



## Your Insurance Legal Rights As A Property Owner In California

California has more laws to protect insurance policyholders than any other state in the country. These laws tell insurers what they must, can and cannot do. There are laws made by judges and legislators in Sacramento called “case laws” and “statutes” or “code provisions”. There are laws called “regulations” that are written by the state Department of Insurance. But a law is a law – regardless of fancy labels.

There are many laws that tell companies and their representatives how they must behave when insured property is damaged and a claim is filed. Many people, *including claim adjusters* are not aware of these laws. Some companies and adjusters routinely break these laws when handling claims – knowingly and unknowingly. This is particularly true when it comes to California’s “Fair Claim Settlement Practices Regulations. Many claim adjusters and even company executives have no idea that these regulations exist – let alone what they say.

If you arm yourself with some basic knowledge about the laws that protect you, you can speed up your settlement and improve your odds of getting paid what you’re owed.

At the end of these tips, we tell you how to get free copies of the laws that protect homeowners in California. Your insurer was supposed to give them to you 15 days after you filed your claim. (CA. Ins. Code sec. 790.034 (b)) Just in case they didn’t, here’s a review of the ones that may help you settle and get back home. *There are many more laws than the ones we list here.*

The most important law to remember is that your insurance company has the legal duty to investigate, process, and pay your claim fully, promptly and in **good faith** and **deal with you** fairly at all times.

For specifics on claim rules, deadlines and what you’re owed, you’ll want to know about California’s Fair Claim Handling Regulations. They spell out:

- Deadlines for responding to letters and phone calls
- Deadlines for your insurer to pay or deny
- Deadlines for submitting paperwork to prove your loss
- What information your insurance company must give you
- What information you must give your insurance company

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## **“GOOD FAITH”**

You are legally entitled to be treated in “good faith” by your insurance company and its representatives at all times. This means your insurer must be considerate of your needs. It must communicate fully and honestly with you about the policy it sold you and about rights and duties relating to your claim. In turn, you are legally obligated to be honest and to cooperate with reasonable requests for information relevant to your claim. Cal. Insurance Code sec. 790.03 is the main place to read these requirements. They’re also included in portions of Cal. Insurance Code sec. 2071.

All representatives of your insurance company are **legally required** to tell you the truth. This includes in-person conversations and all communication by phone, letters, emails and all advertising and printed materials. This means they must be honest about what they sell you, what you’ve paid for and what you’re entitled to if you file a claim. An insurer “shall not cause to be issued, circulated or used, any statement that is known, or should be known, to be a misrepresentation” of the benefits or privileges of the policy or future dividends payable under the policy. [Cal Ins Code 780] No insurer shall misrepresent to a “claimant pertinent facts or insurance policy provisions relating to any coverages at issue”. [Cal Ins Code 790.03]

No insurer shall discriminate in its claim settlement practices on the basis of a claimant’s age, race, gender, income, religion, language, sexual orientation, ancestry, national origin, physical disability or upon the territory of the property or person insured. [Cal Code of Regs 2695.7]

You are entitled to a “good faith” settlement. Every insurer must attempt “in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear”. An insurer cannot make an “unreasonably low” offer, that is, attempting to settle a claim “for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of the application”. [Cal Ins Code 790.02]

Your insurer must conduct a reasonable investigation on its own **and** take into account all evidence you have submitted (such as your inventory lists, photographs, blueprints, independent scopes of loss, repair estimates, and appraisals on antiques, art or jewelry) in making the settlement offer. [Cal Code of Regulations 2695.7 and 2695.9]  
Depreciation/Actual Cash Value holdbacks must be reasonable and not excessive.

## **PROMPT, HONEST & COMPLETE COMMUNICATIONS**

You are entitled to prompt, timely communications from your insurer. The company (and all its representatives) must respond to your communications within “15 calendar days” with “a complete response based on the facts then known.” Any question you ask, and any request you make must be responded to by the insurer within 15 calendar days.

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You must get in the habit of sending your insurer letters or emails, so there is a record of who said what and when. That doesn't mean you should stop talking to your adjuster. If you request copies of your current policy and policy history, including previous policies, policy upgrades, notices of changes, etc. (something UP highly recommends you request in writing), your insurer must respond to your request within 15 calendar days. [Cal Code of Regs 2695]

Your insurer must tell you about all deadlines that apply to your claim and the fact that there is a deadline for filing a lawsuit against them. [Ins. Code 2071 and Cal Code of Regs 2695.7] Once that deadline passes you lose the right to sue them, even if they have broken the law and cheated you. That deadline is called a "statute of limitations" and its purpose is to provide finality and keep things moving forward. There is one deadline for suing an insurance agent and a different one for suing an insurance company, but to find out exactly what yours is – you'll need to consult with an attorney before the one-year anniversary of your loss. Why? Because in the state of California it's tricky. There's something called "tolling". Your deadline is "tolled" (postponed) as long as your claim is still being processed but once they deny it – the clock starts again. An insurer cannot mislead you about this but it's a common source of confusion. [Cal. Ins. Code 790.03]

## **FAIR CLAIMS PROCESS**

Unless specified in your policy, you do not have to use the exact forms provided by your insurer to do your contents list. A neat (hopefully, typed) list with replacement prices should work. An insurer cannot ask for unreasonable "proofs of loss" such as secondary proofs. For example, if you provide photographs or video of items in your home, you cannot then be compelled to provide receipts as well if they contain essentially the same information. [Cal. Ins. Code 790.03]

You have a right to receive a copy of every claim-related document in your file. An insurer shall "notify every claimant that they may obtain, upon request, copies of claim-related documents..." including construction estimates, photographs and the documentation backing up their estimates and "all other valuation". This means how your contents and construction estimates may have been depreciated. [See "Requirements in case loss occurs" in Cal Ins Code 2071.]<sup>1</sup> The only thing you are not entitled to receive is attorney-client privileged communications and their attorney work. This means valuations, photographs, measurements, adjustor notes and reports, contents depreciation schedules, construction depreciation schedules, materials estimates, etc. are all part of your claims process, and you are entitled to receive *complete* copies of these so you can review them.

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<sup>1</sup> Insurance Code Section 2071 contains the coverages and policy rules required by law in CA. Your insurer can sell you more coverage than required in 2071 but not less.

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## COOPERATIVE INVESTIGATION

Keep in mind, the insurer has a responsibility to gather as much information *as needed* to fulfill their end of the claims process and you have a responsibility to cooperate in their investigation. You do not have a responsibility to cooperate with **unreasonable** requests for information or harassing tactics. If you are asked to do a telephone interview, you are not compelled by California law to do so. However, you **are** obligated to answer *claim-related* questions *about your loss*. Instead of doing a telephone interview, you may ask for written questions from the insurer's investigator to be sent to you and to answer them in writing. United Policyholders publishes separate tips on Examinations Under Oath. Visit <http://www.uphelp.org> and search for that term.

## ADDITIONAL LIVING EXPENSES

In claims where the cause is declared a "disaster" by the State, insurers must offer at least 24 months worth of ALE (Additional Living Expenses) benefits, up to policy limits. [Cal Ins. Code 2051] Your insurer must give you, (upon request) a list of items normally classified as reimbursable ALE expenses. [Cal Ins. Code 2060]

Typically ALE is paid via an advance to get you situated after the shock of the loss, then on an "as incurred" basis as you submit receipts and document expenses.

## ADJUSTING AND PAYING YOUR DWELLING CLAIM

**No lowballing:** An insurer may not offer or force you to accept a settlement offer that is "unreasonably low". Your insurer owes you the amount that will restore the damaged property to *no less than its condition before the loss*, in a manner of good workmanship and industry standards, and the rebuilding costs are accurate and representative of the costs in the local market area up to policy limits, including all extended coverages, endorsements, etc. An insurer cannot substitute cheaper materials or workmanship in estimating or having your home rebuilt. For example, an adjuster cannot put down laminate counters if you had marble, or shave off ten feet from the length of a room, or put in for single-pane windows when you had double-pane. [Cal Code of Regs 2695.9]

**Independent estimates:** If the scope of loss, repair or replacement estimates prepared by the insurer seems unreasonably low, you have the right to get an independent reconstruction estimate (preferably from a forensic construction company with experience in estimating re-building, rather than new construction, as disaster-loss sites have their own set of issues, including water vaporization, etc.) and submit it to the insurance company. (The estimate may be reimbursed under your policy as a claim-related expense, so check.) What happens next? Your insurer can 1) pay the difference between their estimate and yours; 2) hire a contractor to rebuild your home in the same materials and workmanship to return it to a "pre-loss condition" or 3) the insurer can adjust the settlement amount to a more reasonable offer. [Cal Code of Regs 2695.9]

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**Settling on the replacement cost of your original home and using those funds to buy elsewhere:** CA. Ins. Code 2051.5(c) allows a total loss claimant to use replacement cost funds to buy elsewhere instead of rebuilding. Because it is a new law, your adjuster/insurer may not be aware of it and there may be disagreements and confusion. If you want to use this option we strongly recommend that you get an independent scope of loss and estimates to replace the home you had – *even though you don't want to replace it at the old location*, then use that information to reach an agreement on how much insurance money you can use to buy a replacement home instead of rebuilding.

New construction and disaster re-construction costs in many areas are *higher* than the purchase price of another, comparable home in the area. So, you may want to seriously weigh whether you want to take a settlement that gives you enough to purchase another existing house, or a lump sum equal to rebuilding your home.

## **CONTRACTORS**

You cannot be compelled by an insurer to have your property repaired or rebuilt by a specific individual or entity. Only if you *expressly* request referrals can an insurer provide them and the insurer must inform you in writing that you have the right to choose a repair individual or entity. If you choose the one recommended by the insurer, the individual or entity must restore your damaged property back to its *pre-loss condition* in a manner of good workmanship, acceptable trade standards and at no additional cost to the claimant than stated in the policy or allowed by California law. [Cal Code of Regs 2695.9]

## **FAIR DEPRECIATION**

An insurer cannot reduce your benefits by depreciating things that would normally not be replaced over the useful life of the property such as framing, the foundation and the expense of labor to repair your property. You have the right to know how your insurer calculated depreciation was calculated and how they calculated their settlement offer [Cal Ins Code 2071 and Cal Code of Regs 2695.9]

## **RULE OF THUMB**

If your insurer refuses to make a payment you believe you are entitled to, ask them to show you where in your policy it states you are *not* entitled to it. Also, if your insurer quotes some strange reason for depreciation (such as the California community fence “rule”), ask them to provide you with a written copy of the law. Any type of depreciation or plain rejection of a part of your claim must be backed up by the insurer with verifiable dollar-valued documentation, not just because they said so. Ask for that documentation.

Sometimes the law “trumps” (overrides) your insurance company. Sometimes policy provisions or claim rules they are trying to impose on you are illegal and cannot be enforced by them. So don't take “no” for an answer unless you're sure they're right.

## EXAMINATION UNDER OATH

If you are asked to provide an “Examination Under Oath”, an insurer may only ask you questions that are “relevant” to processing your claim. You are entitled to a copy of the transcript and tape (if recorded) and have the right to clarify or rectify the answers you gave under oath. You may also ask for the questions they are going to ask in advance, however your insurance company is not legally obligated to give them to you. [Cal Ins. Code 2071]

## COMPLAINTS, ATTORNEYS & LITIGATION

An insurer cannot retaliate against you for making complaint to the California Department of Insurance or withhold payments until the complaint is withdrawn or threaten or intimidate you to keep you from making a complaint. [Cal Code of Regs 2695.7] An insurer cannot directly advise you against obtaining the services of an attorney. It is against the law for your insurer to unreasonably deny a claim, which in turn forces you to have to sue to recover benefits owed. [Cal Ins Code 790.03]

## HOW TO GET COPIES OF LAWS AND REGULATIONS:

- 1) Request them from your insurance company. They are required by law to give them to you upon request, OR;
- 2) Read them online or print them out by going to <http://www.insurance.ca.gov>. To find them, go to the “Insurers” section, “Legal Information”, OR;
- 3) Go to <http://www.uphelp.org>. Enter “Fair Claims” or “790.03” in search box.
- 4) Email [info@unitedpolicyholders.org](mailto:info@unitedpolicyholders.org) if you can’t find them

REFERENCES: *California Insurance Code, Section 790, 2051.5, 2071, California Code of Regulations, Title 26, Section 2695.*

## Timeline of Important Deadlines Under California Fair Claims Settlement Practices Regulations

Time	Activity	Authority in CCR
21 Calendar Days	Within 21 calendar days, respond in writing to DOI inquiries.	2695.5(a)
15 Calendar days	Within 15 calendar days, respond to communications from claimant, unless claimant has initiated legal action.	2695.5(b)
15 Calendar Days	Within 15 calendar days of notice of claim, unless claimant has initiated legal action: -acknowledge receipt, need not be in writing, but must be notated in claim file,	2695.5(e)(1)

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	or - pay the claim	
15 Calendar Days	Within 15 calendar days of notice of claim, unless claimant has initiated legal action: - provide necessary forms, instructions and assistance to claimant.	2695.5(e)(2)
15 Calendar Days	Within 15 calendar days of notice of claim, unless claimant has initiated legal action: -commence necessary investigation.	2695.5(e)(3)
40 Calendar Days	Accept or deny the claim. If more time needed, communicate in writing every 30 days.	2695.7(b) 2695.7(c)(1)
30 Calendar Days (continuing)	Communicate in writing every 30 days as to why claim cannot be accepted or denied.	2695.7(c)(1)
30 Calendar Days	After acceptance of claim, tender pay mentor portion of payment that has been determined and is not disputed.	2695.7(h)
60 Calendar Days	60 calendar days before statute of limitations or contract limitations period runs, notify claimant	2695.7(f)

This publication was prepared by Executive Director Amy Bach, Esq. and Rebecca Huston; a UP volunteer who lost her home in 2003 in Cedar Glen, California and became a citizen lobbyist for insurance reforms. 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 [www.uphelp.org](http://www.uphelp.org).

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