Remedies for the underinsured

Mobile home coverage and claim guidance

Progress payments during rebuilding

Roadmap to Recovery Workshop #7

UP Staff Instructor: Sandy Watts
UP Volunteer Instructor: Ken Klein
Thank you partners and volunteers:

- Voluntary Organizations Assisting in Disasters
- Ventura Community Foundation, Special and Urgent Needs Fund
- Peter Wassyng
- California Department of Insurance
About United Policyholders

- 501(c)3 non profit 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](http://www.uphelp.org) or speakers at our workshops.

• Our speakers are volunteering their time as educators.
Website: www.uphelp.org/woolsey

- Schedule of upcoming recovery help events
- Links to professional/legal/government help

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“Ask an Expert Forum”
www.uphelp.org/ask-an-expert

- Register. It’s free.
- Write in your questions.
- Get an answer from an expert in construction, insurance, laws and disaster recovery.
- Your name stays private.
24/7 help on the web: www.uphelp.org

- Insurance Claim Help
  - Recovery Blogs: www.uphelp.org/Northbayfires
  - Claim Help Library
  - Guides for overcoming obstacles
  - Links to Government and Professional help
  - Tips from past disaster survivors
  - Sample Letters and Claim Forms

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Today’s speakers:

- **Sandy Watts**, Claim expert and policyholder advocate
- **Ken Klein**, Fire survivor, attorney and disaster law professor
Guiding principles:

- Focus on documenting the full extent and value of your losses

- Give your adjuster/insurer a chance to do the right thing, but don’t be a pushover

- Leverage and negotiation

- Get help when you need it
Knowledge Equals Power AND…

The more you understand about your insurance benefits, your rights and the value of your losses, the more benefits you will recover to rebuild your home and life and the smoother your claim will go…
Time is on your side: Statistics show…

• The longer a claim stays open the more money the policyholder receives

• Fully and accurately documenting and valuing major losses takes much longer than you would think

• Remember – an insurance claim is a BUSINESS transaction
Recovering from a disaster is a marathon not a sprint
• 2/3 of wildfire survivors are underinsured

• United Policyholders has been helping solve this problem since 1992
  – Helping innocently underinsured people make all available arguments for retroactive limit increases
  – Pushing for legal changes to remedy the fact that the law does not reflect reality on the duty to adequately insure a dwelling

Please type in the word “underinsurance” in the search box at uphelp.org
Remedies for the Underinsured:

• Find/use leverage and convince insurer to pay above limits
  – 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 your agent/broker/insurer individually or in a group

• Sue another at-fault party
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 cost to rebuild as-was (what your home *should* have been insured for)
Step 3

• Review history of how/when your dwelling limits were set
  – Did you remodel? Re-finance? Change insurers/agents?
  – Did something trigger you to contact insurer to seek reassurance?
  – Did you get reassurance of adequacy of your limits?
• How often did you speak with your agent/insurer or did you buy your policy online?

• 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. Ideally, 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.

• Visit the “Find Help” section of United Policyholders website 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 the CA 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.

1-800-927-HELP  www.insurance.ca.gov
Negotiation - Best Practices

• Keep it professional
• Be concise and to the point
• Bold or bullet point your requests
• Avoid long paragraphs
• Use good grammar and punctuation
• Promptly respond to letters and reasonable requests
• Point out unreasonable requests – common sense is on your side
• Avoid venting frustrations and emotions to your adjuster
Aim for an agreed upon scope of loss

• 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
Ken Klein

• Lost home in 2003 and has been a UP volunteer since 2009

• Getting your mortgage company to release insurance proceeds https://www.uphelp.org/library/resource/lender-relations-after-catastrophic-property-loss

• Getting your mortgage company to pay interest on funds they’ve kept in escrow

• Mobile home coverage and claim guidance
Mobile home coverage and claim guidance

Depreciation should be calculated fairly

https://www.uphelp.org/sites/default/files/blog/mobile_home_claim_tips_2-18.pdf
Your lender/mortgage company and your insurance benefit payments

• Your lender must release all insurance proceeds that are greater than your principal loan balance

• Your lender’s name should not be on any insurance checks for contents, ALE, trees, landscaping, etc. Only dwelling-related benefits

• Communication with your lender and contractor is critical
• Structure your contractor agreement draw schedule to be consistent with (or more favorably than) your lender disbursement schedule

• Do NOT let your contractor "get ahead" of your agreed draw schedule
Tracking down an authorized signer…

Although Countrywide Mortgage (Balboa) handles most of their own loss draft processing and Sterling National Corporation (previously known as Z C Sterling) handles a good percentage, most of the loss draft processing done throughout the USA is handled by Atlanta, GA based Assurant Specialty Property (ASP) which is a subsidiary of Assurant, Inc. (AIZ). This niche market earns ASP a lot of money, much of which, at least in my opinion and the opinion of probably every contractor in the country who has ever had to deal with them, is undeserved.

The software program ASP uses to track your customers loss drafts (ultimately, your money) and that they tell their investors and customers (i.e., Citi, US Bank, etc., is so effective, is called “DraftTrac Enterprise tracking.” The reason they continue to do such a poor job is that they assume you and your customers will never figure out who is behind the delays – but you just did.

TOP ASP EXECUTIVES

Alan B. Colberg, CEO – Assurant, Inc.
Melissa Kivett, SVP, Business Development & Strategy – Assurant, Inc.
Francesca Luthi, SVP, Investor Relations – Assurant, Inc.
Gene Mergelmeyer, COO – Assurant, Inc.
John Frobose – President, ASP
Mike Campbell – President, Global Home Services – Assurant, Inc.
Gary Turner – Director Customer Experience – Assurant, Inc.

Mike Lawson – VP Assurant Group (manager of east coast site in OH where a majority of loss draft processing in the country takes place). Other centers are located in Florence, SC, Duluth, GA (HQ), Santa Ana, CA and Tustin, CA.

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Banks and Mortgages
Jargon

• I use “bank” as the generic word for whatever entity you deal with on your mortgage. It may be a bank, savings and loan, mortgage servicer, or other kind of financial entity.

• I use “mortgage” as the generic word for all of your loan documents, whether it is the loan agreement or the mortgage or the Deed of Trust.
If you have a mortgage and you lost your home, you still owe your monthly mortgage payment

- ...and the mortgage payment is NOT covered by insurance
My house was lost; does the bank have any right to any of the insurance money?

Probably. Most mortgages in the United States are essentially identical except for the parts specific to your particular house and your particular loan. When your agreed with your bank to borrow money, you probably agreed that you would carry insurance on your house. In fact, you probably couldn’t get the loan without providing proof of insurance. The consequence of that agreement is that when your insurance company pays your claim – at least the part of it funding the rebuild or replacement of your home – that check likely will be written payable to both you AND to your bank.
If the insurance check is written to both me and the bank, then which of the two of us get to deposit the money?

- The bank. Neither of you can cash the check without the other one’s signature. While the law in many (maybe all) places is silent about who then controls the money, that’s because the answer is generally assumed to be (and understood to be) that the bank controls the money, since until your home is rebuilt the money is the only collateral left to secure the mortgage. You could fight this, but it will require a lot of time and energy on your part chasing an unlikely victory.
How do I pay my contractor if the bank holds all of the money?

• Most of the time the bank releases the money to you in thirds. One third is released when you begin construction. One third is released when you are roughly halfway done (often this is thought of as the home is framed). The last third is released upon substantial completion.
Can the bank simply apply the money to paying off my loan (even if I don’t want them to)?

• Probably not. Again, most mortgages read almost the same. In your documents you probably agreed that you must repair or rebuild your home. If the bank applied the insurance money to the loan instead of letting you use it to rebuild, then that would make it harder for you to rebuild. That choice by the bank would expose it to an argument that it was acting in “bad faith.” The bank probably does not want to fight that fight. But it might. And then, everyone would have to really study the details of the documents to see what everyone agreed to.
Can I simply apply the money to paying off my loan (even if the bank doesn’t want me to)?

- Probably. Most mortgages allow the borrower – at their option – to pay off the loan early, in whole or in part.
While the bank holds the money, does it collect interest?

- It should, but often it does not unless you fight about it. Financial companies basically never just put money in a locked drawer; instead, they use that money to try to make money for themselves, doing things like investing it or loaning it to others. But this is your money, and you did not choose to deposit it with this financial company (because, say, they paid a nice rate of interest) – you were forced to deposit it with them. You should get some interest on the money. But it seems that most of the time this does not happen without a lot of wrangling. If your property is in California, then state law helps you a bit because California has a law – section 2954.8 of the Civil Code – that says when the bank holds money related to the property, the money collects simple interest annually of 2%. Even in California, however, many banks fight this and it requires tenacity to get it.
If my insurance checks are more than I have left owing on the mortgage, does the bank still get to keep control of all of the money?

• It shouldn’t. But again convincing them of this may take some persistence. In talking to your bank about this (should you choose to do so), ask them what is their justification for being “over-collateralized” when doing so puts as risk your ability to rebuild (which your mortgage requires you to do).