Homeowners Insurance Guidebook: Wildfires

"If you are the victim of a wildfire, as soon as you find a safe place to stay, contact your insurance agent or insurance company."

This information is provided to you by the attorneys at

KANTOR & KANTOR LLP

Kantor & Kantor, LLP is one of the most experienced and highly respected law firms in the nation dealing with litigating insurance claims against insurance companies. Our firm also has extensive experience with the complex appeals procedure and federal court litigation of ERISA matters.

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INTRODUCTION

Wildfires have become a sad fact of life up and down the West Coast.

Most homeowners believe that they are protected in the event of a major disaster like a fire through their insurance. Many discover only after a fire that their insurance does not provide the coverage they believed it did.

Even for those who have plenty of insurance coverage, the process of filing a claim with an insurance company, managing temporary housing and building or buying a new home can be daunting. This Guidebook provides an overview of the process of navigating an insurance claim after a wildfire, and a discussion of some of the biggest issues insured homeowners encounter during that process.

REVIEWING YOUR INSURANCE

If your home has just burned to the ground, how likely is it for you to have copies of your insurance policy? After finding a hotel or place to stay, the first thing to do is to call the insurance agent or insurance company and make a claim. As part of that claim, ask for a copy of your entire policy. Insurers often simply provide the declarations page when asked for a copy of the policy. The declarations page provides a summary of the amounts of coverage under the policy. It does not provide information about how to make a claim, the process that the insurance company will follow in reimbursing the insured, or exceptions and limitations in the policy you might not even know is in the policy.

> *"...ask for a copy of your entire policy..."*

Therefore, the first thing an insured should do when making a wildfire claim is to obtain a complete copy of the insurance policy. This will explain the types of coverage, what is and is not included, the required steps for making a claim, how the insurer will reimburse you, and any limitations or endorsements (additions to coverage) in the policy.

The basic types of coverage in a homeowner policy include:

Dwelling. This is the coverage for the house. Many of the other coverages in the insurance policy are based on a percentage of this amount. It is important to make sure that the Dwelling coverage (sometimes called "Coverage A") is calculated correctly.

Extended Dwelling coverage. Some policies include "extended" coverage, which is usually an additional percentage of the Dwelling coverage. It may say 125% or 150% of the Dwelling coverage. This means that, in the event it costs more than your Dwelling coverage to rebuild, you can access an additional 25% or 50% of the coverage amount. So, if your insurance provided $200,000 as your Dwelling coverage, and you had Extended Dwelling coverage of an additional 50%, you would have coverage for an additional $100,000 if you needed it to complete the rebuild.

Additional Structure coverage. This will cover any carport, shed, barn, gazebo, greenhouse, chicken coop, pool, etc. on the property. It is usually 10% of the Dwelling coverage.

Personal Property coverage. This is for the contents of the home. It is usually 50% of the Dwelling coverage. It is important to read your policy carefully when making claims for personal property, as most policies have strict limits on coverage for jewelry, art, furs, rugs, computer equipment, and business property. Unless you obtained endorsements to increase the limits for any of these categories, you may find that you cannot replace all your items in this category.

Ordinance/Code Upgrades: This covers the cost of upgrading structures to meet new code requirements that may not have existed at the time the original home was built. The coverage is usually 10% of the Dwelling coverage. The policy terms usually state that these costs are not reimbursed until the repairs or rebuild is complete.

Additional Living Expenses/Loss of Use: Additional Living Expenses ("ALE") covers the cost of alternative housing and any other expenses you as the insured homeowner incurs while you rebuild your home. While it is sometimes set as an amount of time, more often it is set as a percentage of the Dwelling coverage. Be aware, that it routinely takes two to three years at least to rebuild a home in areas hard-hit by wildfires, given the years of prior fires and those already competing for labor and materials, and the delays in county permit offices. If the ALE coverage is a set dollar amount, it is important to insist to the insurance company that they choose the most cost-effective housing possible, as you will need to stretch that money as long as you can. If you are not happy with the housing the insurer offers, you are able to find your own rental. Be aware that the insurer is not obligated to purchase housing for you, such as a trailer, during the rebuild process.

> *"If the ALE coverage is a set dollar amount, it is important to insist to the insurance company that they choose the most cost-effective housing possible, as you will need to stretch that money as long as you can."*

In California, recent insurance regulations have required all insurers to extend ALE payments from the prior 24 month limit to 36 months if the insured lost the home in a wildfire, and to provide upon request a 4-month advance of ALE payments. This is not helpful to insureds who have a dollar limit, however, as it does not increase the overall dollar amount of the insurance coverage.

Debris Removal: usually 5% of the Dwelling coverage. To be used for clearing the lot.

Shrubs and plantings: usually 5% of the Dwelling coverage. To replace landscaping.

Other types of insurance: If you do not own the home, renters insurance will still cover personal property and Additional Living Expenses. If you lose a business in a wildfire, the business insurance should cover the losses and have a section covering Business Loss, to protect you while your business is unable to provide a full income. Your homeowner insurance will not cover damage to a vehicle during a fire, but your auto insurance will.

Fair Access to Insurance Requirements (FAIR) Plan policies: Each state has a FAIR Plan insurance exchange. Mandated by the states, these policies are provided by an insurance exchange to which all insurance companies contribute. FAIR Plan policies are available in high-risk areas, usually wildfire areas. They are available to homeowners who have been turned down by at least three other insurance companies due the risk of their location. FAIR Plan policies provided limited coverage. Most homeowner policies provide coverage for liability in case of lawsuit. They provide coverage for repairs if a pipe bursts. They provide Additional Living Expense coverage in the event of a disaster beyond rent, covering the cost of furniture, food, pet boarding, etc. The FAIR Plans provide none of these coverages. They provide simple coverage for fire, and are intended to provide some coverage for rebuilding and for rent for a fairly short period of time. If an insured chooses to, she can pay extra for coverage for windstorms, hail and vandalism.

MAKING THE CLAIM

If you are the victim of a wildfire, as soon as you find a safe place to stay, contact your insurance agent or insurance company. Let them know that you have evacuated and that you believe your home may be destroyed. Explain that you need Additional Living Expense coverage and believe you will need to rebuild your home. The insurance adjuster will be handling other, similar claims to yours. She will ask you to document all of your expenses and to confirm with them once you know the fate of your house.

> *“If you are the victim of a wildfire, as soon as you find a safe place to stay, contact your insurance agent or insurance company.”*

Ask for a complete copy of your insurance policy to be sent to you immediately. They should be able to email you a copy, or at least fax one to the hotel where you are staying.

Once you confirm that your house has been destroyed, you should let the insurer know right away. They may be able to advance you a payment – in California, they are now required to advance you 4 months of additional living expenses upon request.

This is the time for you to start thinking about your long term housing needs. The insurance company may push back on putting you into a long term contract, stating that you will need less than a year before your home is rebuilt, especially if the home was not totally destroyed. If your ALE coverage has a total dollar limit, however, this is not in your best interest. Insist on a more cost-effective housing option, as it may be three years before you are able to move into your new home. While your insurance company may push back on this, you can find your own housing if you prefer.

You will be asked to provide a detailed list of personal property you need to replace. It’s a good idea to carry a notebook around with you to jot down items as you remember them. Creating a comprehensive list of everything you have lost is obviously impossible, but you’ll be able to remember more if you write down items as they occur to you.

The policy will explain the “rules” of how the insurance company will reimburse you. While the steps will be specific to your policy, generally the insurance company will pay for the replacement value, but will deduct depreciation from that. If you actually rebuild, or replace the personal property, and provide receipts to show you did, then they will reimburse you for the depreciation they withheld. Some insurance companies may pay your entire coverage amount upfront if your house has been destroyed. Others may only pay as receipts come in.

Your policy will have a deductible, usually anywhere from $500 to several thousand dollars. The insurance company will deduct this amount from any reimbursement they provide.

> *If you intend to rebuild, you will want to move promptly to begin that process, as it can take much longer than anticipated.*

When wildfires occur, dozens or even hundreds of buildings may be affected. There will be a rush of people trying to secure contractors. If you intend to rebuild, you will want to move promptly to begin that process, as it can take much longer than anticipated.

Public Adjusters and Attorneys, What's the Difference?

Working with the insurance company to process your claim can be an enormous time commitment. Not everyone has the time, or patience, to manage it. Public adjusters are people with significant experience in handling insurance claims for people. They can represent you to the insurance company, so you do not have to deal with the minutiae of the claims process. They are paid a percentage of your total reimbursement for your claim, usually 5-10% of it. They are motivated to obtain the most reimbursement possible for you and are well versed in interpreting policy language and have many connections in the construction industry and the insurance industry. If you do not want to manage the claim process yourself, hiring a public adjuster is an option that could work well for you.

Attorneys generally do not manage claims for insureds. You may wish to involve an attorney if you believe the insurance company is not providing you with the coverage you are entitled to under the contract, if the insurer is delaying payments consistently, or if the insurer is trying to find technicalities on which it can deny your claim. Some insurance companies may seek an Examination Under Oath where they ask you questions under oath – this generally occurs where they suspect fraud. This is another situation where you may want an attorney to represent you. Attorneys may represent you and charge you an hourly rate. They may also arrange a "contingency fee" where they agree to represent you in exchange for 40% or so of the money they win for you in litigation.

Starting the rebuild process, or choosing not to rebuild

With wildfires increasing each year, you may decide you do not want to rebuild your home and choose to move elsewhere. This is a common choice. If you decide not to rebuild, the insurance company will pay for your coverages, and deduct their calculation of depreciation. That will be the amount you have to use to buy a new home. You can also sell the plot of land on which your original home was located and put that toward the new purchase.

If you choose to rebuild, the insurance company will work with you throughout the process. They generally will only reimburse specific expenses after they are incurred, which can create complications as you try to pay for large ticket items. Some insurance companies will decline to pay for services or quotes that they believe are too high, even if you have several quotes demonstrating that the number is the standard rate.

Xactimate

Xactimate® is a computer software product widely used by insurance companies to estimate construction costs. The estimate of the cost to replace your home, used by the insurance company to set your insurance coverage, was likely calculated using Xactimate. Insurance adjusters rely on Xactimate to provide estimates of the cost to repair or rebuild homes. Keep in mind, since Xactimate® is generic software based on the cost to build large numbers of tract homes, using an estimate of the general cost for a regional area, Xactimate's quotation will likely not be enough to replace your individual home.

> *"If your contractor is participating in settlement discussions with the insurance company's adjuster, it is useful to have a contractor who is well-versed in Xactimate to better help translate the generic estimate into specifics for your home."*

The estimate you obtain from a contractor or builder may differ widely from the insurance company's estimate, because contractors and builders generally do not use Xactimate. They base their estimate on the actual factors involved in rebuilding your specific property. If your contractor is participating in settlement discussions with the insurance company's adjuster, it is useful to have a contractor who is well-versed in Xactimate to better help translate the generic estimate into specifics for your home.

Xactimate®'s pricing is frequently too low. It is based on general estimates for an entire region, not neighborhood by neighborhood. It is often based on information that is a few years old and does not take into consideration increases in cost of construction caused by ongoing seasonal wildfires, for example. And it does not take into consideration custom issues related to a home. It also can only provide estimates based on the information put into the system, so if the adjuster uses the wrong base information, the estimate will be wrong. Usually when the estimate is wrong, it is too low, and that is the dollar amount the adjuster will offer to settle your claim.

A good insurance adjuster will be aware of these flaws in Xactimate and should be open to revising the estimate based on specific bids. If not, that may be a sign that you want to involve a public adjuster to represent you, or perhaps an attorney if you believe the policy is not being followed, or if the insurer has officially declined to pay you what you believe you are owed.

Having your ALE covered

Your policy should include Additional Living Expenses, intended to cover your costs while you rebuild or buy a new home. In the first few weeks you may be in a hotel while you figure out your next steps. The insurance company will pay for the hotel. The insurer is required to cover the cost of renting you a home that is the equivalent to what you had prior to the fire. If you lived in a 4 bedroom home, they are required to rent you a 4 bedroom home if that is what you need. However, especially after a fire, finding rental properties can be difficult, and extraordinarily expensive as hundreds of families seek housing in the area at the same time.

The chances are good that your policy provides you with a specific dollar amount of ALE to use. While your policy may say that it will only pay for those costs for 24 months, if you are in California, the insurance commissioner has passed a new regulation requiring insurance companies to pay ALE for a 36 month minimum. If your policy states that it will provide you 24 months of ALE without providing a dollar limit, then you will actually be fully covered for 36 months because of the new regulation. However, if your policy says you have a dollar limit, once that limit is hit, the insurance company will not pay more, regardless of whether you have another place to live when it runs out.

COMMON PROBLEMS YOU MAY ENCOUNTER

Ideally, your insurance company will pay your claim promptly and fully, and you will be able to get your life back on track after the wildfire with the insurer as your partner and supporter. That does not always happen, however. Here are some of the problems that insureds encounter most often with their insurance company after a fire.

Pressure to settle quickly. Your insurer wants you to get moving on your rebuild or decision to move to a new location as fast as possible. They would prefer not to have to pay the full value of your ALE. They also recognize that the longer you delay, the more carefully you may look at the real cost to rebuild your home. Your adjuster may pressure you to accept a full settlement of your claim quickly, before you have the opportunity to speak with contractors, architects and engineers. The cost to rebuild will be a bit of a moving target, and some items, like ordinance/code upgrades, are not usually paid under the policy until after the rebuild is complete. Therefore, while the insurance company is certainly welcome to make advance payments, do not accept them as full payment, or sign anything that states you have accepted it as full settlement of your claim, until the rebuild is complete.

> *"Therefore, while the insurance company is certainly welcome to make advance payments, do not accept them as full payment, or sign anything that states you have accepted it as full settlement of your claim, until the rebuild is complete."*

Cancellation or rescission. Insurance companies do not look closely at your policy and your insurance application until you make a claim. At that time, the adjuster may notice irregularities in your application compared to the information obtained during the claim, or your insurance payment may have been late or for the wrong amount in the month prior to making your claim. Some insurers actively look for reasons to rescind a policy or cancel it based on facts discovered during a claim. If that happens, you will need to contact an attorney. Rescission of a policy means retroactively cancelling the policy as if it had never existed. This is what an insurance company can do if it takes the position that there was a material misrepresentation on your insurance application. If your last premium payment was incomplete or late, the insurance company can cancel the policy based on that fact back to when the premium was due, leaving you with no insurance coverage and a destroyed home. These are situations where a lawyer may be able to help you.

Underinsured. The most frequent issue insureds experience after a wildfire is learning that it will cost easily twice their insurance coverage to rebuild their home. They find they are underinsured for several reasons. First, when the insurance policy was written, it is possible that the agent who recorded the information for the home simply got it wrong. Most insureds assume if that if there is a provable error in the policy coverage, it is on the insurance company to make it right. They are surprised to learn that the law can disagree in some situations. Under the law in most states, it is the responsibility of the insured to confirm that the property has enough coverage in the event of a disaster. Your insurance company will argue that, even if you are underinsured because of a mistake they made in their underwriting, it was your responsibility to double-check. This may seem confusing, as the insurance company is the one who provides a coverage amount in the insurance policy and does not ask for the insured's input. However, it does say on the insurance policy that the coverage amount is an estimate and should be reviewed by the insured. The law can rely on that statement to put the burden on the insured. If you find that you are underinsured and believe it is due to an error made by the insurance company or your broker, you will likely need to contact a lawyer to address it. There are other factors besides simply underestimating the cost to replace the home that can result in being underinsured after a wildfire. If your policy has been in place for a long time, the annual increase may not have kept pace with the costs to rebuild in your area. This is especially true in an area that has experienced recurrent wildfires. In those areas, the shortages of materials and labor created by years of fires mean that costs are rising faster than the insurance companies' annual increases. The pandemic has been another source of delays and cost increases, creating further disparities in cost for people trying to rebuild.

> *"Under the law in most states, it is the responsibility of the insured to confirm that the property has enough coverage in the event of a disaster."*

Delay. Some insureds become frustrated with the length of time it can take to get the insurance company to pay for items or approve next steps. Insurers will often request large amounts of documentation

with detailed breakdowns, some of which might not even exist. Where insurance companies often simultaneously are demanding evidence of ongoing progress in the rebuild, this can be extremely frustrating.

Issue with the ALE. When you home burns down, your first question is often, "what will happen to us now?" As covered earlier, your insurance policy likely provides Additional Living Expenses while your home is rebuilt. The insurance company has the final say on where they find for you to stay. Understandably, it can be difficult to find a furnished long term rental in an area devastated by wildfires, where dozens or even hundreds of other families also need temporary housing. This means that the cost of housing often skyrockets. The insurance company is required to give you similar housing to your destroyed home, so if you had a four bedroom home, they are required to house you in a four bedroom home if you want that. That can be practically challenging, however. Insurance policies generally are limited to 24 months of ALE payments, though new California insurance regulations extend that to 36 months if the insured lost their home in a wildfire. (California Insurance Code Section 2060(b)(1).) Those new regulations also require insurers, as of January 1, 2021, to pay a four-month advance for ALE at the request of the insured.

Even at 36 months, many insureds have not finished building their new homes. Insurance policies often also have a dollar limit on ALE in addition to a time limit, and will only pay until the time limit is up or the dollar amount is used. Where housing is expensive, the ALE dollar amount can run out quickly. Insurance companies are not motivated to find the most cost-effective option for housing their insureds, and the ALE is often quickly eaten up by long term hotel stays, or more expensive monthly leases or six month leases instead of year long leases. Many insurance companies avoid allowing their insureds to enter into year-long leases, worried that the repairs may be done before the lease runs out. Insurance companies also refuse to purchase trailers or other options for their insureds to live in during the rebuild, even when those options are less expensive than the ALE limits or their current housing.

Disputes Over Cost. This is the issue that most insureds think of when they imagine problems rebuilding their homes, and it is a valid concern. Insurance companies rely on Xactimate/360Value or similar software to provide their idea of the appropriate cost to rebuild, and that amount can be off by hundreds of thousands of dollars compared to what an actual contractor will charge for the word. It can be particularly tricky when the insured's home did not burn down entirely, and needs to be repaired rather than rebuilt. Disputes about the condition of the house before the fire, the scope of the repairs and the damage caused by the fire can result in every bill being questioned and many being refused. These disputes can further deplete your ALE, as that money is used each month for your temporary housing while your insurance company disagrees about the cost of the repair or rebuild. Ironically, this is often less of an issue for homeowners needing to rebuild from scratch, as the insurance company is only liable for the limits of the insurance policy, and most insureds find themselves underinsured when they try to rebuild. So the insurance company will pay the policy limits when a rebuild is required, but the insured still does not have enough money to rebuild.

Personal Property. If the home is destroyed, some insurance companies may be willing to simply cut a check for the policy limits on personal property. Many others, however, will require an itemized list of everything you owned and will only reimburse items you list. Most people will not be able to re-create a complete list of every item in their home, meaning that the insurance company already has an advantage. When you seek to replace your items, your insurance company has a second advantage. They will only pay the actual cash value of the items, meaning that they deduct depreciation. If you actually purchase a new version of the item and submit the receipt, they will then pay the difference. But this means that you have to pay for part of each item out of pocket, and then wait to be reimbursed.

Ordinance or Code Expenses. When people think about the cost to rebuild their home, they tend to assume that not much will change. For older homes especially, that is often not the case. Changes in the building code for your county or state can dramatically increase the complexity of your build as your contractor must meet those standards, and often add hundreds of thousands of dollars to the total cost of your build. While in some cases the code upgrade cost may be as much as 50% of the total cost of the build, insurance policies generally allocate only 10% of the Dwelling coverage amount for code upgrades. This leaves code upgrades significantly underinsured. Additionally, the policy language generally states that code upgrades will not be paid until the rebuild is completed. But those costs are incurred throughout the rebuild, meaning that again, the insured is expected to pay them out of pocket, or ask their contractors to go unpaid for those items, until the project is complete.

FAIR Plan Policies

As we covered earlier, many homeowners who lose their homes in wildfires have insurance through the California FAIR Plan Association. The FAIR Plan exists in most states, and provides insurance "of the last resort" in areas that other insurance companies don't want to insure because the unacceptably high risk. As fires have become more of an issue on the west coast, the areas that insurers will no longer coer increase. The FAIR Plan is an insurance exchange, mandated by the state, that all insurers must pay into with the intent of providing basic fire coverage in areas where homeowners otherwise cannot find insurance.

Please note that the coverage offered by the FAIR Plan is bare-bones. The FAIR Plan generally offers fire coverage, and if an insured chooses to pay extra, coverage for wind damage and hailstorms. The insurance will provide Additional Living Expenses, and limited personal property coverage. There is no coverage for theft, and no liability coverage. They generally do not provide replacement coverage, only actual cash value, which means depreciation is deducted. To qualify for FAIR Plan insurance, a homeowner must have been turned down by three other insurance companies.

California Fair Plan recently was forced by the California Insurance Commissioner to increase its limits to $3 million for coverage. In Washington there is a $1.5 million limit on coverage. In Oregon there is a limit of $300,000 on residential property and $600,000 on commercial property. Nevada does not offer a FAIR Plan.

Some insureds do not know that their insurance coverage is through FAIR Plan until there is a fire, if they obtained it from an agent for another insurance company. All insurance agents and brokers can sell FAIR Plan policies. It is not uncommon for an agent for an insurance company that an insured has worked with before to try and obtain coverage through its usual company, be unable to obtain it, and get coverage through the FAIR Plan without the insured ever understanding that their insurance is limited. If that happens to you, you may have a cause of action against your insurance agent.

CONTROLLING LAW

Each state has specific insurance regulations controlling the duties of both the insurer and the insured. There are also laws and regulations about deadlines and statutes of limitations, which is the deadline for filing a lawsuit in court. If a statute of limitation is missed, you may not be able to pursue your claim, so it is important to know the relevant laws and deadlines.

California

In California, any insurance contract will first be controlled by any contractual limitation period in the contract. Most insurance policies state that you can only bring suit up to one year after proof of loss is provided. There are some important caveats to that. First, that timeframe is tolled while the insurance company investigates your claim, and it does not begin to run until you receive an actual denial. Second, in California the insurance commissioner has ordered that for any state disaster, such as a wildfire, the 12 month limit must be extended to at least 24 months.

There is a two year limitation on bringing suit for breach of the implied covenant of good faith and bad dealing, which is the tort of bad faith. Like the breach of contract claim, that limit is tolled until a denial is issued.

In California an insured can bring a cause of action against their insurance company for breach of contract. They can also allege the tort of breach of the implied covenant of good faith and fair dealing, which is also known as bad faith. For breach of contract, the insured can usually only get the benefits owed to them under the contract. Attorneys fees can be awarded solely for the work that was expended obtaining the policy benefits. But insureds can get emotional distress and punitive damages under a claim for breach of the implied covenant of good faith and fair dealing. To be awarded punitive damages, the insured must show that the insurance company and/or agent was "guilty of oppression, fraud or malice" in its actions. Negligence alone is not sufficient. Punitive damages are generally limited to no more than a single digit multiplier of the contract damages. If the policy limits were $100,000, and the jury awarded a 4x multiplier for punitive damages, then the punitive damages would be $400,000.

If an insured is also either disabled or over the age of 65 at the time of the insurance denial, any punitive damages award will be trebled.

California Insurance Code § 790.03, which codifies California's Fair Claims Settlement Practices Regulations, list a number of practices that do not by themselves give rise to a separate right of action and are not bad faith per se, but can be evidence of bad faith.

It is worth noting that California also has 10CA ADC §2695.183, which requires insurance companies to re-evaluate its estimate of your coverage each year based on updated information, including local changes in construction costs, and provide you an annual replacement cost estimate. Failing to do is evidence of bad faith under the statute. It applies to all estimates provided by an insurance company after June 27, 2011. The regulation also states that if a broker or agent fails to do this, the insurance company is liable.

The California insurance commissioner has also ordered all insurance companies to extend any deadlines related to rebuilding or repairing properties during COVID-19 to 90 days after the end of the emergency, as defined by the state. Additionally, insurers were asked to refrain from cancelling policies or allowing them to expire between March 18, 2020 and May 21, 2020, when COVID-19 first hit.

Nevada

Like California, Nevada will potentially award punitive damages and emotional distress damages for insurance bad faith, in addition to breach of contract damages. Also like California, Nevada has a list of unfair business practices codified, which can be the basis for a cause of action for bad faith.

Nevada also recognizes an independent statutory cause of action against an insurer for violations of the state's unfair claims practices statute, which designates certain activities which will be deemed unfair practices in settling insurance claims "if an insurer engages in them with such frequency as to indicate a general business practice." Nev. Rev. Stat. § 686A.310. An insurer is liable to its insured for any damages sustained by the insured as a result of the commission of any act set forth as an unfair practice. Id.

Unlike most other states in the west, Nevada's insurance commissioner has not extended any deadlines for insureds due to COVID-19.

Oregon

In Oregon, insurance policy language requires that an insured have 24 months from the inception of the law to file suit, and it will be tolled until a denial is issued.

Oregon law does not allow for punitive damages in first person property insurance litigation. It permits consequential damages, which generally includes the damages under the contract, and potentially additional economic damages sustained due to the breach of contract. It does not provide a remedy for emotional damages unless the emotional damage resulted in physical harm. If an insured prevails on a breach of contract cause of action, attorneys fees can be awarded if settlement was not made within six months of the date proof of loss was provided to the insurer.

Unlike in California, insurance companies cannot be held liable for financial abuse of the disabled or elderly for handling a claim in bad faith.

The Oregon insurance commissioner ordered a minimum 60 day grace period for any insured who falls behind on premium payments during the pandemic, and required that all deadlines related to reporting claims be extended.

Washington

In Washington, as in California, insurance policies include a one year contractual limitation clause, requiring that suit be brought within a year of receiving their denial.

Washington permits a version of punitive damages, awarded through causes of action brought under the Insurance Fair Conduct Act ("IFCA") or the Consumer Protection Act ("CPA"). Those claims are not limited by the one year contractual limitation in the insurance policy. IFCA claims have a three year statute of limitation, while CPA claims have a four year statute of limitation.

Washington state recognizes bad faith, but does not award punitive damages for it. Instead, Washington state will permit contract damages to be trebled, will award attorneys fees, and emotional distress damages.

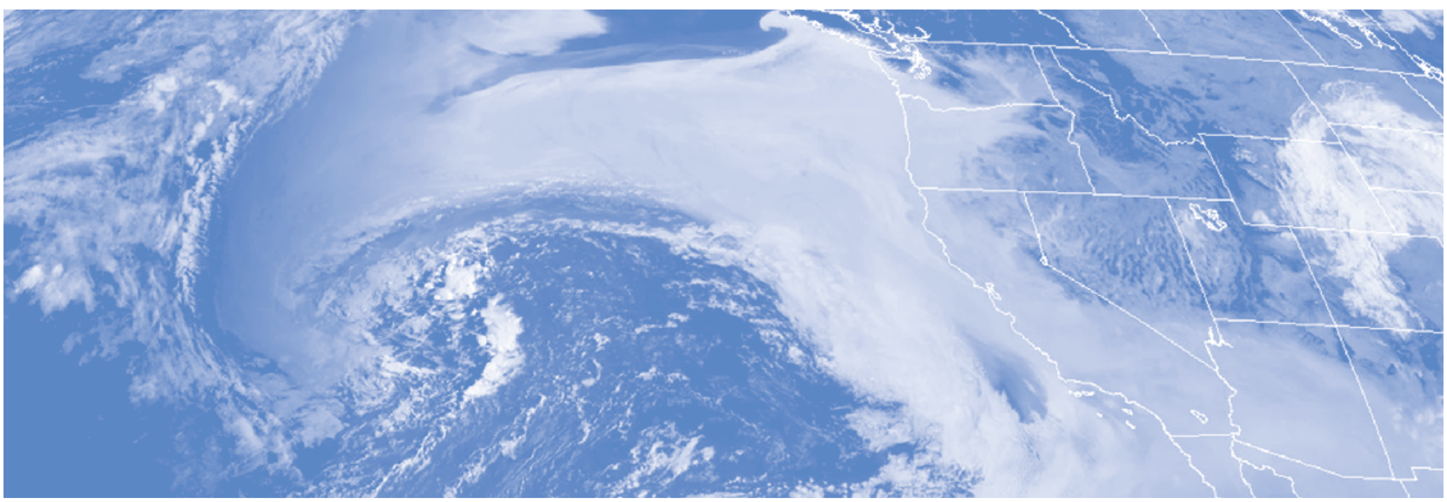
The Washington insurance commissioner ordered all insurance companies to halt policy cancellations or expirations due to nonpayment of premiums between March 25, 2020 and May 9, 2020. He also extended deadlines for rebuilding so that insureds would not lose their ability to recoup depreciation under their policies.

HOW INSURED HOMEOWNERS CAN PROTECT THEMSELVES

The best time to protect yourself from loss due to a wildfire is by making changes before a fire ever occurs. Review your insurance policy and ensure the information on which it is based is accurate. If it is not, correct it and ask that the coverage be altered to reflect the correct information. Talk to a contractor about what it would cost to rebuild your home. If that estimate differs from the estimated coverage your insurer provided, contact your agent and ask to increase your coverage. Do so in writing – if the agent declines to increase the coverage, you now have evidence that you did not sit on your rights but tried to increase the coverage. Check your renewal each year. If the coverage amount does not increase, or does not increase very much, as why. Create a detailed home inventory now, while your belongings are physically in front of you, and store it electronically in a place you will be able to access in the event of a fire.

WE'D RATHER YOU NOT NEED THIS INFORMATION, BUT…

No one ever wants to experience the devastation of losing a home to a wildfire. Educating yourself, being prepared, and being proactive with your insurance company can help make the experience less traumatic and help ensure that your insurance provides the coverage you expect.



If you have questions about your homeowners insurance benefits, please call **877-783-8686** to schedule a free consultation with a Kantor & Kantor attorney.