A GUIDE FOR WINE COUNTRY FIRE SURVIVORS TO UNDERSTAND THEIR HOMEOWNER'S INSURANCE POLICY

Jon B. Eisenberg

This guide explains the basic provisions of a typical California homeowner's insurance policy, which survivors of the Wine Country fires will need to know and understand.

Insurance policy provisions differ from company to company. The amount of your coverage will depend on the amount you purchased—which is listed on a separate page of the policy called the "declarations" page—and on the specific provisions of your policy. This guide will help you with the process of obtaining all the compensation to which you are entitled.

If you have not already reached out to your insurance company to get the process started, you should do so immediately. Contact the agent or broker from whom you bought the policy, or contact the insurance company directly.

The insurance company will assign one of its employees, called an "adjustor," to work with you to determine the amount of your loss and make payments to you. The competence and integrity of insurance adjusters can vary. Most are competent and honest, but some are not and may try to take advantage of you. You need to be careful when dealing with them. Your best defense against a bad adjustor is to understand your insurance policy and know your rights.

The process of determining the value of the property you lost and the amount of your compensation will likely be lengthy, and at times it might be challenging—not just for you, but also for your adjustor, who will be handling dozens of other claims. Patience and courtesy will serve you well if things get tense.

Above all else, you should be completely honest with the adjustor when reporting your losses. You should never fabricate or exaggerate the extent of a loss. The insurance companies will be on the lookout for fraud, and if you are caught at it your troubles will only worsen.

Many people, but not all, are able to manage this process by themselves. You might find it helpful to pay for the services of an independent professional, called a "public adjustor," to negotiate with your insurance company's adjustor on your behalf. You might also wish to hire an attorney to assist you if you have any disputes with the company.

If you feel you are being cheated, your best bet is to take the high road, continue to be completely honest, and consult an attorney or a public adjustor—or both.

One of the responsibilities of your insurance company's adjustor is to explain the details and amounts of your insurance coverage and the process for obtaining payments. You should ask the adjustor to explain anything you think you need to know or don't understand. This guide will help you to make sense of what your adjustor tells you and to figure out what questions you need to ask.

It bears repeating that homeowner's policies can vary widely in terms of coverage and language. This guide provides general information regarding common terms and provisions in most policies, but this information is not a substitute for a close reading of the specific provisions of your own policy.

COVERAGE FOR YOUR HOUSE AND OTHER STRUCTURES

The coverage provided by a typical insurance policy for your house and for other structures on the property is usually divided into the following parts:

- **Basic dwelling coverage.** Basic dwelling coverage includes your house and all structures that are attached to it, such as attached garages and decks. A precise dollar amount of basic dwelling coverage will be listed on your policy's declarations page. This is the starting point for determining the total amount for which your house is insured. It will also serve as a basis for determining the amounts of your coverage for property other than the house.

- **Extended (or "increased" or "replacement") dwelling coverage.** Most insurance policies include extended dwelling coverage, which will protect you if the actual cost of rebuilding your house turns out to be more than the price for which you could have sold the property if it had not burned. This is likely to happen in the wake of the Wine Country fires, because the dramatically increased local demand for labor and materials will cause construction costs to rise. Extended dwelling coverage is usually a percentage (commonly 20%, 50%, or 100%) of the basic dwelling coverage. For example, if your basic dwelling coverage is $500,000, extended dwelling coverage of 50% will increase your total coverage to $750,000.

- **Code upgrade (or "ordinance") coverage.** Most policies also include further coverage that will protect you if your home was old and did not meet the requirements of current building codes. Code upgrade coverage is usually a percentage (commonly 10%) of your basic dwelling coverage. For example, if your basic dwelling coverage is $500,000 and you have 50% extended dwelling coverage raising the total to $750,000, code upgrade coverage of 10% will raise the coverage an additional $50,000 to a total of $800,000.

- **"Other structures" (or "dwelling extension") coverage.** In addition to covering your dwelling and attached structures, your policy will cover other structures on the property that are separated from the dwelling by "clear space." This coverage includes structures like a free-standing garage, a garden shed, or a separate cottage or "granny unit" on the property. Other structures coverage is usually a percentage (commonly 10% or 50%) of your basic dwelling coverage. For example, if your basic dwelling coverage is $500,000 and you have 10% coverage for other structures, your other structures coverage will be $50,000.

- **Trees, shrubs, and other plants.** Most policies provide coverage for trees, shrubs, and other plants that the fire destroyed. The amount of this coverage is usually a percentage (commonly 5%) of your basic dwelling coverage, with an individual maximum of $500 for each tree, shrub, and other plant. For example, if your basic dwelling coverage is $500,000 and you have 5% coverage for trees, shrubs, and other plants, you will be covered up to $500 for each tree, shrub, and plant up to a total of $25,000.

- **Debris removal.** Most policies provide coverage for removal of debris, such as the burned remains of your house. The amount of this coverage is usually a percentage (commonly 5%) of your basic dwelling coverage and becomes payable if your basic dwelling coverage is used up. (Otherwise, it is included in your basic dwelling coverage.) For example, if your basic dwelling coverage is $500,000 and you have 5% coverage for debris removal, your total coverage will increase by $25,000 if your dwelling loss exceeds $500,000.

COVERAGE FOR YOUR PERSONAL PROPERTY

The coverage provided by a typical insurance policy for personal property (that is, everything other than your house, your other structures, and your trees, shrubs, and other plants) will be a percentage of your basic dwelling coverage—typically 50% or 75%. For example, if your basic dwelling coverage is $500,000, personal property coverage of 50% will provide you with $250,000 to replace your items of personal property.

Some categories of personal property will have limits on the amount of coverage. For example, a policy might contain one or more of the following limits:

- $1,500 for all jewelry, watches, and furs.

- $2,500 for all silverware.
- $1,500 for watercraft.
- $200 for coin collections.
- $2,500 for stamp collections.
- $2,500 for all property used in a business.

For some of these categories you might have purchased coverage at higher limits. You might also have purchased what is called "scheduled" coverage for one or more specific individual items—for example, a valuable wedding ring, camera, painting, or musical instrument—at a specific dollar amount.

PROPERTY NOT COVERED BY HOMEOWNER'S INSURANCE

Not all property losses will be covered by your homeowner's insurance policy. The following items are typically excluded from coverage:

- Motor vehicles, including cars and trucks. (Any coverage will be under your automobile insurance policy.)
- Personal property owned by tenants who are not related to you.

COVERAGE FOR LIVING EXPENSES AFTER THE FIRE

Your insurance policy will cover additional living expenses (also called "loss of use") that you incur after the fire due to the loss of your home. This coverage pays for the cost of temporary housing—during the initial period immediately after the fire (for example, hotel expenses), and during the subsequent time you live in a rented residence while rebuilding your house or looking to buy a replacement house. It also includes the costs of renting furniture and other essential household items during the time you are displaced, as well as various other lesser additional living expenses.

Most policies state the amount of this coverage as either the "fair rental value" of your house or the amount that will be necessary for you to maintain your "normal standard of living." This amount will likely be somewhat more now than before the Wine Country fires, due to increased rental costs caused by the massive local demand for temporary housing.

Most policies will provide this coverage for the amount of time required to rebuild your house or to buy a replacement house, with an outside limit of two years.

HOW PAYMENTS ARE CALCULATED AND MADE

Insurance policy provisions on calculation of the amount of the payments to which you are entitled and how the payments will be made are in a section of the policy commonly called "loss settlement," which is divided into two categories—dwelling, and personal property.

For both categories, two terms are of key importance—"replacement cost" and "actual cash value."

- The replacement cost for your house is the amount of money it will cost to rebuild the house.

- The replacement cost for your personal property is the amount of money it will cost to replace your lost items of personal property with new items.
- The actual cash value of your house is the amount of money it would have cost to buy the house had it not been destroyed.
- The actual cash value of your items of personal property is the reduced amount that they were actually worth in their used condition, taking into account what you paid for the items and how long ago you bought them. This reduction in value from the time when the items were new is called "depreciation."

Some policies may cover only the actual cash value of your dwelling and personal property, but most will cover the replacement cost. If you have replacement cost coverage, you will be paid for replacement cost if (and only if) you actually proceed to replace the property. If you do not replace an item, you will be paid only for its actual cash value.

Your dwelling.

The process of determining the replacement cost and the actual cash value of your dwelling will require you to document, as best you can, the features of your house—inside and out—before it burned. Take photographs of the ruins, in which things like kitchen and bathroom tiles, granite countertops, and plumbing fixtures may still be visible. Ask friends and family members to collect any photographs they may have in which the house, other structures, and landscaping appear. If you did any remodeling of the house, ask the building contractor for documentation such as the contract and plans.

Eventually, you and the insurance company's adjustor will negotiate the amounts of replacement value and actual cash value. This is where you might want to hire a public adjustor to negotiate on your behalf, or a building contractor to help you determine these amounts. The insurance company's estimates of replacement value and actual cash value are often too low.

Under most insurance policies, once you reach an agreement as to replacement cost and actual cash value, you will be entitled to full payment of the actual cash value. After the insurance company pays you for actual cash value, the company will not be required to make additional payments toward full replacement cost unless and until you actually rebuild the home. This means that if you do not rebuild the home but instead decide to purchase a replacement home, the insurance company is only required to pay you for actual cash value. If you decide to rebuild, the company will make the additional payments toward replacement value during the process of rebuilding.

Thus, for example, if your dwelling is insured for replacement cost which turns out to be $800,000, and the actual cash value is $600,000, you will be entitled to an immediate payment of $600,000, and then another $200,000 if you decide to rebuild. If you decide to purchase a replacement home instead of rebuilding, you will not be entitled to any additional payment beyond the $600,000 for actual cash value.

Your personal property.

The process of determining the replacement cost and the actual cash value of your personal property can be long and difficult, because the insurance company may require you to list each and every item of personal property that you owned and to make an estimate of the date when you acquired the item, its value when you acquired it, and the amount of money it would cost to replace the item with a new one. This list will be used to determine the amount of depreciation on your items of personal property—that is, what they were actually worth in their used condition—as well as the amount of money it would cost to replace them with new items.

Once you determine your personal property's replacement cost and actual cash value, you will be entitled to an immediate payment of the property's actual cash value. After that, the insurance company will make additional payments up to the full amount of replacement cost as you actually replace the items.

Thus, for example, if you reach an agreement that the actual cash value of all your personal property is $50,000 and its total replacement cost is $250,000 the company will immediately pay you $50,000, and will then make additional payments totaling another $200,000 as you replace the items.

SPECIAL RULES FOR WINE COUNTRY FIRE SURVIVORS

Finally, some of the rules and procedures described above are likely to be relaxed for Wine Country fire survivors by voluntary agreement between the State of California and the insurance companies. (This has happened with some previous California fire disasters.) These measures are likely to include, for example:

- An immediate payment of up to four months of coverage for "additional living expenses" (also called "loss of use") incurred after the fire.

- An immediate advance of 25% of policy limits for personal property losses.

- An agreement by the insurance companies to reduce their standards for itemizing personal property that was lost in the fire—for example, by not requiring a full description of each and every book that was destroyed.

You have many challenges ahead, but you won't have to go it alone. Legal aid and community services organizations are gearing up to provide comprehensive assistance to Wine Country fire survivors. A good starting point is the United Policyholders online library at http://www.uphelp.org/blog/north-bay-fires-insurance-claim-help.

Healdsburg, CA

October 17, 2017