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MEDIATION PROGRAM

Residential Property and Earthquake Claims



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California Department of Insurance



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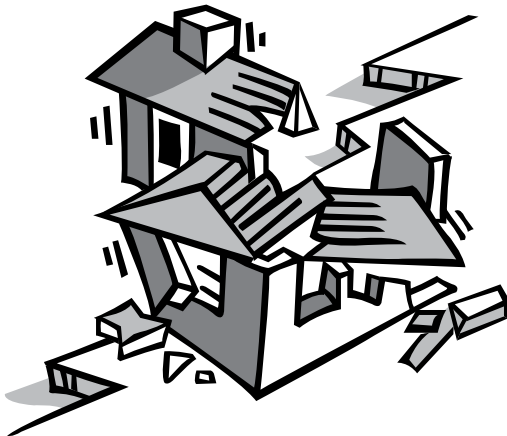
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Why use Mediation?

It is an informal, inexpensive and non-adversarial way to resolve your dispute with your insurance company.

One of the responsibilities of the California Department of Insurance (Department), is to help consumers who are having difficulty getting their residential property or earthquake insurance claims resolved.

California Insurance Code Chapter 8.9 was enacted in October 1995 as a result of Senate Bill No. 882. This law made it possible to establish a program for the mediation of certain disputes over residential earthquake damage claims arising out of the Northridge earthquake of 1994 and any subsequent earthquakes. In 2004, Senate Bill No. 64 was enacted as an urgency measure to expand the mediation program to include residential property insurance losses other than earthquake. The program will be available for those losses that occurred after September 30, 2003, and for which the Governor declared an emergency. This program uses mediation to bring you and your insurance company together in an informal meeting with a qualified mediator.



What is Mediation?

Mediation is a process by which you and the insurance company submit your dispute to a neutral third party (the mediator) that works with both of you to reach a settlement of the dispute. The mediator has no power to impose an agreement on you; only you can decide to settle your case. One of the purposes of mediation is to give you the opportunity to tell the other side your perspective on the dispute; this can only be done in a joint session.

The mediation is **non-binding**, which means that neither you nor the insurance carrier is legally obligated to accept an offer made by the other party. Even if you do agree to settle your case in mediation, you have three business days to change your mind. If you change your mind within this three-day period, you must inform the mediator of your decision.

In private sessions with each side, the mediator tries to promote a candid discussion of the issues and priorities of each party. Gaining knowledge of the facts from these meetings, a mediator can selectively use the information learned from each to:

- Reduce the hostility between the parties and help them engage in a meaningful dialogue on the issues at hand;
- Open discussions into areas not previously considered;
- Communicate positions or proposals in more understandable terms;
- Probe and uncover additional facts and the real interests of parties;
- Help each party to better understand the other party's views and evaluations of a particular issue, without violating confidences;
- Narrow the issues and each party's positions, and deflate extreme demands or positions;
- Evaluate the receptiveness for a proposal or suggestion;
- Explore alternatives and search for solutions;
- Identify what is important and what is expendable;
- Prevent regression or raising of surprise issues;
- Structure a settlement to resolve current problems as well as to meet future needs of the parties.



Who Is Eligible for this Program?

Anyone having a dispute involving residential or earthquake damage claims for which the Governor has declared a state of emergency. The amount claimed by the insured must exceed \$7500.00 and the amount in dispute must exceed \$2000.00. It does not apply to commercial or liability policies.

Residential Property Issues Eligible for Mediation

- Scope of loss
- Mandated Building Code Upgrades
- Dwelling vs. Other Structures
- Preexisting Damage vs. Proximate Cause
- Additional Living Expense
- Asbestos Abatement
- Proof of Loss and Other Personal Property Issues
- Claims when both parties to the policy wish to discuss possible payments beyond policy limits

Residential Property Issues Not Eligible for Mediation

- Coverage issues—the absence of residential property coverage, and other certain underwriting issues, including, but not limited to failure to insure, cancellation, nonrenewal and rating issues.
- Legal interpretations of policy provisions and terms.
- The statute of limitations and contractual limitations on filing periods.
- Claims in excess of policy limits, except as set forth in the issues eligible section, in the absence of Guaranteed Replacement Coverage.
- Allegations of bad faith, and other demands for extra contractual payments.
- Claims or disputes involved in a civil action.



Earthquake Claims Issues Eligible for Mediation

- Scope of loss
- Mandated Building Code Upgrades
- Dwelling vs. Other Structures
- Preexisting Damage vs. Proximate Cause
- Additional Living Expense
- Asbestos Abatement
- Earthquake vs. After Shocks
- Hidden Damages
- Proof of Loss and Other Personal Property Issues

Earthquake Claims Issues Not Eligible for Mediation

- Coverage issues—the absence of earthquake coverage, and other underwriting issues involving underinsurance, failure to insure, cancellation, nonrenewal and rating issues.
- Legal interpretations of policy provisions and terms.
- The statute of limitations and contractual limitations on filing periods.
- Claims in excess of policy limits in the absence of Guaranteed Replacement Coverage.
- Allegations of bad faith, and other demands for extra contractual payments, including underinsurance.
- Claims or disputes involved in a civil action.

Who Selects the Mediator?

The Department will appoint a qualified mediator to handle your dispute. Mediators are required to disclose conflicts of interest with respect to you or other parties to the mediation. It is essential that the parties have complete confidence that the mediator will be fair and impartial.

When and Where Will the Conference be Held?

After the pre-mediation telephone conference, the mediator will forward written confirmation of the date, time and location of the mediation conference.

How Does the Mediation Process Work?

The First Step – Notification

Once you advise us that you have not been able to reach a satisfactory settlement of your claim, the Department is required to notify the insurer that you have reported the dispute. The law requires that the company then be allowed 28 days to resolve the dispute, prior to the initiation of the mediation process. Once this time has expired, and if the claim is still unresolved, you will be offered mediation unless a question of eligibility is raised. If so, it will be reviewed by the Department.

The Second Step – The Agreement to Mediate

Since mediation is voluntary, you must agree in writing that you wish to participate in the mediation program. You will be sent a Mediation Election Form to formally request mediation.

The Third Step – Selection of the Mediator

Upon receipt of your signed request for mediation, the Department will appoint a qualified mediator to handle your dispute. Mediators are required to disclose conflicts of interest with respect to you or the other parties to the mediation. It is essential that the parties have complete confidence that the mediator will be fair and impartial. Each party to the mediation may object once to the mediator assigned by the Department. If either party objects, a new mediator will be assigned. A Mediator Objection Form will be provided to you and your insurance company.

The Fourth Step – Pre-mediation Telephone Conference

The mediator will conduct a pre-mediation telephone conference with you and the insurance company's representative. A mutually agreeable date, time and location for the mediation conference will be determined. You and the company's representative will be asked to prepare a "Mediation Conference Statement." Your statement must summarize the claim and the reason for it, identify the costs or damages sustained, state what you consider a fair resolution of the claim, and identify prior demand and offers, if any. A date will be set for you to send a copy of your statement to the insurance company and the mediator. The company must send you a copy of its statement. The mediator will also ascertain at this point if you will be represented by an attorney at the conference.

The Fifth Step – Preparing for the Conference

- Define and analyze the issues involved in the dispute;
- Consider your entire situation (what you can realistically expect, time constraints, available resources, legal ramifications, business or trade or trade practices, costs, etc.);
- Identify your needs and interest in settling the dispute;
- Prioritize the issues in light of your needs;
- Summarize your claim and the reasons for it; determine what possible solutions might satisfy your interest;
- Review the strengths and weaknesses of your case;
- Gather and be ready with facts, documents, complete policy, letters, photographs, itemized dollar estimates, bills, reports, other items and sound reasoning to support your claims;
- Anticipate the other party's needs, demands, positions, version of facts, strengths and weaknesses;

- You must write a statement outlining the issues, extent of damages and what you consider a fair resolution.
- The mediator has the right to request that you or the company bring additional documentation that you have for review.

The Sixth Step – the Mediation Conference

You should come to the mediation conference prepared with all of the documentation you feel will be necessary to discuss your case.

At the outset, the mediator describes the procedures and ground rules including covering each party's opportunity to talk, order of presentation, decorum, discussion of unresolved issues, and signing of a Confidentiality Agreement. The mediator tries to understand each party's perceptions, interests, and positions. The mediator then acts as a facilitator to keep discussions between the parties focused. The mediator may probe, test and challenge the validity of each party's positions. The mediator will help each party think through its demands, priorities, and views, and deal with the other party's arguments. The mediator helps build a settlement range within which the parties can assess the consequences of continuing or resolving the dispute. If an agreement is reached, the mediator may summarize the specifics of an agreement and make sure the terms are comprehensive, specific, and clear.

The Seventh Step – the Settlement

When the parties reach an agreement, they should put the terms in writing and execute releases. If no settlement is reached, the mediator may explain the consequences of failure to reach an agreement.

Upon completion of the mediation process, a Mediation Program Survey will be mailed to you. The Department requests that it be completed and returned at your earliest convenience to assist with the evaluation of the program. All mediations differ, (depending on the parties involved and the issues in dispute) so yours may vary from the steps described.

What Are the Costs and Time Involved?

There is no cost to you. Your insurance company will pay the costs of the mediation, unless you fail to appear for a scheduled mediation conference without good cause. Most conferences will take several hours. The conference will continue as long as all parties agree progress is being made in resolving the dispute.

What Happens If I Decide to Have a Lawyer Present?

It is not necessary for you to have a lawyer, as this process is designed to be informal and non-adversarial. However, if you elect to be represented by a lawyer at the conference, you must notify the mediator during the pre-mediation telephone conference. The mediator will advise the company so it may have its lawyer present. A lawyer cannot represent your insurance company unless you choose to have a lawyer present at the mediation conference.

If I Go to Mediation Can I Also Go to Court or Participate in Other Dispute Resolution Procedures?

Yes. If the mediation is unsuccessful, you can take whatever options were available to you had you not gone to mediation. Remember, this is a non-binding process, and it is a means to reach a mutually agreed upon resolution of the disputed issues.

Will Anything I Say at Mediation Be Used Against Me Later If the Mediation Is Unsuccessful?

No. The mediation conference is considered a settlement negotiation and statements made during the conference cannot be used against you in any later proceedings. Everyone is required to sign a Confidentiality Agreement at the beginning of mediation conference.

How Can I Get More Information?

You may obtain additional information regarding this mediation program by referring to the California Insurance Code Chapter 8.9. The code is generally located in the reference section of your local library or at a law library in your area. It is also accessible at our Web site: www.insurance.ca.gov.

Residential Insurance Terms and Phrases

ACV – Actual case value is determined as follows: In case of total loss to the structure, the policy limit or the fair market value of the structure, whichever is less. Fair Market Value is the amount at which a knowledgeable buyer (under no unusual pressure) would be willing to buy, and a knowledgeable seller (under no unusual pressure) would be willing to sell. In cases of partial loss to the structure, or loss to its contents, the amount it would cost the insured to repair, rebuild or replace the thing lost or injured less a fair and reasonable deduction for physical depreciation based upon its condition at the time of the injury or the policy limit whichever is less. In case of a partial loss to the structure, a deduction for physical depreciation shall apply only to components of a structure that are normally subject to repair and replacement during the useful life of structure.

ALE – Additional Living Expense is a form of insurance paying to the insured the necessary increase in living expenses actually incurred so that the household can maintain its normal standard of living. The intent of this coverage is to compensate for the difference between the current household cost and what the cost would have been had there been no loss.

Appraisal – An insurance policy provides for an appraisal process after a loss, on demand of either the insured or the company, in order to determine the amount of loss settlement in the event of a dispute regarding the actual cash value or the replacement cost. The costs are shared by both parties.

Business Day – Means each and every day except Saturdays, Sundays, Federal and State holidays.

Calendar Day – Means each and every day including Saturdays and Sundays, Federal and California State holidays, but if the last day for performance of any act required by these regulations falls on a Saturday, Sunday, Federal or State holiday, then the period of time to perform the act is extended to and includes the next calendar day which is not a Saturday, Sunday, or Federal or State holiday.

Coverage – The scope of the protection provided under a contract of insurance; any of several risks covered by a policy.

Debris Removal – Coverage for the cost incurred in the removal of debris of property covered resulting from damage caused by an insured peril.

Deductible Clause – Specifies an amount to be deducted from any loss. For earthquake insurance, this is a percentage of the amount of coverage on the dwelling. Some earthquake policies have a separate deductible on each item of insurance, such as personal property.

Depreciation – A decrease in the value of property due to wear and tear or obsolescence.

In Writing – Includes transmission by facsimile (fax).

Limit – The maximum amount of benefits that an insurer agrees to pay in the event of a loss.

Partial Loss – A loss which does not completely destroy or render useless the insured property.

Policy – Means the written contract between an insured and an insurance company stating the obligations and responsibilities of each party. A policy may include any applications, binders, declaration forms, endorsements, certificates, and any other documents, which describe, affect or limit coverage under the policy.

Replacement Cost Insurance – The full cost to repair or replace the damaged property with no deduction for depreciation, subject to policy limits and contract provisions.

Residential Coverage – Means insurance coverage for individually owned:

1. One to four family dwellings, used exclusively for residential purpose; or,
2. Manufactured homes, used exclusively for residential purpose; or,
3. A single family unit within a townhouse, condominium, planned unit development, or cooperative and used exclusively for residential purpose; or,
4. Tenant residences located within any residential unit.

Talk to the Department of Insurance

We are the state agency that regulates the insurance industry. We also work to protect the rights of insurance consumers.

Contact the California Department of Insurance (CDI):

- If you feel that an insurance agent, broker, or company has treated you unfairly.
- If you have questions or concerns about health insurance.
- If you want to order CDI brochures.
- If you want to file a request for assistance against your agent, broker, or insurance company.
- If you are having difficulty opening a claim with your insurance company.
- To check the license of an agent, broker, or insurance company.



Call:

Consumer Hotline **1-800-927-4357**

TDD **1-800-482-4833**

8:00 AM to 5:00 PM, Monday to Friday, except holidays



Visit us on the Web at:

www.insurance.ca.gov



Write:

California Department of Insurance

300 South Spring St., South Tower, Los Angeles, CA 90013



Visit us in person:

300 South Spring St., South Tower, 9th Floor, Los Angeles, CA 90013

8:00 AM to 5:00 PM, Monday to Friday, except holidays

The California Department of Insurance

Consumer Education and Outreach Bureau

300 South Spring Street, South Tower, Los Angeles, CA 90013

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This brochure is a project of the staff of the California Department of Insurance.
Form 426 / Residential Property and Earthquake Claims Mediation Program
May 2015 – OSP