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Next steps for victims of the San Bruno fire

Lessons learned from the Oakland Hills fire, as homeowners prepare to deal with insurance claims arising out of the San Mateo County disaster

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On a hot Indian summer day in October 1991, one of the most destructive fires in our nation's history ignited. The economic loss of the Oakland Hills fire was estimated at $1.5 billion.

For many victims, the ordeal continued even after the fire was extinguished. Property owners complained that claims adjusters were low-balling them on their claims. Insurance companies responded that residents had claimed lost possessions and even entire floors of houses that had never existed. We have learned many lessons on the insurance coverage front from the 1991 fire that can be applied to the Sept. 9 explosion and fire caused by a natural gas pipeline in San Bruno.

APPLYING THE LESSONS FROM 1991

Some of the key, difficult issues to resolve in the Oakland Hills fire were disputes surrounding policy limit adjustments, scope of loss and decisions to relocate. As a result of homeowner awareness, effective advocacy and intervention of the California Department of Insurance, policies were adjusted retroactively, increasing the amount a homeowner could recover by $200,000, on average.

While it is not expected that the same limits issues will arise as a result of the San Bruno fire, it is important that insureds understand what their policies cover — rebuilding, replacement, cash value? Everything depends on the policy language and insureds need to obtain copies of their policies as soon as possible.

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Insurers have been very careful to explain that most policies do not contain "guaranteed replacement" coverage, but do permit recovery in excess of policy limits fixed by a percentage amount. The insurers have been careful to document this distinction over time in underwriting documents, the applications and the policies themselves. At this time, it appears that the fire losses will be made good by PG&E even if the policy limits are not by themselves adequate to rebuild damaged and destroyed homes.

Homeowners should understand that they are entitled to be protected by their insurers promptly and fairly, and that there should be no delay in this process whether or not PG&E advances further funds.

Nevertheless, scope of loss issues will continue to be presented, whether the loss adjustments are undertaken by the insurance companies or PG&E or some combination of the two. It will still be necessary for homeowners to engage general contractors to prepare scopes of loss in order to achieve a fair recovery. Due to the magnitude of the loss, it may result in a scarcity of qualified contractors to prepare bids and other claim documents. It is also expected that contractors and design professionals will require compensation for their participation in the claims process. These costs of claim preparation and participation (architectural drawings, construction bids, plans and specifications) are typically not compensated within the homeowners' insurance policy. Therefore, homeowners will have to set aside and use their own funds to initiate this process.

PG&E OFFERS OF COMPENSATION

PG&E has announced that it will provide the residents of San Bruno affected by the explosion and fire with funds of up to $50,000 on a "no strings attached" basis. While timely and apparently generous, these funds have caused unusual reactions in the insurance coverage community. It is important to note, it is not an "either/or" situation, and insureds can submit claims to both PG&E and their insurer.

Reports have already surfaced that several insurers that ordinarily would issue advances to homeowners in these circumstances are reluctant to do so in light of the PG&E payments. Furthermore, the insured homeowner or renters' right to "additional living expense" under the policy may not be honored in light of insurers' possible belief that PG&E has handled this additional living expense through these initial payments.

As a practical matter, it is expected that the insurers will attempt to offset from claim payments any amounts that homeowners have received from PG&E or the City of San Bruno.

It is recommended that homeowners and renters, and their counsel, segregate the PG&E payments in a separate fund and characterize those monies as payment for noncovered items under the policies. For example, as in the Oakland Hills fires, the cost of design and construction specialists assisting the homeowners in replacing their homes were not compensated by insurance. Payments for these specialists, therefore, should be taken from the PG&E funds. Furthermore, if the homeowner decides to move elsewhere, she will need separate funds to offset the cost of land in the new location, which is not covered by insurance. These expenses, too, could come from the PG&E funding.

Claims to insurers should proceed notwithstanding the PG&E funding. Counsel should insist on advances and payments for additional living expenses. Insurer demands that homeowners move back in rapidly, so as to reduce the cost of additional living expenses, should be resisted; nothing in the policy requires that homeowners move back quickly, and insureds should not rush, particularly in light of the need to stabilize their families and to sort out their options.

REGULATIONS

The Department of Insurance has issued extensive regulations as to the responsiveness of the insurers to claims for adjustment of their losses. The key of the regulations is that they hold insurers to a duty of good faith and fair dealing.

Homeowners will have many options as a result of the San Bruno fire. Homeowners should understand that they are entitled to be protected by their insurers promptly and fairly, and that there should be no delay in this process whether or not PG&E advances further funds.

SUBROGATION

Most of the policies contain a subrogation clause, which states that the insured assigns its rights of recovery to the insurer "to the extent of its payments." Alternatively, the clause may require the insured to execute a separate document assigning these rights of recovery. The subrogation clause allows insurers to seek recovery of the payments they make to insureds from PG&E or other companies or individuals responsible for the loss. This is best left in the hands of the insurers once the homeowners have been "made whole" under their policies. However, if the homeowner has inadequate insurance, he or she may have to proceed in tandem with the insurer for recovery against PG&E. The exact language of the subrogation clause will define the parties' priority in sharing in recovery from PG&E. Homeowners will want to be cautious to not sign subrogation "receipts" or assignments that assign "all" of their rights of recovery, as that might give the insurers a priority to recoveries from PG&E before the insured is "made whole."

CONCLUSION

Every insurance company owes its insured homeowner a duty of good faith and fair dealing. It is imperative that insureds request a certified copy of their policy, prepare inventory lists of damaged/loss contents of the home and track all expenses. Preparing thorough repair bids will be a significant step toward rebuilding and repairing damaged homes. Lessons from the 1991 Oakland fire tell us that communities with strong advocates can and do rise from the ashes.