



Essential Protection for Policyholders
State Rankings of Homeowners Insurance Protections:
Consumer Remedies

A report from
the Rutgers Center for Risk and Responsibility at Rutgers Law School
in cooperation with United Policyholders

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This report examines how well states provide tools that homeowners need to resolve disputes with their insurance companies, and, when necessary, to remedy improper conduct by the companies.

The protection and security that a homeowners insurance policy provides is most effective—or it fails—when a policyholder files a claim. When a loss occurs, the policyholder trusts that the insurance company will process and pay the claim promptly and fairly.

Often a loss clearly is covered by the policy, the amount of loss is certain, and the company pays the claim without delay. Other times problems arise. The insurance company and the policyholder may disagree about whether the cause of loss is covered by the policy, how much of the loss is covered, or how much it will cost to repair or replace damaged property. The company may disagree about a disputed issue, make a mistake, or even act unreasonably and wrongfully. For an insurance policy to provide the protection and security it promises, the policyholder must have access to a fair, effective, and efficient process for resolving these disputes and for remedying any improper conduct by the company.

Policyholders are at a disadvantage when disputes arise about claims. They lack information and expertise about coverage under their policies and about the claim process, they may have limited financial resources to hire a lawyer, public adjuster, or other expert, and they may be financially and emotionally vulnerable after a major loss. The dispute resolution process needs to recognize and correct this imbalance.

The Essential Protections for Policyholders project recommends a series of measures to give insurance consumers the tools they need to resolve disputes that arise and, when necessary, to remedy improper conduct by insurance companies.

When losses occur, homeowners need to receive the benefits of their insurance policies quickly and fully in order to repair their property and rebuild their lives. Litigation ultimately may be necessary to resolve disputes but it is a last resort for policyholders because it takes time, delaying the process of recovery, and it is financially and emotionally draining. Two alternatives to litigation that can be effective for homeowners are mediation and appraisal. Mediation provides an informal but structured forum in which policyholders and insurers can meet with the aid of a qualified mediator to discuss and attempt to resolve disputes. Appraisal provides a process by which neutral parties can assess loss and determine the costs of repair. Each needs to be well-designed and supported to meet policyholders' needs.

- *States should adopt a mediation program for property insurance disputes.*
- *States should adopt an appraisal process that provides neutral parties to assess all relevant aspects of a claim.*

In difficult cases litigation may be the only means to resolve a dispute or for policyholders to obtain the benefits their insurance companies promised to them. Companies sometimes attempt to prevent policyholders from having their day in court through forced arbitration clauses in insurance policies. Arbitration fails to protect policyholders because discovery is limited, arbitrators can be more favorable to insurance companies, arbitration rulings cannot be reviewed even for errors of law or fact, and the rulings are private so they do not serve the public function of clarifying the law. Arbitration should not be imposed on policyholders by a policy term that is usually hidden in boilerplate or the consequences of which are not well understood.

- *States should prohibit the enforcement of pre-dispute forced arbitration provisions.*

Where insurance companies act improperly, the amounts owed under the policies are inadequate either to compensate policyholders for their losses or to deter companies from unreasonable conduct in the future. When insurance claims are improperly delayed or denied, policyholders may suffer other financial losses and emotional harm. For example, homeowners who do not receive prompt payment may have additional expenses due to being out of their homes and may suffer extreme aggravation and distress. If policyholders have to pay attorneys and incur other litigation expenses to get what they are entitled to, they are never fully compensated for their losses. Moreover, if insurance companies only have to pay what they originally owed under their policies even where they act wrongfully, they have much less incentive to pay claims promptly and fairly; delaying claims increases their investment income and denying claims adds directly to their bottom line.

- *States should require insurance companies to act reasonably in resolving claims and should give policyholders the right to sue for appropriate damages if the companies do not do so.*

The rankings in this report are based on key elements in providing homeowners insurance policyholders with effective remedies for disputed claims. These include:

- Whether forcing policyholders to arbitrate claims instead of receiving their day in court is prohibited.
- Whether policyholders who are forced to sue their insurance companies to receive coverage of their claims are entitled to recover attorneys fees so that they are fully compensated.
- Whether policyholders have a remedy if their claims are denied wrongfully, and whether policyholders are entitled to attorneys fees in those cases.

Key findings:

- Fourteen states prohibit forced arbitration of insurance claims.
- Twenty states require insurance companies to compensate policyholders for their attorneys fees if the policyholders are forced to sue to receive what they are entitled to under a policy.

When insurance companies act wrongfully:

- Only ten states require insurance companies to act reasonably in the claims process and enable policyholders to sue companies for failing to do so.
- More than half the states allow policyholders to sue insurance companies only if they have intentionally or recklessly denied a claim.
- The other states deny consumers any remedy if insurance companies act wrongfully.

For more details on these issues, including recommended statutory language and a survey of current law, refer to the Essential Protections for Policyholders website:

<https://epp.law.rutgers.edu/>

Essential Protections for Policyholders State Rankings — Consumer Remedies

Hawaii	★★★★★	Alabama	★★
South Carolina	★★★★★	Connecticut	★★
Alaska	★★★★	Georgia	★★
Florida	★★★★	Illinois	★★
Maine	★★★★	Indiana	★★
North Dakota	★★★★	Iowa	★★
Washington	★★★★	Kentucky	★★
West Virginia	★★★★	Louisiana	★★
Arizona	★★★	Michigan	★★
Arkansas	★★★	Minnesota	★★
California	★★★	Mississippi	★★
Colorado	★★★	Missouri	★★
Delaware	★★★	New Mexico	★★
Idaho	★★★	North Carolina	★★
Kansas	★★★	Oregon	★★
Maryland	★★★	Pennsylvania	★★
Massachusetts	★★★	Rhode Island	★★
Montana	★★★	South Dakota	★★
Nebraska	★★★	Tennessee	★★
Nevada	★★★	Vermont	★★
New Hampshire	★★★	Wisconsin	★★
New Jersey	★★★	Wyoming	★★
Ohio	★★★	District of Columbia	★
Oklahoma	★★★	New York	★
Texas	★★★	Virginia	★
Utah	★★★		

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