



To: Interested parties

Re: Insurance reform legislation, (Reengrossed) Colorado House Bill 13-1225

Date: March 29, 2013

Background

United Policyholders commends the authors and strongly supports the objectives of the above-referenced pending legislation. Thank you in advance for considering our input.

There are two parts we strongly oppose, and several parts we hope will be amended.

As a 501(c)(3) organization with 21 years of experience monitoring insurance claims and assisting in disaster recovery, and with many staff members and volunteers who've lost homes in wildfires, we are intimately familiar with the problems this legislation aims to fix. Through our Roadmap to Recovery program, we have provided services to Colorado residents after 2010 and 2012 wildfires in partnership with Boulder, El Paso and Larimer County officials and in coordination with the Colorado Division of Insurance on matters related to home insurance.

UP's mission is to be a trustworthy and useful information resource and an effective voice for consumers of all types of insurance in all 50 states. We have participated in the drafting and consideration of similar legislation in Louisiana, Florida, California and elsewhere. In this memo we respectfully restate prior suggestions for relatively minor amendments and respond to points related thereto. If our requested amendments are incorporated in a further revised version of the bill, we will lend our unqualified support to the measure. To the extent feasible, all provisions of the proposed Colorado legislation should be retroactively applied to 2012 wildfire claims.

Post wildfire surveys conducted by United Policyholders in the Boulder, Fort Collins and Colorado Springs regions in 2010 and 2012 documented patterns of problems related to insurance claims. The aggregated results of these surveys can be viewed at http://uphelp.org/library/resource/survey_results

The problems range from pervasive underinsurance (people not having enough insurance to cover repairs/replacement of damaged and destroyed property), prematurely expiring Additional Living Expense ("ALE") benefits, excessive depreciation and holdbacks, unfair deadlines and disputes over valuations and insurance benefits owed.

After similar patterns of problems impeded recoveries after 1991, 2003 and 2007 wildfires in California, the legislature enacted various reforms over time that are now codified in sections of the California Insurance Code. Despite dire predictions by insurance lobbyists during the legislative process, *none* of the California reforms - including a mandate that all policies provide up to two years of ALE for disaster victims, have resulted in significant rate increases or market disturbances.

Adopting laws to benefit future Colorado wildfire victims that are consistent with reforms in other states will create a better regulatory environment for insurers. We have often heard insurance company lobbyists decry the hassle and costs of complying with inconsistent laws state to state. Standardizing post-wildfire claims practices makes common sense.

Language United Policyholders opposes:

1) We strongly oppose the language in Colorado House Bill 13-1225 that states:

YOU, AS THE POLICYHOLDER, ARE SOLELY RESPONSIBLE FOR DETERMINING WHETHER THE POLICY LIMIT, TOGETHER WITH THE OTHER TERMS OF THE POLICY, PROVIDES SUFFICIENT COVERAGE TO BOTH: (1) REBUILD THE COVERED STRUCTURES IN ACCORDANCE WITH CURRENT BUILDING CODES;

Given that the policyholder does not even see a copy of a policy until it's already in force, and given the complex legalese terms in insurance contracts today, there is literally and figuratively no way a policyholder can determine *anything* about the terms of the policy at the point of sale – let alone whether the limits and terms will be sufficient to rebuild their home in accordance with current building codes.¹ Furthermore, insurers and their sales reps use software formulas to calculate policy limits. Policyholders have almost no say in the setting of policy limits in a home insurance policy. With all due respect to the drafters, this statement sounds like it was written by an insurance company lobbyist. All it will do is provide a legal shield for insurance companies and their sales representatives.

2) We strongly oppose the language in Colorado House Bill 13-1225 that states:

With respect to contents coverage in total loss claims, requires insurers to offer to pay 25% of contents coverage reflected in the policy declaration, subject to policy limitations, without requiring a contents inventory;

First – 25% that is far too low a percentage and too heavy a penalty to place on a disaster survivor who can't face the trauma of completing an itemized inventory. Second, given that our survey findings confirm that several insurers have periodically and selectively waived the itemization requirement for some consumers and paid in full on contents claims without requiring a detailed list, there is no reason to insert such a low figure for this option. (See High Park Survey responses to Question 13, and 2010 Boulder surveys)

Amendments United Policyholders proposes:

1) After a declared disaster, policies should allow for a minimum of 24 months of ALE benefits.

With regard to the ALE mandate – because the 24 month minimum (in declared disasters only) is now included in all CA policies statewide, the increased risk is spread widely among all 7 million homeowners in the state. Given that the most destructive wildfire to date destroyed 3,000 homes (less than one percent of all the homes in the state) – 24 months of ALE exposure is a “drop in the bucket” for insurers, which is why the rate impact has been nominal. There have been no vocal complaints from insurers or consumers about the premium impact of this legislative reform. If Colorado adopts a similar rule, it will

¹ Reevaluating Standardized Insurance Policies, Prof. Daniel Schwarcz, *University of Chicago Law Review*, Vol. 78, p. 1263, 2011.
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1687909

have the same "drop in the bucket" effect. 2012's devastating wildfires destroyed @600 (again, less than 1%) of the state's 3 million homes. Further, of those who lose homes in a wildfire, not all need a full 24 months of ALE benefits. 34% of UP's High Park wildfire survey respondents reported they would run out of ALE benefits before they could rebuild/replace/repair their home. This response was typical "The twelve months living expense is not enough. The eleventh month is ending and I am just about to get the building permit."

California's law on this point reads:

(2) In the event of a covered loss relating to a state of emergency, as defined in Section 8558 of the Government Code, coverage for additional living expenses shall be for a period of 24 months, but shall be subject to other policy provisions, provided that any extension of time required by this paragraph beyond the period provided in the policy shall not act to increase the additional living expense policy limit in force at the time of the loss.

Colorado House Bill 13-1225 should give Colorado residents the statutory right to get a list of items eligible for reimbursement as ALE. California's law on this point reads:

Ins. Code 2060. In the event of a loss under a homeowners' insurance policy for which the insured has made a claim for additional living expenses, the insurer shall provide the insured with a list of items that the insurer believes may be covered under the policy as additional living expenses. The list may include a statement that the list is not intended to include all items covered under the policy, but only those that are commonly claimed, if this is the case. If the department develops a list for use by insurers, the insurer may use that list.

2) Total loss victims should have a minimum of one year to submit their personal property/contents inventory plus extensions liberally granted for good cause

Remembering, listing and valuing every single item in a home is an excruciating process for most disaster survivors. Memories fail under stress, it is painful to dredge up memories of cherished possessions that have been reduced to ashes, and most people have accumulated a lifetime of possessions that are extremely time-consuming to inventory. As the months pass, people remember more items and add them to their list. Most people focus first (and appropriately so...) on figuring out how to replace their home so they'll have a place to put themselves and their things back into. *Many* people who suffer a total loss need more than a year to finish a reasonably complete home inventory.

We are now three months shy of the one year anniversary of the 2012 High Park, Woodland Heights and Waldo Canyon wildfires. In mid-March, when United Policyholders asked residents what topic they'd like us to cover at an upcoming workshop – there was a resounding cry: "Personal property inventory help please!!!" Some people have not even begun their inventories; *many* have not completed their inventories.

3) Insurers should promptly tender fair value for damaged and destroyed property and allow disaster survivors up to 24 months, with extensions liberally granted for good cause, to collect full replacement value on all property that is insured for replacement value.

California law on this point applies to both non-disaster and disaster claims and reads:

2051.5. (a) Under an open policy that requires payment of the replacement cost for a loss, the measure of indemnity is the amount that it would cost the insured to repair, rebuild, or replace the thing lost or injured, without a deduction for physical depreciation, or the policy limit, whichever is less. If the policy requires the insured to repair, rebuild, or replace the damaged property in order to collect the full replacement cost, the insurer shall pay the actual cash value of the damaged property, as defined in Section 2051, until the damaged property is repaired, rebuilt, or replaced. Once the property is repaired, rebuilt, or replaced, the insurer shall pay the difference between the actual cash value payment made and the full replacement cost reasonably paid to replace the damaged property, up to the limits stated in the policy.

(b) (1) Except as provided in paragraph (2), no time limit of less than 12 months from the date that the first payment toward the actual cash value is made shall be placed upon an insured in order to collect the full replacement cost of the loss, subject to the policy limit. Additional extensions of six months shall be provided to policyholders for good cause.

In the event of a loss relating to a "state of emergency," as defined in Section 8558 of the Government Code, no time limit of less than 24 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. Nothing in this section shall prohibit the insurer from allowing the insured additional time to collect the full replacement cost.

- 4) **Insureds should have the clear statutory right to view the insurer's file on their claim, including but limited to inspection and damage reports, estimates, notes, photos, measurements and other documents related to their property and their loss. This helps reduce disputes and delays and keeps the homeowner informed and the insurer accountable.**

California's law on this point has been in place for many years. It reads:

CA Insurance Code 2071

The insurer shall notify every claimant that they may obtain, upon request, copies of claim-related documents. For purposes of this section, "claim-related documents" means all documents that relate to the evaluation of damages, including, but not limited to, repair and replacement estimates and bids, appraisals, scopes of loss, drawings, plans, reports, third-party findings on the amount of loss, covered damages, and cost of repairs, and all other valuation, measurement, and loss adjustment calculations of the amount of loss, covered damage, and cost of repairs. However, attorney work product and attorney-client privileged documents, and documents that indicate fraud by the insured or that contain medically privileged information, are excluded from the documents an insurer is required to provide pursuant to this section to a claimant. Within 15 calendar days after receiving a request from an insured for claim-related documents, the insurer shall provide the insured with copies of all claim-related documents, except those excluded by this section. Nothing in this section shall be construed to affect existing litigation discovery rights.

- 5) **Colorado House Bill 13-1225** should require insurers to give insureds a complete and current copy of their policy within 15 days after receiving a notice of loss along with a written confirmation or certification that it is the most up to date and complete version of the policy that was in force at the time of the loss. Giving an insured a certified copy assures that there will be no argument over whether the copy provided is the definitive contract.
- 6) **Colorado House Bill 13-1225c** should codify the insured's right to replace a destroyed home by purchasing a replacement cost home at a different location. The legislation should clearly state the insured has the right to do this and collect the full amount of policy benefits that would have been available if they'd rebuilt the destroyed home at the insured location – including coverages provided through endorsements for extended replacement cost, building code compliance, etc.

California law on this point states:

Ins. Code 2051.5 (c) In the event of a total loss of the insured structure, no policy issued or delivered in this state may contain a provision that limits or denies payment of the replacement cost in the event the insured decides to rebuild or replace the property at a location other than the insured premises. However, the measure of indemnity shall be based upon the replacement cost of the insured property and shall not be based upon the cost to repair, rebuild, or replace at a location other than the insured premises.

- 7) **Colorado House Bill 13-1225** should require insurers to give insureds a claim status report each time a new adjuster is assigned primary responsibility for the claim.

Colorado can improve on California's law on this point by codifying a simpler requirement than the following :

CA. Ins. Code 2071 If, within a six-month period, the company assigns a third or subsequent adjuster to be primarily responsible for a claim, the insurer, in a timely manner, shall provide the insured with a written status report. For purposes of this section, a written status report shall include a summary of any decisions or actions that are substantially related to the disposition of a claim, including, but not limited to, the amount of losses to structures or contents, the retention or consultation of design or construction professionals, the amount of coverage for losses to structures or contents and all items of dispute.

Respectfully submitted,

Amy Bach, Exec. Director, United Policyholders
381 Bush St., 8th Floor
San Francisco, CA. 94104
(415) 393-9990 Ext. 101 amy.bach@uphelp.org