

THE VOSS ★ LAW FIRM

FREQUENTLY ASKED QUESTIONS ABOUT PROPERTY DAMAGE INSURANCE CLAIMS

Q: My adjuster seems knowledgeable. Why would he or she mislead me?

A: Insurance companies are profit-making businesses, and their employees are not social workers. Your adjuster may be friendly, but he or she is not your friend. The “marching orders” adjusters get from their bosses are generally: Close claims quickly. Pay no more than necessary.

Settling a large insurance claim is a business negotiation. The more you understand the process, the better you’ll do.

Insurance companies naturally try to control their payouts, especially after large scale catastrophes. There is a lot of confusing wording and legalese in insurance contracts that helps them do that, but there are laws to protect you from getting taken advantage of. That’s why it’s so important to educate yourself.

Q: What approach should I take to getting a fair claim settlement?

A: Focus on documenting the full amount of your losses and what it will cost to replace and repair everything. Present that documentation to your insurance company in writing. Show them that you are an informed consumer who will be holding them to the promises they made to you.

If you’re like most people, your home is your biggest asset. Insurance companies often read their policies with a bias that is too much in their own favor. Don’t accept an insurance company’s calculation of what they owe on your claim without getting other opinions.

You paid good money for insurance protection. Do your best to settle your claim directly with your adjuster by following United Policyholders tips. Try getting help from elected officials and government agencies. But if you run out of energy or time, or feel you’re over your head, hire qualified professional help. Depending on your particular situation, a construction professional, policyholder attorney or a reputable public adjuster can make a huge difference in getting you back home without further delays and aggravation. But always be careful before hiring anyone or signing contracts. Scam artists prey on disaster victims.

Q: What are the most common post-disaster insurance problems?

A: 1) Not having enough coverage (“underinsurance”)
2) Delays
3) Confusion over what’s covered and what’s not
4) “Lowball” estimates and settlement offers

5) Hardball negotiating tactics by insurance company employees

Q: Does every claim go that way?

A: NO. Many claims go relatively smoothly and the process works as it is supposed to. But every large loss insurance claim is time-consuming.

Q: Where can I find the rules and laws that apply to insurance claims?

A: In California there are “**Fair Claim Handling Regulations**”, and there are laws that tell insurers what they must, can and cannot do. These laws are in an “**Insurance Code**” (a fancy name for the book of laws governing insurance).

There are also laws in published decisions by Judges. Many claim disputes turn into lawsuits. The lawsuits that don't settle get resolved by juries and Judges. Their decisions create laws that are in addition to the “code” laws and regulations. Insurance companies are supposed to comply with all three: Regulations, statutory law, and case law.

California's Fair Claim Handling Regulations are very useful and specific re:

- Deadlines for responding to letters and phone calls
- Deadlines for proofs of loss
- What information your insurance company must give you

Many new laws have been passed to help solve insurance problems after previous disasters in California. Getting up to speed on them will help you get a better and more prompt insurance settlement. You can read a list of many of these laws in a special bulletin issued by the CA. Dept. of Insurance just after the wildfires earlier this fall. Again, you'll find it at their website.

Q: I think I may be underinsured/not have enough coverage to replace my home, contents or temporary living expenses. What should I do?

A: First, recognize that you're not alone. Our organization has been working for many years to wipe out this problem and help underinsured disaster victims get retroactive policy upgrades. We're working hard on it now. Many have succeeded 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. But it is a challenging problem and there is no “one size fits all” solution.

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

Step One: Calculate the total scope and amount of your 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.

Step Two: Remember and reconstruct as best you can the history of how your limits 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 Three: Consult with a qualified policyholder attorney before allowing your insurer to interview you, take your recorded statement or examine you under oath.

Step Four: Make a clear, written demand that your insurance company honor the promises it made to put you back where you were before a loss. Take all steps necessary to enforce that demand.

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.

Q: OK but what are “all steps necessary” to enforce my insurance company’s promise to put me back where I was before the loss?

A: 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 consult with 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.

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

A: Most lawsuits settle through informal negotiations or "mediation". Those that go to trial can 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. Create and use a **CLAIM DIARY** to help keep 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.

[If the above fails, contact The Voss Law Firm, P.C. for a confidential, no-obligation, unlimited consultation at absolutely no cost. We stand ready to fight for you, the policyholder.](#)

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 these claim tips and staying organized by using a claim diary and a three-ring binder will really increase your chances of getting treated well.

Q: Labor and material prices have jumped sky high, but the insurance company will only pay according to its "pricing guidelines." The guidelines are really out of date; what can I do?

A: Labor and material costs always go up after disasters due to supply, demand and greed. Your insurance company owes you for what it will cost in ***real life, not on paper*** (up to your policy limits). Guideline pricing is something insurance companies use to predict how much materials and labor should cost. This system is often a problem because reality demands flexibility. No one can accurately predict how much prices will change after a disaster.

Take plywood for example. Its price fluctuates wildly and can vary from \$12 per sheet up to \$25 per sheet in a post-disaster scenario. That doesn't make it right, but it's not fair or legal to make you wait until things stabilize to start repairing/rebuilding your home.

Roofs are a highly contested item. If the insurance company's pricing is \$150 per square foot but the market price is \$240, keep all receipts and demand the difference along with all amounts the insurance company "held back" due to Actual Cash Value (ACV) rules.

Q: What items can I claim for reimbursement under the Additional Living Expense (ALE) portion of my coverage?

Your insurance company (after a declared disaster) is supposed to give you a list of all items you can claim for reimbursement as ALE expenses. If they didn't, send a written request for that list and notify the Department of Insurance.

A: Temporary rent for the period of time it takes to replace your home to move-in condition. You're entitled to the cost of renting a place that's reasonably equivalent to your home. ¹ If delays out of your control make it take longer than two years, explain the circumstances in writing and request an extension.

Extra expenses from your changed living situation:

Gas and mileage: If you have to drive further from your temporary home to school, work, shopping, laundromat or elsewhere, that extra gas and mileage are reimbursable ALE expenses.

Food: If your temporary home has no cooking facilities, submit restaurant receipts to your insurance company. Relocate to a fully equipped home as quickly as possible to avoid using up the ALE coverage you'll need for temporary rent.

Replacement items for living: As you buy to replace things you need for daily living, (cooking utensils, personal hygiene, etc.) itemize them under your "personal property" claim and get reimbursed from your "Contents" coverage. Most people need all available ALE coverage to pay their rent.

Q: Will my insurer cover the cost if I live in a trailer during reconstruction?

A: If you're planning to rebuild/repair and stay in the area and are willing to live in a trailer, negotiate with your insurer to "cash out" your Additional Living Expenses (ALE) coverage limits so that you can buy a trailer or motor home with your ALE policy limits instead of using the money to pay rent. Negotiating a cash-out gives you flexibility and saves you from having to submit more receipts and paperwork to your insurance company.

Q: My home is very badly damaged but my Insurance Company is refusing to pay anything up front for my contractor's *overhead and profit*. I don't have the cash to advance this item, and he won't get started without it so I'm stuck.

A: This is a common problem with some insurance companies, and it's unfair. In some states it's illegal. Overhead and profit, ("O & P") is a known expense that all contractors charge, usually at a rate of 10% and 10%. An insurer that holds back O & P until repairs are completed puts the property owner in an impossible financial position.

Under a replacement cost policy, if you have a signed contract to rebuild, it is wrong for your insurance company to hold back O & P until your home is completely repaired.

Q: My insurance company keeps reducing what they're going to pay by "depreciating" items in my claim; what can I do?

A: Depreciation is subjective—not a science. Each adjuster makes his or her own decisions on how much and which items they depreciate. That means it's up to you to argue for more reasonable numbers. And not everything in your home is subject to depreciation. For example, paint, vinyl and roofing are exposed to the elements, so of course they deteriorate and are subject to depreciation. The underlying materials that held your home together—studs, cement, rebar, and framing—are not.

Studs can last 200 years, so don't allow your adjuster/insurer to depreciate those items. Adjusters and insurers rarely volunteer to tell you that if you submit receipts for items you replace, they **must** pay you the difference between what they paid you for the item's Actual Cash Value (ACV) and what it actually cost you (if you have a Replacement Cost, not strictly ACV policy).

Q: My adjuster is rushing me to complete my contents inventory, but I just can't remember everything yet.

A: Policies do contain deadlines but insurers routinely extend them. It's normal and fine not to remember much after a traumatic loss. Ask for extensions of time and if your insurer refuses, get help from the Department of Insurance and/or a qualified professional.

Take your time and don't be pressured. 99% of all disaster victims can't remember much of what they had— even after months and years after their loss. [The Voss Law Firm offers free, comprehensive inventory forms and lists at our website that will help in your claim.](#)

If you allow yourself to be rushed into a fast settlement, you are definitely going to underestimate what you had and get less than you're entitled to. Don't forget to include taxes, transportation and shipping costs associated with replacing items.

Q: My home is only partially damaged, but it will look weird if half the vinyl siding is old and half is new. The insurance company is telling me they don't owe for matching. Is that true?

A: NO. Your insurer owes it to you to restore your property to its pre-loss condition subject to the dollar limits of your coverage. The appearance of your home after repairs have been made is legally supposed to be "**uniform and consistent**". If you didn't have two colors of siding on your house before the loss, you don't have to have them after the loss. Insurance is supposed to put you back where you belong.

Q: The contractor-estimates I've received are \$20,000 and more above the ones the insurance company has gotten. How can I break the logjam and still hire the contractor I trust?

A: This is a very, very common problem. If you've submitted all the information that your insurance company needs to pay your claim, written follow-up letters and made phone calls to higher-ups in the company, but nothing's worked, consider "Mediation" or "Appraisal" to resolve the difference. Mediation is an informal way of resolving problems without going to court. Insurance Appraisals are like mini-trials without a jury.

Almost every homeowner's policy has an Appraisal section that is supposed to help resolve disputes over repair estimates. If you and your insurance company are far apart on the amount you're owed for repairs, consider using the appraisal process to settle the dispute. If you decide to use the process, ***make sure you get help from experts who don't do most or all their work for the insurance industry or you'll be wasting your time and money.***

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World Class Attorneys with Texas Heart

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