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INSURING THE FULL VALUE OF YOUR HOUSE

by **Lee S. Harris**

Underinsurance has been reported to be the most common and formidable impediment to financial recovery for homeowner disaster victims in California today, with homeowners underinsured by an average of \$240,000. The recent appellate court decision of the fire insurance claim against State Farm Insurance in *Everett v. State Farm Insurance Company* deals a blow to many homeowners who believed they could rely on their insurance agent's verbal promises to provide "full insurance". The certification of this decision for publication was opposed by the California Insurance Commissioner and numerous consumer advocates because it gives an official seal of approval to two insurance company profit-driven schemes: routinely undervaluing the cost of rebuilding and referring to strictly limited coverage as "replacement cost". Despite the thoughtful comments of the Insurance Commissioner and other consumer advocates, the California Supreme Court allowed the decision to remain published to be used as case precedent in future matters. Insurance companies are already trying to expand the use of *Everett* to further limit homeowners' rights after a disaster.

After the Oakland Hills fires and other natural disasters of the late 1980's many insurance companies attempted to limit their payments to the "policy face value" (the amount listed on the declarations page) even though it was well below the actual cost of replacing the homes. Homeowners objected, claiming a combination of policy language and agent negligence and misrepresentation required full replacement cost payments. The author assisted a number of policyholders in forcing insurers to honor the replacement cost language of their policies and pay the full cost of putting their policyholders back in their homes. A number of consumer groups including United Policyholders also intervened with carriers and legislators to protest and assist.

In the following years, the insurance companies changed their policy language eliminating true replacement cost coverage and, with the help of the state legislature, enacted legislation to "notify" homeowners of the newly-limited policy language (and use these state-sanctioned notices to exempt themselves from misrepresentation claims). Their goal was to enforce the limit listed on the declaration page (with some possible small adjustments depending on the policy form) as the new upper limit of the insurance company obligation.

The question for homeowners then became whether the limit listed on their declaration page was enough to really rebuild their home in a disaster and whether they were adequately informed that their coverage was not really replacement cost anymore. In their decision dealing with the changed policies and new law, the Everett court of appeal decided that notices that conform with state law allow elimination of true replacement cost coverage and that the insurance company isn't responsible for giving the homeowner lousy advice on what it costs to repair or replace a home. Despite the Everett decision there still are several legal arguments that homeowners can make to pursue their claim of reliance on the promises of their agent. These claims are however now more complicated because the insurance companies have the new defenses set out in Everett.

Most homeowners rely on their insurance agent to tell them what the correct cost of repair or replacement of their home will be in a disaster. Unfortunately the insurance companies have a vested financial interest in underinsuring their homes. It is easier to sell insurance if the price is lower, and when disaster strikes the insurer saves substantial sums if they don't have to pay the full cost of replacement or repair.

In light of this new decision, what should a homeowner do prior to a loss to better protect themselves? First, specifically request **IN WRITING** from your agent that they calculate the cost of replacement for your specific house in your specific neighborhood (not using some generic computer program supplied by the insurance company). And, make sure you confirm in writing that they are doing this. Next, check with local contractors to find out what the upper end of per square foot reconstruction cost is for the area you live (factoring in an extra amount for a disaster related market increases) and multiply that times the square footage for your home to see if the number you receive from the insurance agent is in the correct ballpark. Third, request **IN WRITING** that the insurance agent up your limits to the higher of the amounts you and they have calculated. And, get written confirmation that this has been done. Finally, keep the correspondence and policy information in a safe place other than your home, so that it won't disappear in case of a disaster. Try scanning the documents and emailing them to yourself through one of the online email services such as Gmail.

Although the preceding checklist isn't an iron clad guarantee that you will be insured for the full cost of replacing your home following a disaster, each step you perform will give you an ever better chance of achieving that goal.

About the author

Lee S. Harris is a partner at G3MH (Goldstein, Gellman, Melbostad, Harris & McSparran, LLP), San Francisco with over 30 years experience fighting for consumers against insurance companies. He has also served as chair of the American Association for Justice, Insurance and Bad Faith Litigation groups and on the board of Consumer Attorneys of California. He can be reached at www.g3mh.com .