

RICARDO LARA

INSURANCE COMMISSIONER

California Department of Insurance

Notes – Small Business Resources and Fire Preparedness

Virtual Town Hall

Friday, August 14, 2020

California businesses of all sizes are suffering great losses because of the COVID-19 pandemic. While we have encountered business interruption questions in the past following wildfires or other disasters, we have seen nothing on this scale – with thousands of businesses closed and drastically reducing payroll. It is imperative for you to have up to date information on services and resources for both issues. Insurance Commissioner Ricardo Lara and Assemblymember Kansen Chu hosted the following expert at the small business and fire preparedness virtual town hall on insurance issues and available resources for businesses:

- Chief Jake Hess, CAL FIRE, Santa Clara Unit
- Jon Phenix, Staff Counsel, Department of Insurance

Assemblymember Kansen Chu

Welcome everyone. I am Assemblymember Kansen Chu and I represent portions of Santa Clara and Alameda County, which includes Fremont, Milpitas, Newark, Santa Clara, and part of San Jose. Thank you all for joining today's virtual townhall with our California State Insurance Commissioner Ricardo Lara and Fire Chief Jake Hess with CAL FIRE's Santa Clara Unit. I hope you all are doing well and staying healthy.

Also, I would like to thank everyone for following our local and state orders. Please continue to do so. We need to remember that the pandemic is still here and people are still getting sick daily. We need to continue working together to keep the number of cases down and save lives. Please stay home as much as you can, wear masks in public, maintain social distancing and wash your hands. As the pandemic continues, please know that my office is here to help you all navigate these times so please do not hesitate to reach out.

This pandemic has brought a lot of uncertainty to our lives. Everyone single one of us has been impacted one way or another by COVID-19. Please reach out to my office by email or Facebook if you have questions about EDD unemployment insurance or CalFresh. As your representative, I am working with our state officials to ensure that all our state resources are utilized to assist you. This is why I am pleased to have our California State Insurance Commissioner Ricardo Lara with us today. He will provide us with information on what his department has been doing to assist Californians during this pandemic emergency and answer your questions on insurance coverage and how to make sure you are not underinsured when something happens. Also, we are in fire season as well, and Commissioner Lara will give us an update on what his department has been doing to ensure that all Californians have affordable fire insurance coverage.

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Our CAL FIRE's Santa Clara Unit Chief Jake Hess is here today to provide us with an update of what CAL FIRE's has been doing during this fire season, what evacuation during COVID-19 might look like, and tips for keeping your home safe from fires. It is an unfortunate fact, but two-thirds of people who lose their homes in an accident or emergency find themselves underinsured. Before COVID-19 rocked our daily lives, we know that wildfires have become a greater and more serious threat in California. Underinsured means many Californians are often left with covering thousands of dollars above insurance payouts. At such a tough financial time, I want to make sure homeowners and businesses understand the risk of being underinsured and get resources on what kind of insurance they need to cover the costs of damages in case something happens.

Our State Insurance Commissioner Ricardo Lara and his staff are here to provide us with information to help homeowners, renters, and businesses. Commissioner Lara, welcome!

Insurance Commissioner Ricardo Lara

Thank you, Assemblymember Chu, I am happy to join you today as we talk about wildfire preparedness and non-renewals, share resources for small businesses and give you and your constituents an update on the work we have been doing on their behalf.

Over the past year before the COVID-19 pandemic, I joined 22 meetings on wildfire insurance issues across the state – attended by more than 2,000 people. Assemblymember – you were at the last in-person event we held in San Jose in March, right before stay at home orders went into effect.

Since the Governor's "stay at home" order, we have also held over 30 tele-town halls focused on business issues like business interruption insurance and workers' comp -- and reached more than 7,000 businesses and consumers on COVID-19 related issues.

Like COVID-19, the reality is that wildfires are a statewide problem – and the fires that we have seen this year are a reminder that the wildfire season is already here, whether we are ready for it or not.

If we have another wildfire season that damages and destroys homes and businesses, my Department will be there to help you recover.

After the devastating Tubbs and Camp Fires, we organized insurance workshops where we met one-on-one with wildfire survivors.

For the 2017 and 2018 wildfires – as well as the 2018 fire-related Montecito mudslide, the Department of Insurance intervened and was able to recover more than 240 million dollars for wildfire claimants.

The California Department of Insurance recognizes that homeowners — especially in the Wildland Urban Interface — are experiencing:

- Non-renewals – With a 600% increase in complaints to the Department since 2010.
- Premium Increases — With more than 268 rate increases filed by insurers from 2017- July 2020.
- Lack of available insurance in the traditional homeowners and renters market.
- FAIR Plan coverage that is not as comprehensive as traditional homeowners' insurance.

10 of the 20 most destructive wildfires in California's history occurred between 2015 and 2018.

As risk increases, the cost of insurance also increases and the availability of coverage decreases.

Insurers consider the very recent past to underwrite and to determine rates for the future – with \$25 billion in losses in 2017-2018. That is why we are seeing insurance companies request increased rates.

The best way to increase availability and affordability of homeowners' insurance is to decrease the risk of loss.

This includes looking at where we build and investing in pre-disaster prevention and mitigation efforts including:

- Building Codes
- Fire Resistant Modifications
- Land Use Planning
- Community-wide Abatement
- Defensible Space
- Enhanced Infrastructure
- Wildfire Sensors

I believe insurance companies need to do more to support mitigation efforts at the local level.

I have sponsored legislation that would require insurance companies to cover a fire-hardened home in a fire-hardened community. This is an issue I will continue to pursue.

Before my election as Insurance Commissioner in 2018, I proudly authored Senate Bill 824, which gives protection against insurance non-renewals to everyone living in or near the perimeter of a declared wildfire emergency. Last year, I put that new law into effect for the first time.

Now there are more than 1 million homes in 180 zip codes that are protected until December 2020 from a nonrenewal.

You can find the whole list of zip codes on our website: insurance.ca.gov.

If we have a state-declared disaster in Santa Clara County this year and beyond, the new law will protect you from non-renewals for a year as well.

Before we jump into questions we received about wildfire insurance, I would be remiss not to mention several actions I have taken to protect policyholders during the COVID-19 pandemic.

Because of stay at home orders, we have seen fewer accidents on the roads and fewer insurance losses at businesses.

I ordered insurance companies to return a portion of premiums to businesses and drivers affected by the COVID-19 pandemic.

Because of my order, California automobile insurance companies have provided \$1.2 billion in savings to drivers.

If you want to see what your insurance company is doing, you can visit insurance.ca.gov to see the

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list.

This builds on an action I took to request insurance companies give consumers a grace period to pay premiums.

Many insurance companies have honored that request by offering flexibility to consumers and businesses during the COVID-19 emergency.

Other actions I have taken to protect consumers and businesses include:

- Requiring insurance companies to comply with their contracts and California law by fairly investigating business interruption claims.
- Extending personal auto coverage for delivery drivers for California's essential businesses.
- I also took action so people with expired license or registration can maintain their auto insurance while access to the DMV is limited.
- I joined with Covered California in urging uninsured Californians to obtain insurance to protect their health.
- Directing health insurance companies to submit emergency plans on prescriptions and health access- including increased telehealth access for consumers.
- Eliminating cost-sharing for COVID-19 testing.

I want to urge all businesses to be on the lookout for fraud and insurance scams – unfortunately during these times is when you see businesses targeted for fraud.

We have 300 sworn investigators and enforcement personnel, with 9 regional offices – including an office in Morgan Hill that serves Santa Clara County. If you see any red flags or suspicious activity, please report it to the Department of Insurance at 800-927-4357.

While a majority of our staff are teleworking in support of the Governor's "stay at home" directives, we continue to provide essential services for California consumers and we are available via phone at 1-800-927-4357 and through our website – insurance.ca.gov -- to assist you with your questions and claims.

Insurance can be complicated. We can help you and guide you through this process.

We have insurance experts ready to help and answer your questions in multiple languages.

You can talk or chat with an actual person – not just a recording.

Joining me is Jon Phenix from my department's legal branch to help answer your questions.

Fire Chief Jake Hess

CAL FIRE is fully staffed at our peak staffing. The Governor has allocated an additional 858 firefighters for CAL FIRE. These firefighters will help with fire suppression and fuel reduction efforts throughout California. This has been a big focus of our department. We are in a mega fire era. As of August 9, we have had 5,000 fires in CA this year - almost 100,000 acres. Compared to last year, we had 3,000 fires in the same time frame – almost 25,000 acres.

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COVID has not changed CAL FIRE's goal of keeping 95% of all wildland fires to 10 acres or less (we are still very aggressive with our fire suppression). We are having to evacuate folks more often and earlier during this mega fire era. We are working with our counties and cities to ensure that there are COVID mitigation efforts for inception centers for these folks.

Our incident bases have changed. We are reaching out to communities virtually to help put them in contact with resources when wildfire is in their communities. We connect with our local public health officer to make sure we are following the local orders associated with our operations.

The Alert Wildfire Camera Network is a network of over 800 cameras to alert us and help with our situational awareness including evacuation orders. CAL FIRE invested over \$5M into wildfire camera detection. Visit AlertWildfire.org to see fires real time.

We have had some grant opportunities where we are mechanizing how we evacuate people. We will have a public facing platform to see how fast the fire will expand through the landscape. It will give us a whole host of data: what are the roads affected; how many people live there; how many people will be evacuated.

Please review the www.readyforwildfire.org website for great information. There is the ready, set, go program. There is a home hardening link with tips to clean up your property. There is a whole host of programs and resources to help you.

And please register your cell phone to receive reverse 911 calls to your cell phone on AlertSCC.org.

Assemblymember Kansen Chu

Thank you Chief Hess. Also, I would like to thank you and all first responders at your department on behalf of my constituents for keeping us safe.

Now let's move on to the questions and answers. I have some questions for the Commissioner and the Chief. For those who are watching, if you have any questions, please feel free to submit them to Assemblymember.Chu@assembly.ca.gov or click on the google form link. My staff has added this information to Zoom chat and on Facebook Live. If we do not get to your questions, my staff will follow up after the town hall to provide you with the appropriate resources.

Questions

Question 1: I paid my insurance and understood it included business interruption coverage, why isn't the loss of business due to the COVID-19 pandemic covered?

Jon Phenix: The first thing people need to know is that not all policies are the same.

We would need to look at the specific policy to better understand what coverages and exclusions a policyholder has.

If a business has Business Interruption coverage, but their insurance company is telling them that these losses are not covered due to exclusions in their policy, we recommend that you file a formal claim with their insurance company and start creating that paper trail.

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Insurance companies are legally required to fairly investigate a claim and formally respond back with their coverage decision and the reason for any denials they may make.

While it is more complicated than this, many commercial policies have exclusions for loss due to contamination by virus and similar perils.

Many policies also require that a loss be caused by direct physical damage or loss to the insured property that results from a cause covered by the policy. These conditions and exclusions do create hurdles to obtaining coverage.

However, we would need to see the entire policy as well as the circumstances applicable to the loss event to know what conditions or exclusion may or may not exist for a particular business.

If a business has not filed a formal claim, it should do so immediately. If the business has filed a formal claim and that claim has been denied, we recommend they file a "Request for Assistance" with the Department by calling us at (800) 927-4357 or through our website at: www.insurance.ca.gov.

While it is true that many commercial policies have provisions that may exclude coverage for business interruption under the circumstances, the Department will review the claim to ensure that the insurer is properly investigating your claim and following all laws and the provisions in the contract.

Question 2: Can workers' compensation insurance companies exclude COVID-19 from their coverage, whether or not they are considered essential businesses?

Jon Phenix: Workers compensation insurers cannot exclude COVID-19 from their coverage.

All workers affected by COVID-19 on the job are eligible for workers' compensation benefits – whether or not they are considered essential services.

This includes workers engaged in front-line occupations such as health care, emergency services, food production, sales, and delivery, among others.

Workers' compensation also applies to undocumented workers. In 2015, when the Commissioner was in the California State Senate, he authored SB 623, which was signed by Governor Brown, that expanded protections for undocumented workers in the event they are injured on the job, even if their employer does not carry workers' compensation insurance as required by law.

We issued a notice to insurance companies on April 6 to remind insurance companies about these existing legal protections for undocumented workers.

Governor Gavin Newsom signed an executive order creating a presumption that a worker contracted COVID-19 while on the job if the worker is diagnosed with COVID-19 or tests positive within 14 days of performing a labor or service at a place of work.

The order applies to all workers, whether or not they are deemed "essential."

But I have to say for our business owners, this is a rebuttable presumption, meaning that employers will have a chance to prove that the illness is not work-related.

Businesses that are closed or have drastically reduced payrolls due to stay at home orders may see their workers' compensation insurance costs reduced in the short term.

That is why the Commissioner ordered insurance companies to return a portion of workers' compensation premiums to businesses.

We issued emergency workers' compensation regulations to make changes to reflect the lower risk of worker injuries in light of the pandemic.

These new regulations will mandate insurance companies to recompute premium charges for policyholders to reflect reduced risk of loss consistent with the Commissioner's bulletins, and will result in savings for many policyholders as businesses.

Question 3: We also received a lot of questions from small business owners about liability due to COVID-19 exposure. How can businesses deal with these liability issues?

Jon Phenix: We are extremely sympathetic to our businesses.

Even when you reopen, businesses are going to need time to recover. And, we know liability due to COVID exposure is a legitimate concern.

The Department of Insurance is going to be watching closely to make sure that insurance companies are giving you as much flexibility as possible and that they are fully abiding by their contracts.

There are burdens being placed on businesses as they attempt to reopen while still keeping their employees and customers safe. It is not an understatement to say that lives are at stake here.

Businesses should follow the Governor's Resiliency Roadmap, as well as local guidelines, for what processes the business must follow, and that will go a long way towards helping California lead the way through this pandemic.

As businesses reopen, they should have a conversation with their agent or insurance company to get guidance regarding how to safely return to business and also to make sure businesses have the right coverage in place.

If you need an expert from the department to help you decipher your coverage or you're not satisfied with the answers you're getting from your agent/broker, please contact our Department at 800-927-4357.

As I discussed earlier, workers are specifically covered if they contract COVID-19 while on the job.

Question 4: What are my options if I do not have coverage for business losses due to the COVID-19 virus?

Jon Phenix: If you truly don't have any Business Interruption coverage, you should look at the various federal, state, and local programs available through the Small Business Administration and other sources.

However, if you have a commercial policy, but your insurance company is telling you that you don't have Business Interruption coverage, or that there is no coverage when losses are caused by a virus, we recommend that you file a formal claim with your insurance company. As I mentioned before, insurance companies are legally required to fairly investigate your claim and formally respond back to you with their coverage decision and the reason for any denials they may make. The Department of Insurance can also walk you through your policy to make sure what the insurance company is telling you is accurate.

Question 5: For those who might not be tech-savvy, what is the best way to stay informed when there is an emergency?

Chief Hess: My first recommendation is to always register your cell phone with the local 911 system. For Santa Clara County that is AlertSCC.org. Landlines automatically always receive reverse 911 calls but they may not always have service during a fire.

We always encourage the public to enlist family or friends to create a network to help out each other. During large emergencies, CAL FIRE hosts meetings with the communities that are affected to ensure everyone is in the loop.

There are a number of applications out there that are very easy to navigate and user friendly: Readyforwildfire.org - this is a quick download to any smartphone and it sends text messages when new fires start throughout California.

The PG&E website has contact information for wildfire season that will send you alerts and information during public safety power shutoffs.

Question 6: What languages are available for communication during emergencies? Can people opt to have information sent in the language that they are most comfortable with?

Chief Hess: Alert SCC reverse 911 information is available in English, Spanish, Vietnamese and Chinese. For a person calling 911, the Communications Centers have contracts with companies who offer interpreters for a wide variety of languages.

Question 7: If I am a renter, do I need to buy my own hazard insurance in case of fire, flood, or earthquake? What about for things like home being broken into and items stolen?

Jon Phenix: Your landlord does not provide insurance for your personal property. Having all your personal possessions destroyed in a fire or other insurable event, without coverage, is a tragedy that does not have to happen.

A typical renters' insurance policy will cover your possessions if they are lost or damaged as a result of fire, theft, or vandalism. It can protect you from liability if someone gets hurt on the premises. And it can provide compensation if you have to live somewhere else because of certain events, like storm damage or an apartment fire. You don't need renters' insurance unless your landlord requires it, but renters' insurance is usually very affordable if you shop around and we generally encourage people to purchase protection for themselves if they can.

To protect your belongings, you should consider purchasing renter's insurance, also known as

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“tenant’s insurance.” The renter’s policy may be used to provide coverage for your personal contents located in the property that you occupy. Coverage is also provided for loss of use, personal liability protection and medical payments to others.

However, most renters’ policies don’t cover for losses caused by flooding. Renters who live in areas identified with flood risk should consider purchasing flood insurance from the National Flood Insurance Plan to protect contents that may be damaged due to rising sea levels.

They should be aware that NFIP policies do not cover the cost of additional living expenses after a flood. In disaster situations FEMA may be of assistance.

Question 8: About non-renewal - if you are homeowner, living in a high risk or close to high-risk area, are insurance companies required to provide you insurance coverage or can they deny to insure you?

Jon Phenix: Unfortunately, there is no easy answer to this question. Private insurance companies generally can deny homeowners insurance coverage due to high wildfire risk. California’s backstop for property insurance coverage is the California FAIR Plan. The FAIR Plan is backed by all of our admitted property insurers each to the extent of its share of the market that it has in this state. The FAIR plan cannot deny coverage based on your wildfire risk.

But we don’t think it’s fair for companies to give blanket denials of coverage to people who have done the work to protect their homes from wildfires. This year, the Commissioner sponsored a bill in the Legislature that would have required insurance companies to offer a policy to a fire-hardened home in a fire-hardened community. It also required premium discounts if those home hardening efforts were taken. The Legislature decided not to hear that bill – instead hearing an industry-sponsored bill that will hurt consumers. But we’re going to continue pushing for more consumer-friendly legislation in the future.

This market is generally limited to a subset of admitted insurers who do write higher value homes and also to certain surplus lines insurers who write this coverage.

My only suggestion is to make sure you have thoroughly shopped both of these marketplaces and also considered strategic modifications to coverage – such as significant self-insured retentions (higher deductibles) or coverage limitations – that might make the risk acceptable.

There are no guarantees of coverage for homes for limits that exceed those offered by the FAIR Plan. And while there are some rate pricing protections in place with respect to the admitted market and the FAIR Plan, there is no guarantee that premiums are affordable.

Question 9: How do I know as a business owner, homeowner, if I am underinsured? Does the Insurance Department have any resources for consumers to help figure that out?

Jon Phenix: Underinsurance is an important issue in all states. Underinsurance occurs when your coverage limits are inadequate to replace your home in the event of a total loss, or rebuild after a partial loss, or provide adequate liability coverage if a visitor gets badly hurt. It’s important to remember that replacement cost is not the same as the market value of your home. The most important step you can take is to check the policy itself and discuss your coverages and limits with your agent or broker, or the company itself. The policy will show what kinds of things your insurance

company will and won't cover. Your insurance company will give you a copy of the policy if you don't have one already. And, if there are terms in the policy you aren't understanding, you can call the Department hotline and ask our insurance experts to help explain them.

Assemblymember Chu: Can the Department tell us the proper replacement cost or does it depend on the area where you live?

Jon Phenix: Yes, it depends on where you live and whether you have extra structures on the premises; it is very highly individual. Work with your insurance agent or company. Remember to do this on a regular basis.

Question 10: Will Covered California keep its eligibility period open all 2020 due to COVID-19?

Jon Phenix: The Department is unaware whether Covered California will extend their COVID-related enrollment period through the entirety of 2020. The current Special Enrollment Period extends through August 31 and the Open Enrollment Period will begin November 1 and through January 31, 2021. If you've lost your health insurance coverage you may qualify for a special enrollment period.

Question 11: What special protections are in place for Medicare Supplemental Insurance (Medigap) plans during COVID-19?

Jon Phenix: These policies are guaranteed renewable and the benefits are dictated by federal law. If you need Medicare counseling, the California Department of Aging offers free counseling through HICAP.

Question 12: Are premium increases on health insurance frozen during COVID-19?

Jon Phenix: Unfortunately, the Department of Insurance does not have rate approval authority at this time. However, in our rate reviews for 2021 rates, we are closely scrutinizing issues related to utilization rates and COVID-19 costs.

Question 13: What is one of the services that CAL FIRE provides that is not communally known to the public?

Chief Hess: Everyone thinks of Cal FIRE with our helicopters and aircraft and almost 10,000 employees. That is our operational arm. CAL FIRE has an entire arm of Resource Management Employees (Foresters, Environmental Scientists, Forestry Technicians, Archeologists, Hydrologists, Forest Pest Specialists, Biologists) who focus on fuel reduction, vegetation management burns, timber harvest, grant allocation, community outreach, state forest operations, and environmental law.

An example of their work is the Highway 117 project. The Resource Management arm was in charge of this.

Question 14: What is the difference between earthquake insurance and fire insurance if one day we have an earthquake and the house catches on fire?

Jon Phenix: Earthquake insurance is typically going to be in the event you have a really severe earthquake. Homeowners insurance policies will typically have a coverage for what is known as fire following earthquake and you will have coverage in the event the earthquake results in a fire to the premises.

Question 15: Commissioner Lara issued a notice instructing all insurance companies to stop enforcing policies or statutory deadlines on policyholders for claims until 90 days after the shelter in place. My workers' compensation insurer for the previous year ending in 2020- I was never notified that the policy was re-examined at the end of the policy date and the premium was re-calculated. This occurred after my business was forced to shut down. Am I able to delay this payment per the guidelines you listed?

Jon Phenix: This sounds like a question about the grace periods and a very individualized problem. Please reach out to us at our consumer hotline.

Assemblymember Chu

Thank you all for taking the time to join us and big thanks to Commissioner Lara, Jon Phenix, and Chief Hess for taking time out to join us today. This town hall was recorded and will be on my web site and my Facebook. If your questions did not get answered today, we will follow up and refer you to the appropriate resources. Please continue to stay home, stay safe, and do not forget to be kind and help each other out during these tough times!

Chief Hess

Thank you for the invitation to this town hall. We are always available now and in the future. Please make sure you have a "go-kit". Identify those vulnerable in the community and put them on the radar in the event an emergency pops up.

Additional Resources

Request Assistance from the California Department of Insurance

- <https://www.insurance.ca.gov/>
- PH: 800-927-4357

Assemblymember Kansen Chu

- District Office: 408-262-2501
- <https://a25.asmdc.org/>

U.S. Small Business Administration

- www.sba.gov

Ready for Wildfire

- www.ReadyforWildfire.org

Santa Clara County AlertSCC

- <https://www.sccgov.org/sites/oes/alertscc/Pages/home.aspx>

Alert Wildfire

- <http://www.alertwildfire.org/>

CAL FIRE / Santa Clara Unit

- 408-472-1600

CA Fair Plan

- <https://www.cfpnet.com/>

CA Department of Aging – HICAP

- <https://www.aging.ca.gov/>

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