Box 149091
Austin, Texas 78714-9091

If you have a general insurance question, call the TDI Consumer Help Line at 1-800-252-3439.

HIRING PROFESSIONAL HELP

You have the right to hire a qualified attorney or public adjuster to help you document your losses, file your claim and negotiate an insurance settlement on your behalf.

An experienced and reputable public adjuster cannot practice law or give legal advice, but should be familiar with the insurer's duties under the law in your state, as well as insurance lingo and the claim process. A good public adjuster can document and prove your losses and negotiate a full and fair settlement. Generally speaking, if you hire a public adjuster you agree to pay them a percentage of whatever they recover on your behalf – not an hourly fee.

A qualified attorney can represent you in all aspects of resolving an insurance claim, including giving you legal advice, negotiating a settlement, representing you in an appraisal, mediation or arbitration, and/or filing suit on your behalf. Generally speaking, if you hire an attorney to help you resolve an insurance claim dispute, you should hire him or her on a contingency (not hourly) fee basis.

For more information on hiring an attorney or public adjuster, visit the Hiring Professional Help (http://www.unitedpolicyholders.org/claimtips/tip_professional.html), Find Help (<http://www.unitedpolicyholders.org/sponsors.html>) and Resolving Claim Disputes ([file://localhost/\(http://www.unitedpolicyholders.org/claimtips/tip_claimdispute.html\)](file://localhost/(http://www.unitedpolicyholders.org/claimtips/tip_claimdispute.html))) sections of www.uphelp.org.

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