WATTS UP?!

Your Wildfire Insurance Claim Questions Answered

Roadmap to Recovery Workshop
May 21, 2020
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Roadmap to Recovery

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Amy Bach, Esq.

- Dedicated to advancing the interests of insurance policyholders since 1984
- Published author, experienced trial and regulatory attorney
- Co-founder, UP
- Official consumer rep to NAIC since 2009
- Member, Federal Advisory Committee on Insurance (US Treasury)
About United Policyholders

- 501(c)3 nonprofit organization.
- A voice and an information resource for consumers in all 50 states.
- A 26+ year track-record and subject matter expertise in insurance and disaster recovery.
- Not for profit…not for sale.
- Funded by donations and grants.
- A volunteer corps with personal and/or professional expertise in disaster recovery and insurance.
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 www.uphelp.org or speakers at our workshops.
Mike helps counties set up post-wildfire permit operations to serve large numbers of residents and has helped thousands of survivors navigate the plan check, permit and inspection processes and gather documents to meet insurance requirements.

**Building Resiliency Center** - 2018 Camp Wildfires
**Resiliency Permit Center** - 2017 North Bay & 2019 Kincaide Fires
30+ years experience in Insurance claims and claims management
Serves as claim consultant and expert witness
Specializing in Property Insurance Claims Issues
Active in long term disaster recovery through our “Roadmap to Recovery” program
CA Insurance Code 2051.5 is KEY!

- Almost every one of the questions I get involves some part of this newly-clarified (2018) legislation
  - Replacement Cost
  - Extended Replacement Coverage
  - Additional Living Expenses
  - Code Upgrade
  - Buy or rebuild?
Determining Coverage A - Dwelling

2051.5

- (a) (1) Under an open policy that requires payment of the replacement cost for a loss, the measure of indemnity is the amount that it would cost the insured to repair, rebuild, or replace the thing lost or injured, without a deduction for physical depreciation, or the policy limit, whichever is less.
What does this mean???

- The amount you are owed is based upon the cost to rebuild the home you LOST, plus code upgrades, up to the policy limit.

- In most cases, you will need an estimate to determine what it would have cost to rebuild your prior home, even if you do not intend to rebuild it.
Aim for an agreed upon scope of loss

- Make sure that you correct the insurance company estimate so you can compare like-for-like with your contractor’s estimate.

- Make sure your contractor’s estimate is for your OLD home, not the one you want.

- In-person meeting with adjuster can be productive.

- Your contractor/subs should be able to stand behind his/her numbers.

- Know the areas where you differ, and why.
2051.5

(2) If the policy requires the insured to repair, rebuild, or replace the damaged property in order to collect the full replacement cost, the insurer shall pay the actual cash value of the damaged property, as defined in Section 2051, until the damaged property is repaired, rebuilt, or replaced. Once the property is repaired, rebuilt, or replaced, the insurer shall pay the difference between the actual cash value payment made and the full replacement cost reasonably paid to replace the damaged property, up to the limits stated in the policy.
Why are they only paying ACV?

• Most policies have “Loss Settlement Provisions” that specifically state that you are owed ACV (which is replacement cost less depreciation) until the property is repaired or replaced.
Is there a time limit???

2051.5

- (b) (1) (A) (i) A time limit of less than 12 months from the date that the first payment toward the actual cash value is made shall not be placed upon an insured in order to collect the full replacement cost of the loss, subject to the policy limit.

- (ii) In the event of a loss relating to a “state of emergency,” as defined in Section 8558 of the Government Code, a time limit of less than 36 months from the date that the first payment toward the actual cash value is made shall not be placed upon the insured in order to collect the full replacement cost of the loss, subject to the policy limit.
• (iii) This section does not prohibit an insurer from allowing the insured additional time to collect the full replacement cost.

• (B) An insurer shall provide to a policyholder one or more additional extensions of six months for good cause pursuant to clause (i) or (ii) of subparagraph (A) if the insured, acting in good faith and with reasonable diligence, encounters a delay or delays in approval for, or reconstruction of, the home or residence that are beyond the control of the insured. Circumstances beyond the control of the insured include, but are not limited to, unavoidable construction permit delays, the lack of necessary construction materials, or the unavailability of contractors to perform the necessary work.
(c) In the event of a total loss of the insured structure, no policy issued or delivered in this state may contain a provision that limits or denies payment of the replacement cost in the event the insured decides to rebuild or replace the property at a location other than the insured premises. However, the measure of indemnity shall be based upon the replacement cost of the insured property and shall not be based upon the cost to repair, rebuild, or replace at a location other than the insured premises.
• 2051.5 (c) In the event of a total loss of the insured structure, a policy issued or delivered in this state shall not contain a provision that limits or denies, on the basis that the insured has decided to rebuild at a new location or to purchase an already built home at a new location, payment of the building code upgrade cost or the replacement cost, including any extended replacement cost coverage, to the extent those costs are otherwise covered by the terms of the policy or any policy endorsement. However, the measure of indemnity shall not exceed the replacement cost, including the building code upgrade cost and any extended replacement cost coverage, if applicable, to repair, rebuild, or replace the insured structure at its original location.
What’s Included in Code Upgrades?

• As always, read your policy, as the language varies.
• In general, this coverage pays the amount to bring THE HOME YOU LOST up to current building codes, up to available limits.
• This means things that were not there, but will need to be added in order to gain occupancy after rebuilding. i.e. sprinklers, solar, energy efficiency upgrades, etc.
• The cost can be “rolled into” purchase and upgrading of a new house, but the amount is determined by the old house.
• This coverage is usually paid “as incurred” (meaning $ is spent) but insurer has discretion.
• Often, you have to show that the city/county will enforce the codes in order to get payment.
Buying vs. Rebuilding

The process is almost identical for all the different options (rebuild/buy/codes).

The most important thing: KNOW HOW MUCH IT WOULD COST TO REBUILD THE HOUSE YOU LOST up to the policy limits.

If buying you will also need a CODE BID for the house you lost, NOT the new one!

If you were paid the full policy limits you will most likely not need an estimate.
The Land Value Issue

- Some insurers want to deduct an amount for the land under the home you want to buy
- This is an unsettled area of the law
- We recommend pushing back:
  - Ask where it states in policy
  - You are NOT asking for $ for land! Just cost of lost home
  - New home including land is same price as old home excluding land so it’s not a windfall
  - Bill in legislature for future
When you purchased your home, you purchased the structure as well as the land it sits on.

However, homeowner’s insurance only covers the structure, NOT the land.

Let’s say the house that was lost was worth $400,000 and the value of the land is unknown after the loss.
If you decide to buy elsewhere, you will likely purchase a home around $400,000.

However, that $400,000 will necessarily include the value of both the house & LAND underneath it.

If your home was properly insured, your RCV should be $400,000 for a total loss.

$400,000

$300,000

$100,000

$??,???
Result: The purchased home is worth less than your previous home because the amount of your insurance proceeds will likely be used to purchase the land under that house as well!
(2) In the event of a covered loss relating to a state of emergency, as defined in Section 8558 of the Government Code, coverage for additional living expenses shall be for a period of no less than 24 months from the inception of the loss, but shall be subject to other policy provisions. An insurer shall grant an extension of up to 12 additional months, for a total of 36 months, if an insured acting in good faith and with reasonable diligence encounters a delay or delays in the reconstruction process that are the result of circumstances beyond the control of the insured. Circumstances beyond the control of the insured include, but are not limited to, unavoidable construction permit delays, lack of necessary construction materials, and lack of available contractors to perform the necessary work. Additional extensions of six months shall be provided to policyholders for good cause.

Effective September 21, 2018
Is it Automatic?

• No. The amount you are owed is generally the shortest time required to rebuild, replace or for your household to settle elsewhere.

• In most cases, you will need to show that you were acting with “reasonable diligence” in rebuilding or buying. Keep a diary of your obstacles to show carrier. Write to them about your decision making process on buying v. rebuilding.
COVID-19

Time Limits

Governor Newsome has now declared all construction services, in all counties, as “essential”

However, contractors may have ill employees and can not force them to work.

Department of Insurance bulletin has determined COVID-19 delays are out of the insured’s control.

DOI has requested extension of 90 days, after emergency is lifted, to enforce time limits.

New bulletin issued warning insurers to comply with statutory time limits.

If you are experiencing delays, contact Dept of Insurance.
What if I am underinsured?

Underinsurance is difficult in most cases

Current CA law holds the homeowner responsible for choosing proper coverages AND coverage limits

We understand the reality – that homeowners usually are “presented” with a policy by the agent, who chooses everything

Often the limit is the amount of mortgage
Remedies for the Underinsured:

- Sue another at-fault party
- Sue your agent/broker/insurer individually or in a group
  - Their fault, they gave you reason to believe your limits were adequate
  - Their mistake, their faulty underwriting
  - They undertook duty to set limits adequately
  - Seek a "retroactive reformation" of policy limits and offer to pay the difference in premiums
- Sue another at-fault party
California Fair Claims Settlement Practices Act

- 15 days to respond to communications
  - Email, letter, phone call

- 40 days to pay or deny claim

- If unable to make decision must send letter
  - What they need to make a decision
  - How long they need to make the decision
  - Send letter every 30 days
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<th>Tip</th>
<th>Description</th>
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<tr>
<td>Get it in WRITING!</td>
<td>If not, put it in writing, back to them confirming</td>
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<tr>
<td>Keep it professional</td>
<td>Be concise and to the point</td>
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<td>Bold or bullet point your requests</td>
<td>Use proper grammar and punctuation</td>
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<td>Promptly respond to letters and reasonable requests</td>
<td>Avoid venting frustrations and emotions to your adjuster</td>
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24/7 help on the web:
www.uphelp.org

- Insurance Claim Help
  - Recovery Blogs:
  - Claim Help Library
  - Guides for overcoming obstacles
  - Links to Government and Professional help
  - Tips from past disaster survivors
  - Sample Letters and Claim Forms
UNDERINSURANCE WEBINAR

Remedies for the Underinsured – Amy Bach
• Thursday, May 28th at 4:00 pm
• Send your questions to info@uphelp.org

RESOLVING RECONSTRUCTION DISPUTES

Learn how to reconcile your estimates and get your dwelling claim paid!
Sandra Watts- Project Coordinator
Roadmap to Recovery Program
Saturday, June 6th – 10:00 a.m. to 12:00 p.m.
REGISTER @ uphelp.org today!