

## Los Angeles Wildfires — Insurance Coverage Pointers for Home and Business Losses

***Policyholders affected by the devastating fires should take certain immediate steps to maximize potential recovery.***

The Los Angeles County wildfires that began on January 7, 2025, and continue to ravage the communities of Pacific Palisades, Altadena, Hollywood Hills, and Sylmar, among others, have wreaked destruction. They have devastated structures and personal property of all types — homes, businesses, schools, community centers, places of worship, and everything in between — and upended the lives and livelihoods of hundreds of thousands in the area. The losses caused by these wildfires, smoke, winds, and other physical perils may implicate multiple lines of insurance, including commercial property (all-risks and named perils), homeowners, renters, auto, and specialized (e.g., agricultural products) policies. Umbrella and/or excess policies may also provide coverage beyond primary homeowners and auto policies, particularly for personal property losses.

This Alert highlights important considerations and action items for potential insurance claims concerning property damage and economic losses related to this catastrophe. Latham's Insurance Counseling and Recovery Practice Group is here to assist or answer any questions you may have in navigating coverage issues that arise.

### Key Action Points

Whether your policy covers loss because of fire, smoke, wind, or other physical peril depends on the policy language. You should take immediate steps to maximize your potential recovery. In the event of a claim for wildfire, smoke, or other loss or damage, you should:

- Contact your broker and/or agent and inform them of your loss. **Avoid specifics, other than to state that “the wildfire conditions resulted in loss to your home on or about January \_\_, 2025.”**
- Obtain copies of all potentially implicated policies. So-called “homeowners” or “renter’s” policies will likely be the primary vehicle to recover losses suffered by individual property owners, and so-called “property and business interruption policies” the likely primary coverage for commercial entities. However, each policyholder should also obtain any automobile, excess, umbrella, and other potentially applicable policies.

- Ask your broker or agent to “please provide confirmation that all applicable insurers have been placed on notice in accordance with the policy.” You may also provide notice yourself — your policies will provide specific instructions as to the form of notice and the person and place where notice should be sent. **Assume that notice must be sent as soon as practicable.**
- Document all damage and all costs. Some tips for individual policyholders (homeowners and/or renters):
  - Gather pictures of your property and its contents (if possible) to show your insurer as part of your claim.
  - Obtain building plans and renovation records for your home.
  - Keep all of your receipts. Every expense from the time you leave your home (lodging, food, gas, clothing, supplies, etc.) may be reimbursable.
  - Even if your home is not lost or destroyed, you could still get reimbursed for out-of-pocket costs while displaced.
- Take contemporaneous notes of all communications with your insurer, including telephone conversations, in-person discussions, e-mails, or other written correspondence.
- Respond to your insurer’s preliminary coverage investigation, and follow up regularly with the assigned adjuster(s) to ensure the claim is being promptly processed.
- Ask for an advance! The answer will likely be yes, but only if you ask.
- Be alert to coverage defenses, adjustment issues, and timing requirements as your claim progresses. Your policy will likely require you to keep your insurer informed before undertaking any major steps, such as debris removal. They also may include a contractual period in which you must begin rebuilding to collect the replacement cost value of your property (as opposed to the lesser actual cash value). However, such deadlines may be extended or suspended by the California Insurance Commissioner or otherwise by operation of law.
- Be aware of policy deadlines (e.g., proof of loss submission, statute of limitations for filing suit, deadline for commencing reconstruction, etc.) and consider obtaining a waiver of those deadlines from the insurer.
- We recommend exercising extreme caution before retaining a public adjuster. Their value is typically quite limited in total loss scenarios. Seek advice of counsel before doing that.
- Prepare for potential dispute resolution with your insurer, including by consulting with counsel as appropriate.

## Common Coverage Provisions and Considerations

- **Actual Cash Value vs. Replacement Cost Coverage.** When purchasing insurance, policyholders typically select to insure their property at either its “actual cash value” or its “replacement cost.” Policyholders should check the policy to determine which coverage was purchased. If the policy covers the actual cash value, the insurance will only pay the current market value of the damaged

property, taking into account its age and wear and tear (depreciation). In contrast, if the policy covers the replacement cost, the insurance will pay to replace damaged property at today's market price, without deducting for depreciation. However, in mass loss situations like these Southern California fires, insurers will often do a rough calculation of actual cash value and make an initial claim payment in the amount of the actual cost value. The replacement cost value will be determined later and will require the policyholder to diligently go back-and-forth with the insurer to prove the value of the property and challenge any low valuations the insurer proffers.

- **Full Replacement Cost at New Location.** In the event of total loss, Insurance Code § 2051.5 permits you to use replacement cost payments to build or purchase property at a new location.
- **Scope of Recoverable Loss.** Homeowner policies, for example, often provide coverage beyond the structure of a home. These policies can cover personal property and the cost of a rental during the period of repair or replacement. The process to repair or replace damaged property from these fires could be unusually long, given the volume and scope of damage in the area. Policyholders will need to determine if their policies limit the duration or amount of such rental coverage.
  - **Alternative Housing.** Most policies provide for alternative living expense coverage. This can be applied even to housing in a new geographic area.
  - **Personal Property.** Many policies provide “replacement cost coverage” for personal property. Although insurers may relax requirements regarding itemization and documentation of lost property in total loss situations, to maximize total recovery we recommend itemizing all lost personal property (appliances, furniture, clothing, jewelry, art, musical instruments, etc.), to the extent practicable.
  - **Renter’s Insurance.** Many renter’s or tenant insurance policies cover fire or smoke damage to personal property (clothing, furniture, electronics, etc.), as well as living expenses like temporary housing and meals until a new permanent residence is located.
  - **Commercial Insurance.** Commercial property and business interruption policies typically provide a broad array of coverages, including extra expense coverage (reimbursing for the additional costs incurred to allow the business to operate while repairs are in progress) and business interruption coverage, discussed below.
- **Lender Loss Payable Provisions.** Properties with mortgages may need to pay off their loans with insurance proceeds, leaving the policyholder to acquire new, higher-priced mortgages (if available) to finance building costs. Unless policyholders can rebuild without a mortgage or can pay higher rates, policyholders can take several steps, including the following:
  - Working with their insurer to ensure the insurance proceeds are issued on a “jointly payable” basis
  - Keeping current on their mortgage
  - Creating an escrow account with the policyholder and mortgage company from which releases will be authorized solely to cover rebuilding costs
- **Business Interruption Coverage.** In addition to insuring loss or damage to real and personal property, commercial property policies often also provide businesses with coverage for economic

losses resulting from the inability to use property for its intended purpose because of physical perils like smoke and fire. Such coverage is often referred to as “business interruption” or “time element” coverage. Similarly, some property policies may also provide coverage for economic losses resulting from loss or damage to another’s property, or offsite events that impair the policyholder’s ability to conduct operations on its own property. For example, economic losses may be recoverable when civil authorities order the policyholder’s business closed or evacuated or impair access to its property due to nearby fire and smoke. Coverage for business interruption losses often continues at least until damaged property is repaired or replaced, and sometimes until business returns to operations that would have existed had no loss or damage occurred.

## **FAIR Plan Policies**

Some businesses or individuals in high-risk areas may have been forced to purchase FAIR Plan insurance. The FAIR Plan is a government-created insurer of last resort for fire insurance coverage. California law requires all insurers licensed to operate in California to pool the risk for FAIR Plan policies, allowing homeowners and businesses in high-risk areas access to basic fire insurance coverage. FAIR Plan coverage is available for businesses and individuals that have difficulties in obtaining coverage from the private insurance market. While a relatively small percentage of Californians have FAIR Plan policies, a disproportionate number of policyholders in the areas affected by the recent wildfires in Southern California may have FAIR Plan policies, as several private insurers have dropped customers in these areas in recent years.

These policies typically cover basic property/structural damage from perils like fire and smoke and the costs to rent a property similar to the damaged property, up to a certain dollar amount. But FAIR Plan policies do not provide personal liability coverage or “Loss of Use” or “Additional Living Expense” coverages that standard policies provide, such as extra mileage, pet boarding, meals, furniture rentals, etc. While FAIR Plans should provide some basic protections, property owners with FAIR Plans will need to review their policies carefully. In many cases, property owners will need to look to umbrella, difference in conditions, or any additional insurance they may have purchased to cover portions of their losses.

## **Latham Is Here To Help**

Latham’s insurance coverage team has recovered billions of dollars for our clients. We have a wealth of experience advising policyholders facing catastrophic losses and advocating for fire-related and business interruption coverage. We are available to provide a preliminary consultation and review of policies to ensure best practices are followed to maximize insurance recoveries related to these fires.

In addition, multiple other Latham teams have broad wildfire expertise to assist you. Latham’s teams routinely work on preparing reports to evaluate wildfire risks for proposed and existing facilities, evaluating legal and regulatory questions involving wildfires, and engaging fire consultants to prepare and implement wildfire mitigation strategies for clients’ properties or proposed developments.

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If you have questions about this Client Alert, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

**David A. Barrett**

david.barrett@lw.com  
+1.202.637.2126  
Washington, D.C.

**Drew T. Gardiner**

drew.gardiner@lw.com  
+1.858.523.5472  
San Diego

**Robert J. Gilbert**

robert.gilbert@lw.com  
+1.617.948.6059  
Boston

**Kirsten C. Jackson**

kirsten.jackson@lw.com  
+1.424.653.5689  
Century City

**Steven B. Lesan**

steven.lesan@lw.com  
+1.858.523.5453  
San Diego

**Brook B. Roberts**

brook.roberts@lw.com  
+1.858.523.3983  
Austin

**John M. Wilson**

john.wilson@lw.com  
+1.858.523.5463  
San Diego

**Paul Moura**

paul.moura@lw.com  
+1.212.906.1340  
New York

**Corey D. McGehee**

corey.mcgehee@lw.com  
+1.858.509.8467  
San Diego

**John D. Niemeyer**

john.niemeyer@lw.com  
+1.858.509.8456  
San Diego

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