Essential Protections for Disaster Victims

Essential Protections for Policyholders
is a project of
the Rutgers Center for Risk and Responsibility at Rutgers Law School
in cooperation with United Policyholders.

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Policyholders who suffer losses due to natural disasters such as hurricanes, wildfires, or tornadoes face all of the potential problems that other policyholders confront and more. When policyholders need their insurance most, and when many policyholders in an area need their insurance all at once, events coincide to make it harder for insurance to work promptly and fairly. The Essential Protections address the special needs of disaster victims.

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Essential Protections for Policyholders

United Policyholders
Empowering the Insured

Many of the Essential Protections that apply in other circumstances are extremely important for disaster victims as well. Clear explanations of key policy terms and information about the need for and availability of additional insurance for natural disasters makes it more likely that consumers will purchase insurance that will protect them if disaster strikes. Minimum protections in policies and the offer of more coverage for additional living expense, law and ordinance upgrades, and extended replacement cost make policies better suited to the special needs for rebuilding after a disaster. A fair claims process with reasonable time limits, standards for valuing losses, alternative dispute resolution systems such as mediation, and the right to sue for unreasonable conduct protects disaster victims if problems arise.

Often, however, disaster victims need more extensive protections because of the distinctive conditions created following disasters. After a disaster insurance companies can lack the capacity to promptly process claims, the availability of contractors to repair or rebuild declines and the price of labor and materials rises, and public services are overwhelmed. The Essential Protections for disaster victims mandate flexibility in the claim process, standards that prevent unexpected gaps in insurance due to unfair exclusions, and prevention of dislocation in the insurance market.

The Essential Protections apply to homeowners' insurance and other forms of private insurance on residential property. Nearly all of those policies exclude coverage for damage caused by flooding, variously defined in the policies, which has led to the creation of the federal government's National Flood Insurance Program. Because that program is largely governed by federal and not state law it is not within the scope of the Essential Protections. One issue that often arises is damage caused by an excluded flood loss and an included cause such as wind. The Essential Protection provision on causation does address that issue.

Disaster victims should have flexibility in coverage provisions and the claims process.

- **Policyholders after disasters should have a reasonable time for additional living expense and for filing claims.**

After a disaster policyholders often are unable to meet the ordinary conditions and time limits specified in insurance policies through no fault of their own. Entire communities may be inaccessible for periods of time, preventing policyholders from returning to their homes. Insurance companies are inundated with inquiries and claims, delaying communication with policyholders. Contractors are overwhelmed with work, delaying repairs and rebuilding. In those circumstances, policyholders should be granted additional time for processing their claims. Some types of problems can be anticipated and specified in advance, such as the need to extend time limits for filing additional living expense and full replacement cost claims. Other types of problems depend on the situation and require action by insurance departments to make sure that insurance companies recognize the need to be flexible.

Recommended action:

States should adopt statutes that extend the time for additional living expense and for filing claims after a disaster and that authorize insurance departments to extend other time limits. Insurance departments should exercise the authority granted to make sure that policyholders have adequate time to pursue claims after disasters.

Recommended statutory language:

> Following a catastrophic event for which a state of emergency has been declared by the President of the United States or the Governor or for which a local emergency has been declared by the executive officer or governing body of local government or which has been declared by a nationally recognized catastrophe loss index provider:

(a) Coverage for additional living expense in a homeowners insurance policy that provides for such coverage shall be available for a period of not less than twenty-four months.
(b) In a homeowners' insurance policy providing for replacement cost, no time limit of less than twenty-four months from the date that the first payment toward the actual cash value is made shall be placed upon the insured in order to collect the full replacement cost of the loss, subject to the policy limit.
(c) The insurance department shall have the authority to extend time for policyholders to give notice of loss to an insurance company, file proof of loss, or satisfy other time limits imposed by the terms and conditions of a homeowners insurance policy. Any extension of time required by department action under this paragraph beyond the period provided in the policy shall not act to increase the coverage available or policy limit in force at the time of the loss.

Current law:

The California Insurance Code permits extension of time or coverage following disasters.[1] Other states took similar action in response to particular events such as Hurricane Katrina, Superstorm Sandy, and the Louisiana flooding of 2016. Responses to particular disasters are helpful, but the enactment of statutes to deal with all disasters provides certainty for policyholders and insurance companies and avoids the need for hasty action.

Disaster victims should have clear rules about causes of loss to avoid unfair gaps in coverage.

- **Policyholders should be compensated for losses due to covered causes.**

Homeowners insurance policies cover losses caused by some risks and exclude coverage caused by other risks. For example, policies typically cover hurricane damage caused by high winds but exclude losses caused by flooding during a hurricane. In many cases, however, a loss will occur due to a covered cause and an excluded cause, acting either in sequence, together, or in a manner that cannot be determined after the fact. This is often a problem in catastrophic weather events, in which damage occurs by wind and water.

[1] E.g., Cal. Ins. Code § 2051.5.

Many homeowners policies have language that attempts to deny coverage in these cases, even if it is clear that part of the damage was due to a covered cause of loss. One widely used policy bars coverage due to an excluded cause "regardless of any other cause or event contributing concurrently or in any sequence to the loss"—even if the "other cause" is covered under the policy. Terms such as this—known as "anti-concurrent causation clauses"—disappoint the reasonable expectations of policyholders that they will be compensated for losses due to covered causes and can be particularly problematic after catastrophic events.

Recommended action:

States should ensure that losses due to covered causes are covered by limiting the scope of anti-concurrent causation clauses.

Recommended statutory language:

> An insurer shall not deny or exclude coverage for any claim for loss or damage that would otherwise be covered by a policy solely because an event or peril not covered or specifically excluded under the policy was a contributing factor in such loss or damage or occurred simultaneously with the event or peril that was covered.

Current law:

The majority of states observe the rule of "efficient proximate cause" in cases involving covered and excluded causes of loss.[2] Efficient proximate cause is often described as "the predominating cause of the loss" that "looks to the quality of the links in the chain of causation."[3]

Although a few statutes define causation under insurance policies,[4] it has been left to the courts (sometimes applying the relevant statutes) to decide whether an anti-concurrent causation clause in an insurance policy can narrow the rule of causation that otherwise would be dictated by state law. The states are divided on this issue.[5]

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[2] 5-44 Appleman on Insurance § 44.03.

[3] Murray v. State Farm Fire & Cas. Ins. Co., 509 S.E.2d 1, 12 (W. Va. 1998).

[4] Cal Ins Code § 530; Fla. Stat. § 627.702(1)(b); N.D. Cent. Code § 26.1-32-01.

[5] Leading cases include Safeco Ins. Co. of America v. Hirschmann, 773 P.2d 413 (Wash. 1989), (clause unenforceable); State Farm Fire & Cas. Ins. Co. v. Bongen, 925 P.2d 1042 (Alaska 1996) (clause enforceable). See Annot., Validity, Construction, and Application of Anticoncurrent Causation (ACC) Clauses in Insurance Policies, 37 A.L.R.6th 657.

Disaster victims should be protected against sudden dislocations in the insurance market.

- **Insurance companies may not decline, cancel, nonrenew, surcharge, or increase premiums because of disasters.**

Following a wildfire, hurricane, or other disaster that causes a large number of losses to a community or region, insurance companies sometimes react by cancelling, failing to renew or imposing a surcharge on existing policies, and declining to offer new policies in the affected areas. Over time the companies may moderate their positions as the extent of losses and likely future risks become clearer, but in the meantime insurance may be unavailable or unaffordable.
An Essential Protection is to ensure that catastrophes or other significant events do not cause a sudden and often unjustified dislocation in the insurance market.

Recommended action:
States should limit the ability of insurance companies to cause temporary dislocations in the market by failing to write or renew policies or imposing higher costs after a major disaster.

Recommended statutory language:

> (1) The declination, cancellation, or nonrenewal of a homeowners insurance policy or the addition of a surcharge or an increase in the premium of such policy is prohibited if the declination, cancellation, nonrenewal, addition of a surcharge, or increase in premium is based solely on any loss incurred as a result of one or more catastrophic events for which a state of emergency has been declared by the President of the United States or the Governor or for which a local emergency has been declared by the executive officer or governing body of local government or which has been declared by a nationally recognized catastrophe loss index provider.
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> (2) In the case of a total loss to the primary insured structure under a homeowners' insurance policy caused by a disaster as defined in section (1), the insurer shall offer to, at least once, renew the policy, except for the following reasons:

(a) Nonpayment of premium

(b) Conviction of the named insured of a crime having as one of its necessary elements an act increasing any hazard insured

(c) Discovery of fraud or material misrepresentation by the named insured or his representative in obtaining the insurance or pursuing a claim under the policy

(d) Discovery of grossly negligent acts or omissions by the insured or his or her representative substantially increasing any of the hazards insured against.

Current law:

Many states have statutes that prohibit adverse actions after disasters or due to weather-related losses. A large number of states prohibit cancellation or nonrenewal due to weather-related events other than catastrophes, such as prohibiting cancellation or nonrenewal "solely as a result of claims arising from natural causes"[6] or because of a claim "resulting from an act of God".[7] By their terms, these statutes would include adverse action due to catastrophes. Statutes in other states refer specifically to disasters.[8] Some statutes are more limited, for example, permitting nonrenewal where "the claim or loss identifies or confirms an increase in hazard, a material change in the risk assumed or a breach of contractual duties, conditions or warranties that materially affect the nature or the insurability of the risk"[9] or where the insured has failed to take action reasonably requested by the insurer "to prevent recurrence of damage to the insured property"[10] or "to prevent a future similar occurrence of damage to the insured property."[11] Several states limit adverse action due to weather-related claims in specified time periods, often subject to other requirements.[12] A few states authorize the insurance department to declare a cooling-off period following a disaster during which cancellations and nonrenewal are suspended[13] or to take other action.[14]

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[6] Ark. Code Ann. § 23-63-109.

[7] S.C. Code 1976 § 38-75-790. Even broader are statutes such as 36 Ok. Stat. Ann. § 3639.1, prohibiting cancellation solely because of a first claim except for specified circumstances such as a substantial increase in risk.

[8] E.g., Ct. Gen. Stat. Ann. § 38a-316d; N. M. Stat. Ann. § 59A-16-20.1.

[9] N.J. Stat. Ann. 17:36-5.20a; see also N.J. Admin. Code § 11:1-22.2.

[10] Fla. Stat. Ann. § 627.4133.

[11] Fla. Stat. Ann. § 627.4133(6).

[12] E.g., Utah Code. Ann. 1953 § 31A-21-303; N. D. Stat. § 26.1-25.2-03; La. Rev. Stat. § 22:1265; § 22:1333.

[13] E.g., R.I. Admin. Code 11-5-110:12; N.Y. Ins. Law § 3425; Fla. Stat. Ann. § 627.4133.

About Essential Protections for Policyholders

Essential Protections for Policyholders is a project of the Rutgers Center for Risk and Responsibility in cooperation with United Policyholders.

The Rutgers Center for Risk and Responsibility at Rutgers Law School explores the ways in which society makes choices about risk, its proper allocation, and compensation for the harm caused when risks materialize.

United Policyholders is a non-profit 501(c)(3) organization whose mission is to be a trustworthy and useful information resource and a respected voice for consumers of all types of insurance in all fifty states.

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[14] E.g., Ala. Dep't of Ins. Bulletin 2010-10, citing the Unfair Trade Practices Law, Ala. Code § 27-12-1 et seq.; RI Ins. Reg. 110.