

Hot off the Presses: California Further Regulates Out-of- State Adjusters in the Wake of Record-Breaking Catastrophic Losses



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Over the past few years, California has endured some of the largest catastrophic losses in the state’s history. For example, in July 2018, the Mendocino Complex Fire consumed almost 460,000 acres of land, spreading across four different California counties.¹ Just a few months later, the Camp Fire destroyed almost 19,000 structures in Butte County, including the entire town of Paradise.² In short, declared emergencies stemming from record-breaking fire losses are becoming the new normal in California. For insurers, these CAT events with area-wide impact often create a shortage of in-state licensed adjusters to handle the influx of claims. This results in hiring many out-of-state adjusters. Recently, in response to the 2017 series of wildfires that caused unprecedented losses, the state Legislature held multiple hearings during which wildfire victims, public adjusters, the California Department of Insurance (the “Department”), and others testified about their concerns relating to the adjustment of fire claims by out-of-state adjusters. For example, witnesses testified as to how “claims were mishandled and delayed because, in part, out-of-state adjusters provided inaccurate information about California law pertaining to the claim.”³ “Some witnesses testified that they repeatedly had to deal with new adjusters on the same claim and that the turnover

resulted in delays and, in some instances, shifting standards or procedures.”⁴

In response, the California State Legislature unanimously voted, in August 2019, to pass Senate Bill 240, also known as the *Insurance Adjuster Act of 2019* (the “Act”), which the governor signed into law on October 3, 2019.⁵ Because the Act was designated as an urgency statute,⁶ it took effect immediately, instead of being delayed until January 1, 2020.⁷

As described by Insurance Commissioner Ricardo Lara, the Act is intended to provide the Department “with the authority to ensure that unlicensed adjusters are competent in California’s property claims laws and issues related to adjusting wildfire claims.”⁸ It sets forth a series of new requirements for the Department, insurers, and adjusters as follows:

- **New Requirements for the Department:** The Act requires the Department to (1) produce an annual bulletin “describing the most significant California laws pertaining to property insurance policies, including those related to a declared state of emergency”;⁹ (2) create an adjuster handbook that includes “information relevant to evaluating damage caused by an emergency, catastrophe, disaster, or other similar occurrence, including wildfires”;¹⁰ (3) post both the annual bulletin

and adjuster handbook on the Department’s website; (4) distribute the annual bulletin to every licensed independent adjuster and insurer admitted in California; and (5) take enforcement actions against a licensee or the registered emergency adjuster, including a civil penalty of up to \$500, for the misconduct of the adjusters. The Department is not required to investigate the stated employment status of individuals who are adjusting claims under a licensing exemption, such as firm employees and emergency adjusters.¹¹

- **New Requirements for Insurers:** The Act requires insurers to: (1) provide the annual bulletin to claimants suffering losses in a declared emergency “within 15 calendar days from the date ... [of] notice of the claim”;¹² (2) provide a homeowner submitting a disaster claim with a “primary point of contact” if the adjuster assigned to the claim is changed three times in a six-month period;¹³ and (3) ensure the “primary point of contact” is available to the homeowner and remains assigned to the claim until its completion, and will refer the homeowner to a supervisor upon request of the homeowner.¹⁴
- **New Requirements for Adjusters:** The Act requires the following: (1) for licensed adjusting firms to ensure that unlicensed employees adjusting disaster claims for the firm have read and understand the annual bulletin and adjuster handbook; (2) for registered emergency adjusters to certify, under penalty of perjury, that they have read the Department’s annual bulletin and adjuster handbook; and (3) for emergency adjusters to register with the Department no later than fifteen calendar days instead of “within 15 working days,” as previously required. Licensees are permitted to defer license renewal while actively serving in the military.¹⁵

With the exception of its regulations that relate to the provision of a “primary point of contact” for residential property policies, the Act is generally applicable to all property policies issued to California policyholders, both residential and commercial.

The new requirements mark a significant departure from existing law. Under prior law, for example, when

an insurer assigns a third or subsequent adjuster to a homeowner’s claim within a six-month period, it could simply provide the insured with a “written status report.”¹⁶ Likewise, annual certification from out-of-state adjusters is now going to be required under the penalty of perjury—a prerequisite never previously imposed.

In sum, annual catastrophic events such as wildfires and other related events—including rainstorms after wildfires, which often result in landslides—are the new normal in California. Due to the volume of claims that these types of events precipitate, it is likely that insurers will continue to retain out-of-state adjusters to assist with claim handling. As such, it will be critical for insurers and adjusters alike to understand and adhere to the provisions of this new law.

Endnotes

- 1 Top 20 Largest California Fires, California Dep’t of Forestry & Fire Prot., https://www.fire.ca.gov/media/5510/top20_acres.pdf (last visited on Oct. 1, 2019).
- 2 *Id.*; see also Alastair Gee & Dani Anguiano, *Paradise Was Sent to Hell: Revisiting the Town Destroyed by Wildfire*, THE GUARDIAN (May 7, 2019), <https://www.theguardian.com/world/2019/may/07/paradise-california-wildfire-six-month-anniversary-recovery>.
- 3 *Senate Floor Analysis, Senate Rules Committee: Office of Senate Floor Analyses*, 2019-2020 Reg. Sess. (Aug. 23, 2019), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB240.
- 4 *Id.*
- 5 See S.B. No. 240, 2019-2020 Reg. Sess. (Cal. 2019) https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB240.
- 6 *Id.* (“To ensure that independent adjusters and consumers have easy access to important information about California law directly relating to insurance benefits and claims arising from an emergency before the next emergency is declared, it is necessary that this act take effect immediately.”)
- 7 *Id.* (“The Act amends Sections 1722, 14020, 14022, 14022.5, 14023, 14037, and 14065 of the existing Insurance Code and adds the Sections 14046, 14047, 14064.5 as new provisions.”)
- 8 *Senate Floor Analysis*, supra note 3.
- 9 CAL. INS. CODE § 14046(a)(1).
- 10 § 14046(a)(2).
- 11 *Senate Floor Analysis*, supra note 3.
- 12 CAL. INS. CODE § 14046(b). Likewise, this requirement is not specific to only homeowner property policies. Rather, the language of the statute is generalized and appears to include all “property insurance policies.”

13 The requirements relating to a “primary point of contact” relate only to a “policy of residential property insurance,” which is defined under section 10087 of the California Insurance Code as follows:

[A] policy insuring individually owned residential structures of not more than four dwelling units, individually owned condominium units, or individually owned mobilehomes, and their contents, located in this state and used exclusively for residential purposes or a tenant’s policy insuring personal contents of a residential unit located in this state. “Policy of residential property

insurance,” as defined, shall not include insurance for real property or its contents used for any commercial, industrial or business purpose, except a structure of not more than four dwelling units rented for individual residential purposes. A policy that does not include any of the perils insured against in a standard fire policy shall not be included in the definition of “policy of residential property insurance.”

14 *Senate Floor Analysis, supra* note 3.

15 *Id.*

16 *Id.*

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