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LA Wildfire Insurance Update: Policyholder Rights and Coverage Concerns

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As policyholders take stock of their losses and begin the daunting task of rebuilding their homes and their lives, the California Insurance Commissioner continues to address various policyholder concerns and insurance coverage issues as they arise. The Department of Insurance periodically issues bulletins, notices, and opinions to clarify the department's official interpretation of certain issues or laws.

ALE (Additional Living Expenses) and Uninhabitable Homes

On February 14, 2025, California Insurance Commissioner Ricardo Lara issued a Notice addressing ALE, health, and safety. Policyholders had been reporting that their insurance companies are terminating ALE payments because their homes are still standing and therefore "habitable." Commissioner Lara addressed the ongoing health and safety issues arising from the fire debris and ash which may contain asbestos, heavy metals, chemicals and other hazardous substances. This fire debris and ash may pose significant threats to public health through inhalation of dust particles and contamination of drinking water.

On February 11, 2025, Los Angeles County Public Health issued a strong advisory to residents near the Palisades Fire and the Eaton Fire burn areas. The advisory calls residents' attention to the dangers associated with fire debris for individuals residing within 250 yards of a burned structure within the burn area. The advisory goes on to advise that residents in these areas may face an increased risk of exposure to hazardous substances from ash, soot and fire debris before the completion of Phase 1 (hazardous materials removal) and Phase 2 (fire debris removal): "Exposure to these materials may lead to physical health symptoms and may pose long-term health impacts."

California Insurance Code section 2060(b)(2) was amended after the Camp Fire in Paradise in 2018 to expand "Additional Living Expenses" to situations where a home is uninhabitable due to a covered peril, such as wildfire. Section 2060(b)(2) states:

"A policy that provides coverage for additional living expenses subject to this subdivision shall not limit the policyholder's right to recovery if the insured home is rendered uninhabitable by a covered peril. However, an insurer may, in lieu of making living expense payments required by this subdivision, provide a reasonable alternative remedy that addresses the property condition that precludes reasonable habitation of the insured premises..."

Commissioner Lara also noted that whether a residence is uninhabitable is **not** limited to situations where power, water, or sewer systems are disrupted: "A residence may be deemed uninhabitable due to health and safety reasons, such as those described by the LA County Health notices."



Commissioner Lara urged all insurance companies to exercise due diligence in determining whether a home is habitable or uninhabitable and that the fact that an area is now accessible **does not automatically** mean that the residences in that area are habitable especially when considering the on-going health and safety issues being addressed by the LA County Public Health Department. **Commissioner Lara went further to state that while the February 11, 2025 County Public Health Advisory remains in effect, policyholders in the impacted areas should continue to receive ALE benefits unless the policyholder chooses to inhabit their residence.**

Smoke Damage Losses

Recently, a number of court cases have addressed insurance coverage for smoke damage losses. Commissioner Lara issued a Bulletin on March 7, 2025 addressing these decisions and clarifying that they do not support the proposition that smoke damage is never covered as a matter of law.

Commissioner Lara went on to advise that the Department of Insurance expects insurers handling smoke damage claims to comply with the California Insurance Code provisions governing claims settlement practices, including without limitation, California Insurance Code section 790.03(h) and all other applicable laws and regulations.

In that vein, an insurer must:

- Adopt and implement reasonable standards for processing smoke damage claims;
- Must make good faith efforts to effectuate prompt, fair and equitable settlements of smoke damage claims where liability is reasonably clear; and
- Must conduct and diligently pursue a thorough, fair and objective investigation of a claim.

Commissioner Lara further noted it is not reasonable to deny a smoke damage claim without conducting an appropriate investigation and it is not considered reasonable for the insurer to require insureds to incur substantial costs to investigate their own claims. If professional testing is needed for a specific claim, the Department of Insurance **expects** the insurance company to contract and pay for these services.

At home tests are available for asbestos and other smoke damage contaminants and the Commissioner urges the insurance companies to provide these low cost tests to their insureds as a first step in responding to and investigating smoke damage claims. Depending on the results of the at-home tests, insurance companies then should consider professional testing.

As always, our team at Buchalter is here to answer your insurance coverage questions.



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