

# OTLA CLE on Wildfire Insurance Claims

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## A. STARTING A CLAIM

### 1. How do I start my insurance claim?

Under Oregon law, *Parks v. Farmers*, 347 Or. 374, 227 P.3d 1127 (2009), the clock starts running on the insurance company's obligation to settle your claim fully within six months with a phone call to your insurance agent. In other words, notice of the loss is equivalent to "proof of loss" for the six-month settlement requirement under ORS 742.061.

### 2. Are there resources online that you recommend?

Yes:

United Policyholders: <https://www.uphelp.org/pubs/how-create-home-inventory>

Oregon Wildfire: <https://wildfire.oregon.gov/>

California Wildfire: <https://www.fire.ca.gov/>

Beware of industry sites:

Insurance Information Institute: <https://www.iii.org/>

NW Insurance Council: <https://www.nwinsurance.org/>

### 3. What should I be doing to document my Claim?

Using email or text, keep a running diary of all contacts with the insurer and its representatives.

### 4. My business was damaged as a result of the fire and now I cannot operate. What policy benefits might be available to my business?

Most commercial policies have business interruption coverage with complex formulas to calculate lost profits and ongoing expenses. Public adjusters with larger companies have in-house experts to calculate business interruption. Read your policy closely.

### 5. I am worried about paying my mortgage. Do I have any options for not paying?

You should continue to pay your mortgage company monthly. However, your mortgage company may consider your request for forbearance.

**6. What can I ask for as an advance?**

Ask for \$5,000, \$10,000, or \$20,000 as needed as an advance on contents.

**7. Can FEMA help me?**

There is FEMA information at the top of the Oregon government wildfire site:  
<https://wildfire.oregon.gov/>

**B. DEALING WITH THE INSURANCE COMPANY**

**1. I am very frustrated with my adjuster, what should I do?**

You should maintain civility in all of your communications with the adjuster. Otherwise, it will reflect poorly on you in the event the case is litigated and presented to a jury.

**2. My insurance company is offering me a lump sum to settle my claim, and they tell me that I have to decide soon... should I take the deal?**

Any offers to settle should be evaluated by a lawyer or public adjuster.

**3. Will it help to contact the Oregon Department of Insurance?**

The Oregon Department of Insurance (now called Division of Financial Regulation) provides some useful information on its website: <https://dfr.oregon.gov/Pages/index.aspx>

However, when claims involve a lawyer, or a coverage dispute, the department generally is unable to assist consumers.

**4. Will paying for the damage from these wildfires bankrupt my ins co?**

No. Your insurer is probably a billion dollar company.

**5. Is the relationship between the claimant and the ins co adjuster similar to my doctor or my lawyer, i.e., a trust relationship? If not, why not?**

Under *Farris v. United States Fidelity & Guaranty Co.*, 284 Or. 453, 587 P.2d 1015 (1978) the relationship between the fire loss claimant and the insurer is ARM'S LENGTH, not trust or fiduciary. Think of purchasing a used car. The salesman does not owe any fiduciary duties to the customer.

## C. POLICY ISSUES

### 1. **My adjuster says some of my property is not covered or limited under my policy, how can I find out if that is true?**

The policy has numerous limitations on certain types of personal property, including guns, cash, fine art, etc. Read the Coverage B section (personal property) closely.

### 2. **What is like kind and quality and how does it relate to my claim?**

You are entitled to be restored to your pre-loss condition, but you are not entitled to "betterment." Until you actually replace contents or structure, you are entitled only to actual cash value (ACV), which is replacement cost value (RCV) less depreciation.

### 3. **If my home was old and not up to current codes, does the insurance company pay for the extra cost to bring it up to code?**

The policy will generally provide an allowance (*e.g.* 20% of structure limits) for necessary code upgrades.

### 4. **Do I have to keep paying premiums for a home that is gone? Why?**

You should continue to pay premiums because the policy has a liability portion in addition to the property portion. If someone is injured on your fire-damaged property, you will need liability protection.

### 5. **What documentation should I keep to be reimbursed by the insurance company for the cost to replace my contents? Additional living costs?**

Keep track of all receipts for submission to the insurer for reimbursement.

### 6. **What is a misrepresentation and what is non-cooperation?**

- a. Misrepresentation: The insurer could assert that the entire claim is invalid if you claim for a big screen TV that you did not own.
- b. Non-Cooperation: The insurer could assert that the entire claim is invalid if you refuse to provide a statement or refuse to provide requested documents.

### 7. **My car or boat burned in the fire. Is that covered under my homeowners policy? Auto / boat policy?**

The auto policy is separate from the homeowners policy. Read your policy carefully.

**8. How long do I have to sue my insurer if they won't pay what they owe on my claim?**

You have TWO YEARS from the date of the loss within which to bring suit. This limit is strictly enforced in Oregon.

**9. How does a deductible work?**

Your policy has deductibles that must be exhausted before any payment by the insurer. This will not be an issue on wildfire claims.

**10. Does my insurance policy provide coverage for damage to landscaping, trees, shrubs, etc.?**

There is additional coverage (5% of structure limits) for damage to trees and shrubs.

**11. After a fire, how long will the insurance company pay me business income benefits?**

Read your policy closely.

**D. STRUCTURE**

**1. Can I hire my own contractor? When should I contact a contractor? Should I obtain multiple estimates from contractors?**

You should consider hiring your own contractor for quality control. Keep in mind that insurance industry preferred contractors may be beholden to the insurer.

**2. Does the insurance company pay to clean-up the home site?**

Most policies have additional coverage (5% of structure limits) for debris removal. The Oregon DEQ or FEMA may be conducting site cleanups without charge.

**3. What is depreciation?**

Until you replace structure or contents, the insurer will pay a lesser amount (ACV) based on age, condition, and usage.

**E. CONTENTS**

**1. I am anxious that I did not video the contents of my home, or maintain a room by room inventory. What do I do now?**

Most consumers do not have a pre-loss video of their personal property. Conduct a careful room by room inventory from memory, or refresh your memory by sifting debris at the site.

## **F. ALE**

### **1. How long will the insurance company pay for my expenses to live somewhere else?**

It may be as long as 24 months. The amount will be limited by the policy limit for Additional Living Expense (ALE). Read your policy closely.

### **2. What kind of living expense am I entitled to?**

You are entitled to comparable substitute housing, and any increased amount of living expenses.

## **G. HIRING A PROFESSIONAL**

### **1. When should I consider hiring an attorney / public adjuster to help with the claim?**

You should consider at the outset whether to hire a public adjuster, who will handle the claim for you on a percentage basis (10-20%). A lawyer may charge hourly or on a contingency.

### **2. If I have to hire a lawyer, will a lawyer take my case on a contingent fee? Why?**

Lawyers will consider taking these cases on a contingent fee because if the insurer fails to settle fully within six months, and suit is brought, the insurer must pay the claimant's attorney fees if there is ANY additional recovery. The statute, ORS 742.061, is ONE-WAY in favor of claimants.

### **3. What can I do if my insurance policy limits aren't high enough to pay to replace my home or contents?**

You may consider joining a claim against a public utility. A class action has been filed against PacifiCorp in connection with the recent wildfires.

You may consider a claim against your independent insurance agent.