

# HOMEOWNERS INSURANCE

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UNDERSTANDING YOUR INSURANCE POLICY AND YOUR CLAIM



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# Homeowners Insurance

## Rules of the Road for Insurance Companies

1. Insureds seek protection against calamity and purchase insurance to buy peace of mind and security.
2. The insurer has a duty to give as much consideration to the interests of the insureds as it does its own.
3. The insurer must promptly conduct a fair, balanced and thorough investigation of the claim with a view toward paying the claim.
4. More specifically, an insurer may not focus on just those facts which justify denial of a claim and ignore evidence which supports payment.

# Homeowners Insurance

## What is Bad Faith?

- In every contract of insurance there exists a duty for the insurance company to act in good faith.
- The Implied Covenant of Good Faith and Fair Dealing requires the insurer to act fairly with respect to an insured's claim for benefits. The ultimate test of liability for bad faith is whether its refusal to provide policy benefits was unreasonable.
- If an insurer unreasonably refuses or delays paying benefits that are due, fails to protect the insured's interests as if they were its own, denies a claim without thoroughly investigating it, or ignores evidence which supports coverage—it has acted unreasonably towards its insured and has breached the covenant of good faith and fair dealing.

# Homeowners Insurance

## Homeowners Insurance is First Party Coverage

- Coverage for losses suffered directly by the insured—you.
- The insurance company promises to pay money to you upon the occurrence of an insured loss (peril).
- First party property coverage is “triggered” by the *manifestation of damage* during the policy period and the insurer on the risk at that time of the damage is responsible for the entire loss.

# Homeowners Insurance

## Understanding the Policy's Coverage Provisions

The standard homeowner's policy usually provides four discrete property loss coverages:

- Coverage A – “Dwelling”
  - Insures the residence.
- Coverage B – “Other Structures”
  - Detached Garages
  - Workshops
  - Guesthouses, etc.

# Homeowners Insurance

## Understanding the Policy's Coverage Provisions

- Coverage C – “Personal Property”
  - Personal items within your home or other structures.
- Coverage D – “Loss of Use”
  - “ALE”—Additional living expenses incurred during the period of repair or replacement.
  - “Fair Rental Value”—The rental value of the residence by looking to comparative rentals in the given area.

# Homeowners Insurance

## Types of Coverage:

- **Actual Cash Value**
  - Total Loss: payment of the policy limit or the fair market value, whichever is less.
  - Partial Loss: the amount it would cost to repair, rebuild, or replace, less a fair and reasonable deduction for physical depreciation based upon its condition at the time of the loss or the policy limit, whichever is less.  
(Ins. Code Sec. 2051)
  - “Fair market value” is the price a willing buyer would pay a willing seller. Factors such as age, condition, fitness for the buyer’s purpose and similar considerations are relevant in assessing fair market value.
  - Note, the above statutory definitions do not apply when the policy defines “actual cash value” differently.  
(i.e. Replacement Cost less depreciation)

# Homeowners Insurance

## Types of Coverage:

- Replacement Cost Coverage
  - Under a replacement cost policy, the measure of indemnity is the amount it would cost the insured to repair, rebuild or replace the damaged property, *without any deduction for depreciation.*  
(Ins. Code Sec. 2051.5 (a))
  - Three types of Replacement Cost Coverage:
    - Guaranteed Replacement Cost (not limited by stated policy limits)
    - Extended Replacement Costs (limited to stated policy limits + stated percentage increase)
    - Replacement Cost (limited by stated policy limits)

# Homeowners Insurance

## Types of Coverage: within Replacement Cost Coverage

- Guaranteed Replacement Cost
  - Guaranteed replacement of the structure.
  - Full cost to repair, rebuild or replace, irrespective of Policy Limits
- Extended Replacement Cost
  - Policy Limit
  - Plus an “Extension”
  - Typically 10% - 50%
  - Example
    - \$300,000 Policy Limit
    - 50% Extension (\$150,000)
    - \$450,000 “Extended” Policy Limit
  - The “Guarantee” is gone

# Homeowners Insurance

## Types of Coverage: within Replacement Cost Coverage

- Replacement Cost
  - Replacement cost provides for the cost to repair, rebuild or replace the damaged dwelling, up to the stated policy limit.  
(Ins. Code Sec. 10102)

# Homeowners Insurance

## CALIFORNIA RESIDENTIAL PROPERTY INSURANCE DISCLOSURE

Ins. Code Sec. 10102: Disclosure Form

PRODUCER		NAMED INSURED/APPLICANT'S NAME AND MAILING ADDRESS (include county & ZIP)			
					TELEPHONE NUMBER
CODE: AGENCY CUSTOMER ID		SUBCODE:	COMPANY		ACCOUNT NUMBER
			POLICY NUMBER	NEW RNWL	EFFECTIVE DATE
					EXPIRATION DATE
<p>This disclosure is required by California law (Section 10102 of the Insurance Code). It describes the principal forms of insurance coverage in California for residential dwellings. It also identifies the form of dwelling coverage you have purchased or selected. A checkmark in the box in the "Dwelling Coverage Selected or Purchased" column below identifies the form of dwelling coverage you have purchased or selected.</p> <p>This disclosure form contains only a general description of coverages and is not part of your residential property insurance policy. Only the specific provisions of your policy will determine whether a particular loss is covered and, if so, the amount payable. Regardless of which type of coverage you purchase, your policy may exclude or limit certain risks.</p> <p>This disclosure form does not explain the types of contents coverage (furniture, clothing, etc.) provided by your policy. Some policies do not replace contents with new items, but instead, only pay for the current market value of an item. If you have any questions, contact your insurer or agent.</p> <p>READ YOUR POLICY CAREFULLY. If you do not understand any part of it or have questions about what it covers, contact your insurance agent or company. You may also call the California Department of Insurance consumer information line at 1-800-927-HELP.</p>					
DWELLING COVERAGE SELECTED OR PURCHASED		FORMS OF COVERAGE FOR DWELLINGS			
<input type="checkbox"/>		<p><b>GUARANTEED REPLACEMENT COST COVERAGE WITH FULL BUILDING CODE UPGRADE</b> PAYS REPLACEMENT COSTS WITHOUT REGARD TO POLICY LIMITS, AND INCLUDES COSTS RESULTING FROM CODE CHANGES.</p> <p>In the event of any covered loss to your home, the insurance company will pay the full amount needed to repair or replace the damaged or destroyed dwelling with like or equivalent construction <u>regardless of policy limits. Your policy will specify whether you must actually repair or replace the damaged or destroyed dwelling in order to recover guaranteed replacement cost.</u> The amount of recovery will be reduced by any deductible you have agreed to pay.</p> <p>This coverage includes all additional costs of repairing or replacing your damaged or destroyed dwelling to comply with any new building standards (such as building codes or zoning laws) required by government agencies and in effect at the time of rebuilding.</p> <p>To be eligible to recover full guaranteed replacement costs with building code upgrade, you must insure the dwelling to its full replacement cost at the time the policy is issued, with possible periodic increases in the amount of coverage to adjust for inflation and increases in building costs; you must permit inspections of the dwelling by the insurance company; and you must notify the insurance company about any alterations that increase the value of the insured dwelling by a certain amount (see your policy for that amount).</p> <p>The annual premium for this category of coverage is: \$ _____</p>			



DWELLING COVERAGE SELECTED OR PURCHASED	FORMS OF COVERAGE FOR DWELLINGS
<input type="checkbox"/>	<p><b>GUARANTEED REPLACEMENT COST COVERAGE WITH LIMITED OR NO BUILDING CODE UPGRADE</b>  PAYS REPLACEMENT COSTS WITHOUT REGARD TO POLICY LIMITS BUT LIMITS OR EXCLUDES COSTS RESULTING FROM CODE CHANGES. (continued)</p> <p>To be eligible to recover full guaranteed replacement cost with limited or no building code upgrade, you must insure the dwelling to its full replacement cost at the time the policy is issued, with possible periodic increases in the amount of coverage to adjust for inflation and increases in building costs; you must permit an inspection of the dwelling by the insurance company; and you must notify the insurance company about any alterations that increase the value of the insured dwelling by a certain amount (see your policy for that amount).</p> <p>The annual premium for this category of coverage is: \$ _____</p>
<input type="checkbox"/>	<p><b>EXTENDED REPLACEMENT COST COVERAGE</b>  PAYS REPLACEMENT COSTS UP TO A SPECIFIED AMOUNT ABOVE THE POLICY LIMIT.</p> <p>In the event of any covered loss to your home, the insurance company will pay to repair or replace the damaged or destroyed dwelling with like or equivalent construction <u>up to a specified percentage over the policy's limits of liability</u>. See the Declarations Page of your policy for the limit that applies to your dwelling. <u>Your policy will specify whether you must actually repair or replace the damaged or destroyed dwelling in order to recover extended replacement costs</u>. The amount of recovery will be reduced by any deductible you have agreed to pay.</p> <p>To be eligible to recover extended replacement cost coverage, you must insure the dwelling to its full replacement cost at the time the policy is issued, with possible periodic increases in the amount of coverage to adjust for inflation; you must permit an inspection of the dwelling by the insurance company; and you must notify the insurance company about any alterations that increase the value of the insured dwelling by a certain amount (see your policy for that amount). Your policy will specify whether or not you must actually repair or replace the damaged or destroyed dwelling in order to recover extended replacement cost. Read your Declarations Page to determine whether your policy includes coverage for building code upgrades.</p> <p>The annual premium for this category of coverage is: \$ _____</p>
<input type="checkbox"/>	<p><b>REPLACEMENT COST COVERAGE</b> PAYS REPLACEMENT COSTS UP TO POLICY LIMITS.</p> <p>In the event of any covered loss to your home, the insurance company will pay to repair or replace the damaged or destroyed dwelling with like or equivalent construction <u>up to the policy's limit of liability</u>. See the Declarations Page of your policy for the limit that applies to your dwelling. <u>Your policy will specify whether you must actually repair or replace the damaged or destroyed dwelling in order to recover replacement costs</u>. The amount of recovery will be reduced by any deductible you have agreed to pay. To be eligible to recover replacement cost, you must insure the dwelling to 100 percent of its replacement cost at the time of loss. Read your Declarations Page to determine whether your policy includes coverage for building code upgrades.</p> <p>The annual premium for this category of coverage is: \$ _____</p>
<input type="checkbox"/>	<p><b>ACTUAL CASH VALUE COVERAGE</b>  PAYS THE FAIR MARKET VALUE OF THE DWELLING AT THE TIME OF LOSS, UP TO POLICY LIMIT.</p> <p>In the event of any covered loss to your home, the insurance company will pay either the depreciated fair market value of the damaged or destroyed dwelling at the time of the loss or the cost of replacing or repairing the damaged or destroyed dwelling with like or equivalent construction <u>up to the policy limit</u>. The amount of recovery will be reduced by any deductible you have agreed to pay. Read your Declarations Page to determine whether your policy includes coverage for building code upgrades.</p> <p>The annual premium for this category of coverage is: \$ _____</p>
<input type="checkbox"/>	<p><b>BUILDING CODE UPGRADE - ORDINANCE AND LAW COVERAGE</b> PAYS, UP TO LIMITS SPECIFIED IN YOUR POLICY, ADDITIONAL COSTS REQUIRED TO BRING THE DWELLING "UP TO CODE".</p> <p>In the event of any covered loss, the insurance company will pay any additional costs, up to the stated limits, of repairing or replacing a damaged or destroyed dwelling to conform with any building standards such as building codes or zoning laws required by government agencies and in effect at the time of the loss or rebuilding (see your policy).</p> <p>The annual premium for this category of coverage is: \$ _____</p>
<p>Applicant's Signature _____ Date _____</p>	

# Issues to keep in mind

## Are you underinsured?

Past California fire victims have been drastically underinsured. In other words, their homes were not “insured to value”.

- Who sold you the Policy?
  - Insurance “Agent”?
    - “a person authorized, by and on behalf of an insurer, to transact all classes of insurance other than life insurance.” (Ins. Code Sec. 31)
    - Insurers are liable for the acts of their “Agents.”
  - Insurance Broker?
    - “a person who, for compensation and on behalf of another person, transacts insurance other than life with, but not on behalf of, an insurer.” (Ins. Code Sec. 33)
- Who chose the Policy Limit?

# Issues to keep in mind

## Are you underinsured?

The switch from “Guaranteed” Replacement Cost to “Extended” Replacement Cost Coverage occurred in mid-1990s

- Reduction in limits
- Elimination of a benefit
- California Insurance Code Section 678 (a)(1)(A)
  - Requires that an insured be notified of any “reduction of limits or elimination of coverage” at least 45 days prior to policy expiration.

If no notice from the insurer with regard to reduction in limits or elimination of coverage, an argument can be made under §678 that the limits should not be reduced.

# Issues to keep in mind

## Low-Balling

A common practice (amplified during catastrophic losses) where the insurance industry has historically undervalued the scope and cost of repair or replacement.

- Scope of Repair/Replacement
  - What needs to be fixed and/or best method of repairing/replacing to “pre-loss condition”.
- Cost to Repair
  - Often the “bid”, which is unreasonably low and in a dollar amount for which the contractor could never do the job properly.
- Carrier’s obligation is to “pay” a measure of damages, NOT to do the repair.

# Issues to keep in mind

## Programs used by Contractors



**MSB Calculated Value**

**MSB Calculated Value**

**Want to use the MSB value?**  
Click the "BASIC" link above to change the stated value on the Basic Information screen.

**\$81,040 - Replacement Cost**

**\$47,003 - Actual Cash Value**

[REFRESH VALUES FROM MSB](#)

[GO TO MSB COST ESTIMATOR](#)

[View MSB Report \(pdf\)](#)

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# Issues to keep in mind

## Delay

Another common practice is delay in paying benefits. Generally the tendency to delay is made worse in catastrophic loss situations.

Insurers will say that the large number of claims at the same time makes it difficult to adjust claims in the “typical” time frame for a loss.

It is not uncommon to find claims that remain open and pending even three or more years after the loss.

# Getting through the “Adjustment”

## Your duties under the Insurance Policy

- Notice
  - Most policies require that an insured notify its insurer “as soon as practicable” after the loss.
- Cooperation
  - Most policies contain a “cooperation” provision, stating that the insured is to cooperate in the insurer’s investigation of the loss.
  - Failure to cooperate could relieve the insurer of its duties under the policy.

# Getting through the “Adjustment”

## Your duties under the Insurance Policy

- Proof of Loss
  - A “proof of loss, signed and sworn to by the insured” documenting the nature and extent of the loss, e.g. structure and personal items, must be submitted—often, within 60 days after the loss, unless waived by the insurer.
- Examination Under Oath
  - Most policies give the insurer the right to conduct, “as often as necessary”, an examination of the insured, under oath, about any matter relating to the insurance or the loss. And,
  - May require the insured to produce relevant records for the examination.

# **\*\*IMPORTANT\*\***

## Standards for Prompt, Fair and Equitable Settlements

10 Calif. Code Reg. Sec. 2695.7 (b), (b)(1), (c)(1), (f)

- Upon receiving proof of claim, every insurer shall immediately, but in no event more than forty (40) calendar days, accept or deny the claim, in whole or in part.
- When an insurer denies or rejects a first party claim, it shall do so in writing and shall provide a statement listing all bases for such rejection or denial, as well as the factual and legal basis for each reason given for such rejection or denial which is then within the insurer's knowledge.
- If the insurance company requires more time than the original forty (40) calendar days, then it is required to let you know, before the forty days expires, as to why it needs more time and what additional materials it may need to make a decision. It must then provide you with written notice every thirty (30) calendar days until it makes a decision.
- Every insurer shall provide written notice of any statute of limitation or other time period requirement upon which the insurer may rely to deny a claim—no less than sixty (60) days prior to the expiration date.

# Getting through the “Adjustment”

## Contractual Limitations Period

- “Suit Against Us” provision—imposing a contractual limitation period of one (1) year from the date of the loss.
- “Date of the Loss”
  - That point in time when appreciable damage occurs and is or should be known to the insured, such that a reasonable insured would be aware that his notification duty under the policy has been triggered.
- However, limitations period “equitably tolled” during the time the claim is being considered by the insurer.
  - Clock stopped upon notice of claim to Insurer
  - Clock starts again upon written denial by Insurer, and/or notification that adjustment is complete. (10 CCR 2696.7 (f))

In other words, the insured is not penalized for the time used by the insurance company investigate/adjust the claim.

# Getting through the “Adjustment”

## Pay attention to Coverage D - Loss of Use

### “ALE” versus “Fair Rental Value”

- “ALE”—Additional Living Expenses
  - If you have ALE you are entitled to receive reimbursement for those living expenses that would otherwise not have been incurred had the loss not occurred.
    - Cost of renting alternative housing.
    - Increased meal expenses due to lack of a kitchen.
- “Fair Rental Value”
  - The rental value of the residence by looking to comparative rentals in the given area.

# Getting through the “Adjustment”

## Pay attention to Coverage D - Loss of Use

“ALE” versus “Fair Rental Value”—the main differences:

Under an ALE provision, the insured is entitled to receive reimbursement for those expenses which are actually incurred.

Under a Fair Rental Value provision, the insured is entitled to the rental value, regardless of whether the insured decided to actually spend the same amount on replacement housing.

# Getting through the “Adjustment”

## Get an accurate “Scope of Loss”

- “Scope of Loss”
  - an itemization of all that needs to be done to repair or replace
- “Estimate”
  - an itemization of what it will cost to do all that needs to be done to repair or replace

In some cases, the insurance company’s own scope of loss and estimate may be in excess of the policy limit, even with the extension.

You should still get your own scope of loss. It is impossible to objectively identify the value and the extent of the claim, and whether you are underinsured without your own scope of loss.

# Getting through the “Adjustment”

## Work on getting a full inventory of Personal Property Items

- Identify the total contents lost with as much specificity as possible.
- Mentally go through each room in your home and identify everything in each room.
  - Log on to your Amazon account and download a past history of items ordered.

# Getting through the “Adjustment”

## Get Undisputed Amounts Paid

In every claim there will be “undisputed” amounts that both you and the insurance company agree are owed—insist that they be paid promptly.

The failure to pay an undisputed amount can form the basis for a bad faith claim as an unreasonable “withholding” of benefits.

Keep track of each “undisputed” payment.

# Getting through the “Adjustment”

## Appraisal

Most homeowner’s policies contain an Appraisal provision, which indicates if the insurer and the insured are unable to agree on the amount of the loss, then either can demand appraisal to determine the amount of the loss.

California Insurance Code Section 2071:

“In the event of a government-declared disaster, as defined in the Government Code, appraisal *may* be requested by either the insured or this company *but shall not be compelled.*”

# Getting through the “Adjustment”

## Other Tips:

- Get and read a complete copy of your Policy.
  - Including the “Dec Page.”
  - Know your coverages and the amounts of each coverage.
- Remember, the insurance claims adjuster works for the Insurance Company, not for you.
- Get everything in writing.
  - Ask your questions in writing—let your insurance company know you want answers in writing.
- Organize with neighbors to form “carrier-specific” groups.
- Keep a daily claim journal.
- If you haven’t already, take pictures or video of all damage to your property.

# Getting through the “Adjustment”

## Other Tips:

- Get insurance company approval before repairs.
- If you are offered money, be extremely suspicious if asked to sign releases or waivers. **NOT REQUIRED IN ORDER TO RECEIVE BENEFITS UNDER THE POLICY.**
- Take your time. Avoid agreeing to “low-ball” offers.
- When dealing with insurance companies it is important to be firm, but polite. Make sure the insurance company knows you are aware of its obligations to you as the insured.

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