

Oregon Department of Consumer and Business Services Division of Financial Regulation, Bulletin No. DFR 2022-3

TO: All property and casualty insurers that write homeowners policies and that have time limits in their policies for rebuilding or replacement of contents of less than three years

DATE: August 4, 2022

RE: Rebuild timelines and the 2020 Labor Day wildfire disaster

PURPOSE

The purpose of this bulletin is to clarify the division's expectations for insurers with respect to claims by Oregon homeowners rebuilding after suffering losses in the 2020 Labor Day wildfire disaster, and to provide certainty to affected consumers for the purpose of rebuilding from the losses.

AUTHORITY

- ORS 746.230
- ORS 746.240
- ORS 731.236
- ORS 731.296

BACKGROUND AND DIVISION FINDINGS

The catastrophic 2020 Oregon wildfires were among the most destructive and disruptive in Oregon's history, resulting in the loss of life and widespread destruction of property and the substantial disruption of the normal operation of the economy throughout the state. This disaster event is exacerbated and complicated by the ongoing COVID-19 emergency, along with the continuing global supply chain and economic challenges.

The impacts of these wildfires and the significant demands and challenges of recovery were addressed by numerous executive orders issued by the governor,¹ as well as an emergency order and guidance issued by the director of the Department of Consumer and Business Services.²

As noted, Oregon faced unprecedented supply shortages due to global supply chain issues, preventing some policyholders from timely beginning or completing construction from the 2020 wildfires.³ These market disruptions have presented a particular challenge to Oregonians seeking to rebuild homes destroyed by those fires.

Many homeowners insurance policies include provisions that impose restrictions on the time within which policyholders must rebuild their homes and replace contents. These restrictions typically range from one to three years after the loss occurs.⁴ However, the ability to rebuild after a catastrophic event is often constrained by the need to remediate health and safety hazards and a surge in demand for limited construction resources.

The conditions caused by both the catastrophic 2020 wildfires and the COVID-19 pandemic were of unprecedented scope and scale, leading to widespread shortages of

¹ See EO 20-60, *Proclamation of State of Emergency to Support Ongoing Recovery from Catastrophic Wildfires* (Oct. 28, 2020); EO 20-57, *Extending the Duration of Executive Order No. 20-42 (Declaration of Abnormal Disruption of the Market Due to Wildfires)* (Oct. 6, 2020); EO 20-42, *Declaration of Abnormal Disruption of the Market Due to Wildfires* (Sept. 10, 2020); see also EO 20-53 (Sept. 25, 2020); 20-52 (Sept. 25, 2020); 20-51 (Sept. 25, 2020); 20-49 (Sept. 25, 2020); 20-48 (Sept. 15, 2020); 20-47 (Sept. 15, 2020); 20-45 (Sept. 14, 2020); 20-44 (Sept. 14, 2020); 20-43 (Sept. 14, 2020); 20-41 (Sept. 9, 2020); 20-40 (Sept. 8, 2020); 20-39 (Sept. 8, 2020); 20-36 (Aug. 31, 2020); 20-35 (Aug. 20, 2020).

² See Wildfire Emergency Order (Sept. 18, 2020); Bulletin No. DFR 2020-17 (Sept. 25, 2020); Bulletin No. DFR 2020-20 (Oct. 23, 2020).

³ See, for example, <https://www.kgw.com/article/news/local/wildfire/high-cost-of-lumber-building-materials-halt-rebuilding-for-some-oregon-wildfire-survivors/283-f738e7c5-8d22-452a-b746-d7e0f6d6c455>
<https://www.oregon.gov/bcd/codes-stand/Documents/techb-material-supply-chain.pdf>
<https://djcoregon.com/news/2021/09/02/agc-contractors-face-labor-shortage-rising-costs-supply-chain-delays-covid-recovery/>
<https://www.statesmanjournal.com/story/news/2022/06/10/with-rebuilding-underway-in-oregon-fire-zones-price-of-lumber-reaches-new-highs/65359789007/>

⁴ The legislature recognized these restrictions and enacted HB 3272, effective July 1, 2022 which requires additional time for an insured to repair, rebuild or replace damaged or lost property. The extended timeframe is 12 months or 24 months depending on whether a declaration of state of emergency was issued and if the loss was subject to the declaration.

building supplies, home furnishings, and labor. As a result, a significant number of policyholders have found it impossible to either rebuild or replace their belongings within the timelines provided in their homeowners insurance policies. As of December 31, 2021, there remained 991 active claims from the 2020 wildfire catastrophe.⁵

The division has requested information from insurers about these claims, and the division has actively engaged with insurers to address policyholder concerns regarding rebuilding time limits.⁶ While insurers have generally indicated a willingness to extend timeframes on a case-by-case basis, the division continues to hear concerns from policyholders over a lack of certainty, as well as that some insurers are refusing to extend rebuilding timelines in spite of the numerous rebuilding challenges faced by policyholders. Therefore, the division finds that:

- The scope and scale of the 2020 wildfire disaster, along with the ongoing worldwide supply chain disruptions and product and labor shortages, has rendered rebuilding impossible for many policyholders within the timelines allotted by their policies;
- In situations where policyholders have acted in good faith and with due diligence in their efforts to rebuild, but have faced obstacles due to circumstances outside of their control, not providing additional time to complete their rebuilding and replacement efforts may unnecessarily harm those policyholders;
- Failure to adequately provide notice of expected timeframes to rebuild property or replace contents, including any additional time granted, may also be harmful to policyholders seeking certainty regarding their still-active insurance claims; and

⁵ Results of “2020 Oregon Wildfires Homeowner Claims Data Call” issued February 1, 2022.

⁶ See DFR News Release, “State and insurance companies reach agreement to extend rebuilding timelines for wildfire victims” (December 8, 2020).

- Under the circumstances, such failures may be inconsistent with insurers' obligations under the Insurance Code and constitute violations of ORS 746.230 and ORS 746.240.

THE DIVISION'S EXPECTATIONS FOR INSURERS

Any insurer that seeks to enforce a rebuilding time limit must promptly undertake a reasonable inquiry into all of the facts and circumstances of each outstanding claim by a policyholder arising out of a loss directly resulting from the 2020 wildfire disaster. This inquiry should include an assessment of the market conditions faced by the policyholder and the extent to which those market conditions may have increased the reasonable time and expense of rebuilding.

Under Oregon law, an insurer may not insist on the performance of a condition where unanticipated conditions or events have rendered the policyholder's performance of that condition impossible. Performance becomes "impossible" where it would involve difficulty or expense that is "outside any reasonable contemplation of the parties."⁷

In addition, the Insurance Code requires that all insurers:

- Promptly and truthfully reply to division inquiries regarding any matter connected with its insurance business;⁸
- Conduct a reasonable investigation based on all available information;⁹
- Acknowledge and act promptly upon communications relating to claims;¹⁰
- Promptly and equitably settle claims in good faith;¹¹ and

⁷ See, e.g., *Bennett v. Metro. Life Ins. Co.*, 173 Or. 386, 405 (1944) (holding that insured was discharged from duty to provide insurer with proof of disability where circumstances made performance impossible and enforcement of condition would forfeit the rights of insured); *Portland Section of Council of Jewish Women v. Sisters of Charity of Providence in Oregon*, 266 Or. 448, 457-58 (1973) (explaining that "unexpected difficulty or expense" may discharge a duty where the difficulty or expense is "outside any reasonable contemplation of the parties").

⁸ See ORS 731.296.

⁹ See ORS 746.230(1)(d).

¹⁰ See ORS 746.230(1)(b).

¹¹ See ORS 746.230(1)(f).

- Adopt and implement reasonable standards for the prompt investigation of claims.¹²

The Insurance Code also prohibits insurers from:

- Requiring a claimant to litigate by offering substantially less than the amount ultimately recovered by the claimant;¹³ and
- Engaging in a general business practice of refusing to pay or settle claims without just cause.¹⁴

Insurers have an obligation to promptly conduct reasonable investigations of all material facts so as to be in a position to make good faith, equitable claim settlement offers and payments. The effect of significant market disruptions on policyholders' ability to satisfy conditions of coverage generally would be material facts that should be investigated.

Therefore, for any active claims as of the issuance date of this bulletin that are the result of the 2020 Labor Day Wildfires, insurers shall:

- Extend the rebuilding time limit and/or content replacement time limit in the insured's policy up to September 30, 2023, if an insured acting in good faith and with reasonable diligence encounters a delay or delays in the reconstruction process that are the result of circumstances beyond the control of the insured. Circumstances beyond the control of the insured include, but are not limited to, debris cleanup and removal, unavoidable construction permit delays, lack of necessary construction materials, and lack of available contractors to perform the necessary work; **or**
- Follow the provisions of the bulletin for communicating why the rebuild time limit has not been extend as set forth below.

¹² See ORS 746.230(1)(c).

¹³ See ORS 746.230(1)(g).

¹⁴ See ORS 746.230(2).

- Nothing contained in this bulletin prevents an insurer from extending the contractual rebuilding and/or replacement time limit at its own discretion beyond September 30, 2023.

COMMUNICATIONS AND DATA TO BE FURNISHED BY INSURERS

Insurers are directed to communicate with their policyholders with active claims from the September 2020 wildfires in writing¹⁵ no later than August 30, 2022, with their decision as to whether policyholders will be given until September 30, 2023, or a future date certain to complete their rebuilding efforts or replace contents.¹⁶

For any policyholder not being granted until September 30, 2023, to complete their rebuild and/or replace their contents, the division directs insurers to provide the division with the following information regarding the active claims beginning September 1, 2022 and continuing every 60 days until otherwise directed, per ORS 731.296:

- The claims chart as identified in Appendix I of this bulletin; and
- The insurer's explanation regarding the decision not to extend the rebuilding and/or replacement timeline through September 30, 2023.

This bulletin takes effect upon publication.



Andrew R. Stolfi
Insurance Commissioner and Director
Department of Consumer and Business Services

08/04/2022

Date

¹⁵ The writing may be delivered by electronic means if this method of communication has been authorized by the policyholder.

¹⁶ Active claim is defined as any claim that has not yet received a final loss payment and the insurer expects there will be additional payment(s) expected.