



# Consumer Federation of America

## NEW YORK GOVERNOR'S COMMISSION INSURANCE AND RISK MANAGEMENT REFORM SUBCOMMITTEE

By J. Robert Hunter<sup>1</sup>,  
Director of Insurance

November, 2012

### Background

In the wake of Superstorm Sandy, Governor Andrew Cuomo created a Commission to ensure that the State of New York is resilient in the face of future natural disasters. The Commission is working on a broad range of issues. The Consumer Federation of America<sup>2</sup> (CFA) has been asked to serve on the Insurance and Risk Management Subcommittee and give input on: disclosures and the scope of deductibles; treatment of natural disasters and other emergencies; flood insurance; and reforms to the New York Department of Financial Services authority during disasters. CFA has been advised by the Governor's staff that the Insurance and Risk Management comments should be broader than these specific items and instructed us to be "open ended" in our thinking.

In recent years, insurers have succeeded in shifting significantly more of the risk of losses associated with extreme risks to policyholders and to government (State and Federal), while continuing to insure for their own accounts higher frequency, lower severity risks. This has resulted in a significant and unacceptable risk exposure for most consumers who believe they are fully insured against all forms of loss and has also increased taxpayer exposure.

Consider the limited role the private insurance sector plays in insuring homes for disasters. Flood insurance on homes is not written by the private sector at all and is only provided by the federal government. While some earthquake risk is privately underwritten, homes in the epicenter of potential earthquake events, California, are primarily covered through the California Earthquake

---

<sup>1</sup> Mr. Hunter formerly served as Federal Insurance Administrator under Presidents Ford and Carter (during which time he ran the National Flood Insurance Program and administered the federal rules related to FAIR Plans) and as Texas Insurance Commissioner. In preparing this paper, Mr. Hunter had excellent input from Amy Bach, Executive Director of Policyholders United and Birny Birnbaum, Executive Director of the Center for Economic Justice for which he is very grateful.

<sup>2</sup> Consumer Federation of America is an association of nearly 280 non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, education and advocacy.

Authority, a state organized entity. Wind damage from hurricanes and tornadoes have historically been covered privately, but the private sector has sharply reduced its direct exposure through coverage cutbacks in the homeowners insurance policy and use of state pools such as Citizen's Insurance Company in Florida, the state's leading writer of wind coverage. In New York, the FAIR Plan covers homes that cannot get insurance in the normal market. Every coastal state has some form of wind facility similar to a FAIR Plan.

The data showing how insurers have shifted risk and costs associated with weather catastrophes to consumers and the state and federal governments, is detailed in our February 2012 report, "[The Insurance Industries Incredible Disappearing Weather Catastrophe Risk](#)".<sup>3</sup>

In the sections that follow, the Consumer Federation of America recommends the following to the New York Department of Insurance:

- Work to immediately identify coverage gaps that result in consumer frustration during the claims process;
- Adopt policies to clarify coverage, deductible and anti-concurrent-causation clause issues;
- Adopt a insurance policyholder's bill of rights;
- In the longer-term, add flood insurance to the homeowners insurance policy; and
- Take the lead in an interstate compact to advocate for a rational, all-risk homeowners' insurance policy that will provide clear and consistent coverage to homeowners seeking to insure against the risk of all types of loss, including losses associated with catastrophic events.

### **Identifying a major insurance problem: Claims/Coverage Gaps leading to consumer troubles after the storm**

From the consumer perspective, it is helpful to look at claims/coverage issues in recent catastrophic events to determine what problems consumers face in the insurance market and what might be done to ensure that consumers have better access to homeowners insurance that meet their needs during catastrophic events. CFA has identified several issues that are important for New York<sup>4</sup>:

Consumers do not have sufficient flood insurance in force. This was obvious even in Katrina, which hit an area of the country where NFIP's market penetration was relatively high, about 50 percent. In the Sandy impacted area, it is expected that about 70 percent of Sandy-flood-damaged homes do not have flood insurance.

The conditions under which hurricane deductibles apply are unclear and result in consumer confusion. Consumers do not understand when and if a hurricane deductible kicks in and when and if a wind deductible applies since the consumers had no say in the selection of these deductibles. It is also unclear to consumers whether it is the insurance

---

<sup>3</sup> J. Robert Hunter, February 2012.

<<http://www.consumerfed.org/pdfs/InsuranceRegulationHurricaneRiskDisappearingCoverageStudy2-12.pdf>>

<sup>4</sup> California earthquake insurance policies face serious problems that are not covered in these comments.

company or a state regulatory agency that makes the determination that a severe weather event triggers these deductibles. It is unclear whether hurricane deductibles apply to claims in an entire state if a storm is classified as a hurricane in one part of a state but not in another part of a state. It is unclear if the wind speed deductible is applied based on wind speed in the specific town or county or whether a trigger applies the deductible statewide.

State prohibitions on hurricane deductibles may or may not apply to deductibles based on wind speed. If a hurricane deductible is banned, as it has been in Sandy in New York, it is unclear whether that prohibition applies to wind speed deductibles not mentioning “hurricane.” This is a relatively new problem, with many of these percentage, storm-related deductible clauses added to policies only since Hurricane Andrew in 1992.

Consumers are extremely unaware of the anti-concurrent-causation (ACC) clause in their policies. CFA recently released [information](#)<sup>5</sup> regarding this little known provision, which states that, if a structure is damaged at about the same time by two risks, one of which is covered (like fire or wind) and the other not (like flood), then either no coverage or limited coverage will be provided for the “covered” part of the claim. People do not believe that their own insurance company would design a trap door in the back of their policy through which the coverage they purchased can fall. This is a very new problem, emerging in the aftermath of Hurricane Katrina in 2005. The dense legalese in anti-concurrent causation exclusions confounded esteemed Federal and State judges after Katrina. They defeat consumers’ reasonable expectations of coverage and should be banned.

Consumers are often unaware that a cap on replacement costs may result in significant out-of-pocket costs. Many consumers are not aware that caps on replacement costs are part of their homeowners insurance policy. Almost none are aware of the risk they take if a catastrophic event occurs. After a severe weather event, the price of materials and labor to repair homes often increase considerably, a phenomenon known as “demand surge.” The replacement cap limits coverage to the amount stated in the policy as the replacement cost. Some insurers offer additional coverage of approximately 20 percent. Previously insurance policies guaranteed that repairs would be made even if the claims estimate were lower than the actual cost to make necessary repairs. However, replacement caps became common practice in policies written after Hurricane Andrew. If rebuilding prices surge, as is typical after a large event with many damaged homes, homeowners face significant out-of-pocket expenses. For example, if a family buys replacement coverage with a \$500 deductible on \$200,000 home and files a normal total loss fire claim, they will receive a claims check for \$199,500. If the damage to their home is the result of a hurricane, and building material scarcity results in a 50 percent price increase in building costs, that family would now need \$300,000 to restore their home. If the insurer imposes the replacement cost limit, and they receive a claims check for \$199,500, they will be far short of what they would need to be made whole. To rub salt in the wound, if they lived on the beach and the hurricane deductible of 5 percent of value is applied (in this case \$10,000) they would only receive a claims check for only \$190,000.

---

<sup>5</sup> “Will Breezy Point’s Firefighters Who Lost Their Homes to Fire During Superstorm Sandy Have Their Fire Insurance Claims Denied?” <<http://www.consumerfed.org/news/613>> November, 19, 2012.

Consumers are unaware that their policy probably does not cover the cost of mold removal. Mold, which frequently follows water damage, is now excluded from most homeowners insurance policies. These exclusions were introduced in the last 10 years. In addition to adding mold exclusions, insurers have been consistently adding language that limits water damage from various sources, (such as sewer backup, off premises pipe damage, and damage resulting therefrom).

Consumers are unaware that many policies do not cover additional costs if construction ordinances or building codes require certain upgrades. For instance, if a structure is 50 percent damaged, flood insurance rules require elevation of the first floor of the whole home to the 100-year flood elevation, often a very expensive additional cost to rebuild a home. This is a relatively new problem since it was once part of homeowners insurance coverage. This exclusion was added to home insurance policies after Hurricane Andrew in 1992.

### **Claims/Coverage –Short-Term Solutions**

#### **1) Rewrite the Homeowners Insurance Policy to make it Fairer to New York Consumers When Future Storms Hit**

Today, homeowners' insurance policies are like Swiss cheese rubbed with Limburger: stinky with lots of holes. Here are some suggestions for the State of New York to consider for address the claims/coverage issues identified above:

Flood insurance should be offered in high-risk flood areas through private insurers<sup>6</sup>. There are reasonably priced, private-sector service providers who can make the flood insurance rate map determination of risk that could be used to trigger the offer of flood insurance when a homeowners insurance policy is sold (they do it today for banks). If a home is in a high-risk flood area, the insurer should be required to offer flood insurance when selling any homeowners insurance policy. If a homeowner wants the flood coverage and the insurance company is an NFIP Write Your Own (WYO) insurer, the company can simply add flood insurance to the homeowner's insurance policy. If the insurer is not a WYO insurer, the home insurance carrier for the consumer can secure the flood policy from the NFIP direct servicing contractor and added to the policy package.

The DFS should require that a consumer choose the deductibles based on wind speed. DFS should disapprove the current, confusing hurricane-related deductibles and only allow wind speed deductibles to be used in the state. To attach the wind deductible, the insurer would be required to give, when the policy is sold, the policyholder an option to select the wind speed deductible from a table of different prices for different wind speed deductibles. The table should include a no wind speed deductible option. This consumer selection would be made at the time a policy is offered and the consumer would therefore know exactly what to expect if a storm hits.

---

<sup>6</sup> This proposal is an interim proposal to be in place until the long-term reform we propose in section C, below, is implemented.

The DFS should disapprove all anti-concurrent-causation clauses. The ACC clause was intended to limit or even remove the insurer's liability when a covered risk damages a structure at about the same time as an excluded risk, regardless of the order of such events. After Hurricane Katrina, courts were asked to determine whether the insurance companies' language supersedes the common law doctrine of proximate cause. While many of the courts ruled that insurance companies could, in fact, use ACC clauses to avoid the common law rule of proximate cause, others found the clause too ambiguous and, ruled against the insurance companies. This draconian clause, hidden in the fine-print of the homeowners insurance policy, acts like a trap door that snaps open to the surprise of consumers, as the coverage consumers thought that they had falls through. The ACC clause should be prohibited from use for homeowners insurance policies in New York State.

**Caps on replacement cost (RC):** CFA proposes that the DFS require insurers to offer different RC caps at the time of sale with the price impact of each option being disclosed clearly to the consumer. Secondly, in a demand surge situation, insurers should be the risk-takers, not the policyholders. DFS should regulate claims practices to remove demand surge price changes from any calculation of the RC cap in a claim in a disaster situation. Recognizing that current policies are overly restrictive with regard to replacement cost coverage, [Maryland recently amended its laws](#)<sup>7</sup> to give disaster victims at least 24 months to collect full replacement cost.

**Mold exclusion:** CFA believes that DFS should require that mold coverage be a yes/no choice at the time of the policy sale with the cost implications fully disclosed to consumers.

**Law and Ordinance Coverage:** CFA proposes that DFS require, at time of sale, a yes/no decision on such coverage be offered to the consumer, along with the premium implications disclosed clearly.

## 2) Catastrophe Claim Reforms

### Claims transparency

Consumers should be entitled to a complete copy of all documents in their claim file. Consumers should be informed they have a right to hire their own public adjuster but that they should be warned to check references, license status and experience before doing so. In cases of a declared natural disaster, appraisals should be optional, not mandatory. Information on when to consider the need to hire an attorney should also be included. Some of this material could be included in the homeowners insurance Bill of Rights proposed below. The California Insurance Code at sections 2071, and [2051.5](#) provide a reference point for suitable language.

### Claims adjuster licensing and accountability

---

<sup>7</sup> 2010 Maryland Insurance Code, § 19-213 < <http://law.justia.com/codes/maryland/2010/insurance/title-19/subtitle-2/19-213/>>.

The State of New York should license claims adjusters and establish minimum standards for training and competency among adjusters. There is a wide range of skill/training and competencies among insurance adjusters. In some cases, financial incentives for independent adjusters cause them to skimp on the quality of loss assessments and move on to the next assessment in order to maximize income. These incentives result in some adjusters underestimating repair estimates and also causes delays.

The contracts that the large independents like Crawford & Co., General Adjustment Bureau and others have in place with the major property/casualty Insurers are enormous. These independents are provided with the claims handling guidelines of the Insurers they have contracted with and are expected (contractually) to adhere to those guidelines. There may also be financial incentives or disincentives written in the contracts between the Independent firm and the insurer. The Insurer will also conduct a percentage of re-inspections, some on-site and some paper reviews to determine if the independent is adhering to the Insurers' claim handling guidelines and contractual obligations. Regulators should examine these contracts including the SOW (statement of work), which is the section of the contract that outlines the specific expectations, incentives and penalties to determine if policyholders are at risk of being shortchanged.

#### Data Needs

DFS should initiate a process to collect Sandy claim data that will include:

- Homeowner claims filed, amounts paid, amounts denied, cause of loss, value of structure in policy, value of structure determined at the time of the claim, was the anti-concurrent-causation provision applied, law and ordinance claims denied and how deductibles were applied.
- NFIP claims paid, amounts denied, amounts paid should be obtained from FEMA.
- Commercial claims filed, amounts paid, amounts denied, cause of loss and how deductibles were applied.
- Cost data for remediation, restoration, and repairs/construction services post-Sandy.

#### 3) Require a Consumer Bill of Rights Accompany Every Homeowners Insurance Policy Sold and Every Claim File Opened in the State

The State of New York should establish an insurance policyholder's bill of rights using the bill of rights adopted in Texas as a model (see attached). This bill of rights should be provided to policyholders at the time of sale of a policy as well as when a claim file is opened. The Bill of Rights should contain information on how to fairly settle claims in a disaster situation. The Consumer Federation of America's step-by-step instructions for policyholders on filing claims related to Superstorm Sandy are provided as a potential model (see attached).

- 4) The State of New York should also regulate vendors whose products impact the catastrophe claims and pricing decisions of insurers

The New York Department of Financial Services should be empowered to regulate, vendors whose computerized products have serious impacts on claims settlement offers and on hurricane and other storm prices charged by insurers in the state. Products such as “Xactimate” impact the valuations of homes for claims payout purposes. Products like CAT models impact the price of insurance for New York homeowners. Yet these models and computerized ‘black boxes’ are not regulated by the DFS. Providers of such products should be regulated as advisory organizations in the same way that other entities, like the Insurance Services Office, are regulated.

**The State of New York should Take the Lead in finding a National Long-Term Solution the Massive Underinsurance on the Coast and to Rationalize our Topsy-Turvy National Catastrophe Insurance System:**

Reforming Underinsurance for Coastal Hurricane Risk in New York

The largest reason for consumers' underinsurance for the flood peril is due to the fact that a separate (from homeowners) policy purchase is required. We suggested a short-term fix for this above but a longer-term solution is outlined here.

Behavioral economics offers some insight on why people fail to purchase flood insurance: a general underestimation of risk and over-hyped expectations regarding federal bailouts in case of an event (e.g., many expect grants rather than loans). These behavioral trends suggest that the flood peril should be part of every basic homeowners policy. Our comments above lay out a number of other insurance issues about which consumers have limited knowledge or understanding. As with the presence or absence of flood peril, anti concurrent causation, mold coverage, additional building costs, replacement cost out of pocket and other problems with the homeowners policy provide graphic evidence of the failure of the current insurance market model of consumer "choice" paired with "disclosures." The results of Sandy -- evidence of under-insurance, irrational insurance choices and surprise and misunderstanding of coverage purchased -- indicates that a new model of insurance markets is needed with regulators becoming far more pro-active in enforcing statutory requirements that policies not be misleading, confusing or deceptive.

The absence of flood insurance from the basic homeowners policy leads to massive inefficiencies in addition to massive under insurance. The inefficiencies arise from the second set of administrative costs associated with a flood policy that would not exist if flood were part of the basic homeowner policy and from the additional claim settlement costs associated with determining which policy (if any) covers the damage. GAO<sup>8</sup> estimates that the WYO companies take one-third to two-thirds of the premiums the NFIP collects just for overhead costs (and that excludes the federal direct costs).

---

<sup>8</sup> ‘FEMA’s Management and Oversight of Payments for Insurance Company Services Should be Improved,’ GAO, Report 07-1078, September 2007.

The absence of flood coverage from the basic homeowners policy is inherently misleading and deceptive to consumers. It is unreasonable to expect a consumer to parse through which types of damage are or are not covered by a policy -- wind damage, water damage following wind damage, water damage caused by wind, storm surge, flooding, and so on.

New York should require flood insurance to be included as part of the basic homeowners policy to create a policy with coverage that consumers expect, to provide coverage for flood and water losses in the most efficient manner possible and to eliminate unreasonable claim settlement problems.

In addition to providing a product that meets the basic financial and economic security needs of consumers, broadening the risk pool for flood peril, eliminating inefficiencies in the provision of flood insurance and transforming an inherently deceptive product (homeowners) into a fair and reasonable product, requiring flood coverage as part of the homeowners policy will spur insurers to become more proactive on loss mitigation and loss prevention, which is the only long-term strategy for addressing growing natural catastrophe risk.

The transition to an “all-risks” homeowners policy should take place over two to five years and include the creation of a public option insurer with the ability to compete with the private market throughout the state if private insurers fail to offer the all risks policy in all parts of the state.

The basic insurance model -- a risk pool diversifying and spreading the risk of many consumers - - must give way to insurance as both risk transfer and a mechanism to finance and implement loss mitigation and loss prevention. Part of this is accurate pricing of the insurance -- this is essential to give consumers and businesses the appropriate price signals to make informed and rational decisions about their investments in property and structures. But the most important part of this is engaging insurers and the public sector to partner with policyholders to finance the essential investments in loss mitigation -- be that CAT-resistant-structures or other loss prevention measures.

**Coastal States should join together to better regulate the hurricane risk**

There has never been an attempt to reform the current hodge-podge of insurance/mitigation that serves as our national Catastrophe System. We have federal flood insurance; state earthquake insurance, semi-private wind insurance and weak mitigation of all such catastrophic risks. As a result, insurance covers less than half of catastrophic losses in the United States, with taxpayers through state and federal entities picking up the tab for a lot of the damage (even for homes that are built where they never should have been). New York should start a process that would lead to a national review of the current mess. Recent events during and after storms offer some ideas for moving toward a more rational system.

In the wake of the 2004/2005 hurricanes, Florida’s legislature enacted numerous changes that significantly reduced costs to Florida citizens when they purchase insurance against catastrophic loss. Florida saw that the reinsurers were charging many times what their own actuaries said was the proper rate for hurricane risk. The State of Florida took on a layer of risk at the real actuarial rate and required the insurers to use that layer and price the savings into homeowners’ insurance



rates. Raymond James has estimated savings to the policyholders from this step at over \$20.6 billion. The premiums Florida charged, the actuarial premium, has resulted in nearly \$9 billion in the Florida State Treasury to cover future claims. The total maximum payout for the largest possible storm is about \$17 billion, which means the total benefits of the program of more than \$29 billion, far exceed even a worst-case claim. The State of Florida also allowed the Citizen's Insurance Company to compete with the private market when the private market's rates became excessive. The effects of this competition have resulted in further significant savings for Florida homeowners. Yet, while Florida was successfully managing the insurer turmoil after the storms to the benefit of its citizens, the insurers intimidated other states into not moving in that direction and those states ended up giving the insurers and reinsurers whatever they demanded in the way of excessive prices. Only Florida's size allowed them to fully protect its consumers. Smaller states like Alabama and Mississippi were unable to do so.

Likewise, when Governor Cuomo and other northeast governors banded together to prohibit insurers from applying a percentage hurricane deductible, the industry, while upset, in most cases applied the standard dollar deductible, a big benefit for the homeowners whose property was damaged by Sandy. Being big helps state governments better protect consumers as insurer threats of possible pull out of a large state are not credible.

It would be helpful for the coastal states to band together to regulate insurance and mitigation/land use in the nation's high-risk coastal areas. CFA believes that the hurricane-prone states from Maine to Texas should form an interstate compact or find another mechanism to work jointly to mitigate the costs associated with insuring hurricane risk in a way that protects their citizens exposed to hurricane risk. Together, the states could develop regulatory computer models to determine fair prices and keep rates at actuarially sound and below excessive levels. Together, states could jointly regulate insurance policy language issues like deductibles, claims practices, anti-concurrent-causation clauses and other recommendations discussed previously to protect homeowners and policyholders from abuse. Together, the states could effectively oppose abusive requests from insurers and reinsurers that often intimidate smaller states like Alabama and Mississippi into compliance.

An equally important reason for a coastal states joining together is that a coastal coalition would be in a much more powerful position to approach the federal government to ask them to move toward a more logical private/state/federal partnership on natural disasters. At that point, ideas like a true national all-risk homeowners' insurance policy could be meaningfully discussed.

Ultimately, the adoption of a rationalized all-risk homeowners' insurance policy by New York would lead toward a national program to provide coverage against all forms of risk, including flood and earthquake risk. Here is how such a plan could be organized:

1. Consumers would bear the first layer of cost of losses, including catastrophic losses, through reasonable deductibles and clear exclusions but would not face significant out-of-pocket costs due to a surge in building costs or denials of claims due to anti-concurrent-causation clauses or other such surprise provisions that devastate the unsuspecting policyholder.

2. The private direct insurance market would bear the responsibility of paying for claims above the policyholder retention up to the total of all damage.
3. Private reinsurers (and ACT bond providers, etc.) would participate in funding these damage claims in accordance with an organized system of reinsurance that included government participation only in the case of extreme events. The federal government would reinsure above that level, with state governments responsible for a percentage of the reinsurance cost the federal government paid out<sup>9</sup>.
4. Homeowners insurance premiums would be distributed to the private and public risk bearers in accordance with their actuarial risk.
5. All parties would share in loss mitigation activity, with the federal government continuing to analyze and produce risk maps and facilitate the development of serious building and land use codes. The federal government would also monitor code enforcement. In communities with weaker enforcement, a surcharge on the rates would be imposed.

New York should take the lead in moving the coastal states towards developing an interstate compact or other joint mechanism to promote a rationalized, all-risk homeowners' insurance policy.

---

<sup>9</sup> It could work like the Riot Reinsurance Program the Federal Insurance administration ran in the 1970s. under which each state was to reimburse the Department of Housing and Urban Development for certain reinsured losses in a given contract year up to five percent of the aggregate property insurance premiums earned in a state when other stand-by resources were exhausted.

## **Consumer Bill of Rights Homeowners, Dwelling and Renters Insurance**

AVISO: Este documento es un resumen de sus derechos como asegurado. Usted tiene el derecho a llamar a su compañía y pedir una copia de estos derechos en español.

### **What is the Bill of Rights?**

This Bill of Rights is a summary of your rights and does not become a part of your policy. The Texas Department of Insurance (TDI) adopted the Bill of Rights and requires insurance companies to provide you a copy when they issue your policy.

Texas law gives you certain rights regarding your homeowners, dwelling and renters insurance. This Bill of Rights identifies your rights specified by rule or by state statute, but it does not include all your rights. Also, some exceptions to the rights are not listed here. If your agent, company, or adjuster tells you that one of these rights does not apply to you, contact TDI Consumer Protection at 1-800-252-3439 (463-6515 in Austin) (111-1A), P.O. Box 149091, Austin, TX 78714-9091. For a list of the specific law(s) and/or rule(s) summarized in each item of this Bill of Rights, or if you have questions or comments contact the Office of Public Insurance Counsel at 333 Guadalupe, Suite 3-120, Austin, TX 78701 (512-322-4143) or <http://www.opic.state.tx.us>.

This Bill of Rights does not address your responsibilities. Your responsibilities concerning your insurance can be found in your policy. Failure to meet your obligations may affect your rights.

### **Getting information from the Department of Insurance and Your Insurance Company**

1. ***INFORMATION FROM TDI.*** You have the right to call TDI free of charge at 1-800-252-3439 or 463-6515 in Austin to learn more about:

- your rights as an insurance consumer;
- the license status of an insurance company or agent;
- the financial condition of an insurance company;
- the complaint ratio and type of consumer complaints filed against an insurance company;
- use of credit information by insurance companies, including which insurance companies use it and access to each company's credit scoring model;
- an insurance company's rates filed with the state;
- an insurance company's underwriting guidelines (subject to exemptions in the Public Information Act, also known as the Open Records Act);
- the Texas FAIR Plan, designed to help consumers who have been denied coverage by at least two insurance companies;

- Helpinsure.com, a service to help Texans shop for homeowners insurance;
- the Market Assistance Program (MAP) at 1-888-799-MAPP (6277), designed to help those in underserved areas obtain insurance; and
- other consumer concerns.

You can also find some of this information on the TDI website at <http://www.tdi.state.tx.us>.

2. **INFORMATION FROM YOUR INSURANCE COMPANY.** You have the right to a toll-free number to call your insurance company free of charge with questions or complaints. You can find this number on a notice accompanying your policy. This requirement does not apply to small insurance companies.

### **What you should know before you buy insurance**

3. **PROHIBITED STATEMENTS.** Your insurance company or agent is prohibited from making false, misleading, or deceptive statements to you relating to insurance.

4. **LENDER-REQUIRED INSURANCE.** A lender cannot require you to purchase insurance on your property in an amount that exceeds the replacement cost of the dwelling and its contents as a condition of financing a residential mortgage or providing other financing arrangements for the property, regardless of the amount of the mortgage or other financing arrangements. In determining the replacement cost of the dwelling, a lender cannot include the fair market value of the land on which a dwelling is located.

5. **CREDIT INFORMATION.** An insurance company cannot deny you insurance solely on the basis of credit information. Insurers who use credit information must also consider other underwriting factors independent of credit information when deciding whether to offer coverage. (For additional information see the section of this Bill of Rights entitled *What you should know about insurance companies' use of credit information*.)

6. **APPLIANCE RELATED WATER DAMAGE CLAIMS.** An insurance company cannot deny you insurance or increase your premium based on a prior appliance-related water damage claim if:

- the claim has been properly repaired or remediated; and
- the repair or remediation was inspected and certified unless three such claims have been filed and paid in a three-year period.

NOTE: A claim includes a claim filed by you or a claim filed on your property.

7. **WATER CLAIMS/MOLD DAMAGE OR CLAIMS.** An insurance company cannot deny you insurance based:

- solely on a single prior water damage claim.
- on prior mold damage or a prior mold claim if:

- the damage or claim was properly repaired or remediated; and
- the repair or remediation was inspected and certified.

NOTE: A claim includes a claim filed by you or a claim filed on your property.

8. **PROPERTY CONDITION.** Voluntary Inspection Program: You have the right to have an independent inspection of your property by any person authorized by the Commissioner of Insurance to perform inspections. Once the inspector determines that your property meets certain minimum requirements and issues you an inspection certificate, no insurer may deny coverage based on property conditions without reinspecting your property. If an insurer then denies coverage, the insurer must identify, in writing, the specific problem(s) that makes your property uninsurable. You can find a list of available inspectors on the TDI website at [www.tdi.state.tx.us/consumer/vipcommish.html](http://www.tdi.state.tx.us/consumer/vipcommish.html) or you can contact TDI for the list directly at (512) 322-2259.

9. **SAFETY NET.** You have the right to buy basic homeowners insurance through the Texas Fair Access to Insurance Requirements Plan, also known as the Texas FAIR Plan, if you have been denied coverage by two insurance companies. Your property must meet certain requirements, and eligibility for FAIR Plan coverage must be re-established every two years. You can access a list of insurance agents who are authorized to sell this coverage on the Texas FAIR Plan Association website at [www.texasfairplan.org](http://www.texasfairplan.org) or by calling 1-800-466-6680.

10. **WINDSTORM COVERAGE.** For property located in areas designated by the Commissioner in certain counties on or near the coast, you have the right to buy windstorm and hail coverage from the Texas Windstorm Insurance Association. Your property must meet certain requirements, and the basic coverage is limited to a maximum amount set each year by the Commissioner of Insurance. This right applies whether or not you buy other insurance for your house. In all other counties your homeowners or dwelling policy includes this coverage. You may be able to purchase additional coverage from the Association.

11. **ELECTRONIC PAYMENTS.** If you authorize your insurer to withdraw your premium payments directly from your financial institution, including your escrow account, your insurer cannot increase the amount withdrawn unless:

- the insurer notifies you of the premium increase at least 30 days prior to its effective date and provides a postage paid form you can use to object to the increase; and
- you do not notify the insurer or financial institution that you object to the increase at least 5 days prior to the increase.

This does not apply to premium increases specifically scheduled in the original policy, to increases based on policy changes you request, or to an increase that is less than \$10 or 10% of the previous month's payment.

12. **NOTICE OF REDUCED COVERAGE.** If an insurer uses an endorsement to reduce the amount of coverage provided by your policy, the insurer must give you a written explanation of the change made by the endorsement. The insurer must provide the explanation before the effective date of the new or renewal policy. An insurance company cannot reduce coverage during the policy period unless you request the change. If you request the change, the company is not required to provide notice.

13. **NOTICE OF PREMIUM INCREASE.** If your insurer intends to increase your premium by 10% or more upon renewal, the insurer must send you notice of the rate increase at least 30 days before your renewal date.

14. **EXPLANATION OF DENIAL.** Upon request, you have the right to be told in writing why you have been denied coverage. The written statement must fully explain the decision, including the precise incidents, circumstances, or risk factors that disqualified you. It must also state the sources of information used.

NOTE: The obligation to provide a written explanation applies to insurance companies directly. An independent agent does not have a specific duty to quote the lowest possible rate to a consumer or to provide a written statement explaining why the agent did not offer the consumer the lowest possible rate.

15. **RATE DIFFERENTIAL WITHIN A COUNTY.** If an insurer subdivides a county for the purposes of charging different rates for each subdivision, the difference between the lowest and the highest rate cannot exceed 15% unless actuarially justified.

16. **RIGHT TO PRIVACY.** You have the right to prevent an insurance company, agent, adjuster or financial institution from disclosing your personal financial information to companies that are not affiliated with the insurance company or financial institution. Some examples are income, social security number, credit history and premium payment history.

If you apply for a policy, the insurance company or financial institution must notify you if it intends to share financial information about you and give you at least 30 days to refuse. This refusal is called “opting out.” If you buy a policy, the insurance company or financial institution must tell you what information it collects about you and whether it intends to share any of the information, and give you at least 30 days to opt out. Agents and adjusters who intend to share your information with anyone other than the insurance company or financial institution must give you similar notices.

You can opt out at any time. Your decision to opt out remains in effect unless you revoke it.

These protections do not apply to information:

- publicly available elsewhere;
- insurance companies or financial institutions are required by law to disclose; or

- insurance companies or financial institutions must share in order to conduct ordinary business activities.

### **What you should know about cancellation and nonrenewal**

**Cancellation** means that **before the end** of the policy period the insurance company:

- terminates the policy;
- reduces or restricts coverage under the policy; or
- refuses to provide additional coverage to which you are entitled under the policy.

**Refusal to renew** and **non-renewal** mean the policy terminates **at the end** of the policy period.

The **policy period** is shown on the declarations page at the front of your policy.

**17. *LIMITATION ON CANCELLATION FOR HOMEOWNERS AND RENTERS POLICIES.*** After your initial homeowners or renters policy with your company has been in effect for 60 days or more, that insurance company cannot cancel your policy unless:

- you don't pay your premium when due;
- you file a fraudulent claim;
- there is an increase in the hazard covered by the policy that is within your control and results in an increase in the policy premium; or
- TDI determines continuation of the policy would result in violation of insurance laws.

If your policy has been in effect for less than 60 days, your insurance company cannot cancel your policy unless:

- one of the reasons listed above applies;
- the insurance company identifies a condition that:
- creates an increase in hazard;
- was not disclosed on your application; and
- is not the subject of a prior claim; or
- the insurance company rejects a required inspection report within 10 days after receiving the report. The report must be completed by a licensed or authorized inspector and cannot be more than 90 days old.

**18. *LIMITATION ON CANCELLATION FOR DWELLING POLICIES.*** After your initial dwelling policy with your company has been in effect for 90 days, that insurance company cannot cancel your policy unless:

- you don't pay your premium when due;
- you file a fraudulent claim;
- there is an increase in the hazard covered by the policy that is within your control and results in an increase in the policy premium; or

- TDI determines continuation of the policy would result in violation of insurance laws.

19. **NOTICE OF CANCELLATION.** To cancel your policy, your insurance company must mail notice at least 10 days prior to cancellation. Your policy may provide for even greater notice.

20. **POLICYHOLDER'S RIGHT TO CANCEL.** You have the right to cancel your policy at any time and receive a refund of the remaining premium.

21. **CHANGE IN MARITAL STATUS.** If your marital status changes, you have the right to continue your insurance coverage. You have a right to a new policy in your name that has coverages which most nearly approximate the coverages of your prior policy, including the same expiration date. The insurance company cannot date the new policy so that a gap in coverage occurs.

22. **USE OF CLAIMS HISTORY TO NONRENEW.** Your insurance company cannot use claims you filed as a basis to non-renew your policy unless:

- you file three or more claims in any 3-year period; and
- your insurer notified you in writing after the second claim that filing a third claim could result in non-renewal of your policy.

In determining the number of claims filed, your insurance company cannot include:

- claims for damage from natural causes, including weather-related damage;
- appliance-related water damage claims where the repairs have been inspected and certified; or
- claims filed but not paid or payable under the policy.

NOTE: An insurance company can count appliance-related claims if 3 or more such claims are filed and paid within a 3-year period.

23. **USE OF CREDIT INFORMATION TO NONRENEW.** An insurance company cannot refuse to renew your policy solely on the basis of credit information. Insurers who use credit information must also consider other underwriting factors independent of credit information when deciding whether to renew coverage. (For additional information see the section of this Bill of Rights entitled *What you should know about insurance companies' use of credit information.*)

24. **NOTICE OF CHANGE IN POLICY FORM.** Your insurer must notify you in writing of any difference between your current policy and each policy offered to you when the policy renews.

25. **NOTICE OF NONRENEWAL.** If the insurance company does not mail you notice of nonrenewal at least 30 days before your policy expires, you have the right to require the insurance company to renew your policy.



26. **EXPLANATION OF CANCELLATION OR NONRENEWAL.** Upon request, you have the right to a written explanation of an insurance company's decision to cancel or non-renew your policy. The written statement must fully explain the decision, including the precise incidents, circumstances, or risk factors that disqualified you. It must also state the sources of information used.

### **What you should know when you file a claim**

27. **FAIR TREATMENT.** You have the right to be treated fairly and honestly when you make a claim. If you believe an insurance company has treated you unfairly, call the Department of Insurance at 1-800-252-3439 (463-6515 in Austin) or download a complaint form from the TDI at <http://www.tdi.state.tx.us>. You can complete a complaint form on-line via the Internet or fax it to TDI at 512-475-1771.

28. **SETTLEMENT OFFER.** You have the right to reject any settlement amount, including any unfair valuation, offered by the insurance company. You have the right to have your home repaired by the repair person of your choice.

29. **EXPLANATION OF CLAIM DENIAL.** Your insurance company must tell you in writing why your claim or part of your claim was denied.

30. **TIMEFRAMES FOR CLAIM PROCESSING AND PAYMENT.** When you file a claim on your own policy, you have the right to have your claim processed and paid promptly. If the insurance company fails to meet required claims processing and payment deadlines, you have the right to collect 18% annual interest and attorney's fees in addition to your claim amount.

Generally, within **15 calendar days**, your insurance company must acknowledge receipt of your claim and request any additional information reasonably related to your claim. Within **15 business days** (30 days if the company reasonably suspects arson) after receipt of all requested information, the company must approve or deny your claim in writing. The law allows the insurance company to extend this deadline up to **45 days** if it notifies you that more time is needed and tells you why.

After notifying you that your claim is approved, your insurance company must pay the claim **within 5 business days**.

If your claim results from a weather-related catastrophe or other major natural disaster as defined by TDI, your insurance company may take 45 additional days to approve or deny your claim and 15 additional days to pay your claim.

31. **RELEASE OF CLAIM FUNDS.** Often an insurance company will make a claim check payable to you and your mortgage company or other lender and will send it to the lender. In that case, the lender must notify you within 10 days of receipt of the check and tell you what you must do to get the funds released to you.

Once you request the funds from the lender, within 10 days the lender must:

- release the money to you; or
- tell you in specific detail what you must do to get the money released.

If the lender does not provide the notices mentioned above or pay the money to you after all requirements have been met, the lender must pay you interest on the money at 10% per year from the time the payment or the notices were due.

32. ***NOTICE OF LIABILITY CLAIM SETTLEMENT.*** Your insurance company must notify you if it intends to pay a liability claim against your policy. The company must notify you in writing of an initial offer to compromise or settle a claim against you no later than the 10th day after the date the offer is made. The company must notify you in writing of any settlement of a claim against you no later than the 30th day after the date of the settlement.

33. ***INFORMATION NOT REQUIRED FOR CLAIM PROCESSING.*** You have the right to refuse to provide your insurance company with information that does not relate to your claim. In addition, you may refuse to provide your federal income tax records unless your insurer gets a court order or your claim involves lost income or a fire loss.

### **What you should know about prohibited discrimination**

34. ***PROTECTED CLASSES.*** An insurance company cannot discriminate against you by refusing to insure you; limiting the amount, extent or kind of coverage available to you; charging you a different rate for the same coverage; or refusing to renew your policy:

- because of race, color, religion, gender, marital status, disability or partial disability, or national origin; or
- unless justified by actual or anticipated loss experience, because of age or geographic location.

35. ***AGE OF HOUSE.*** An insurance company cannot refuse to insure your property based on the age of your house. However, an insurance company may refuse to sell you insurance coverage based on the condition of your property, including the condition of your plumbing, heating, air conditioning, wiring and roof.

36. ***VALUE OF PROPERTY.*** An insurance company cannot refuse to insure your property because the value is too low or because the company has established minimum coverage amounts.

37. ***UNDERWRITING GUIDELINES.*** Underwriting guidelines may not be unfairly discriminatory and must be based on sound actuarial principles.

38. **EQUAL TREATMENT.** Unless based on sound actuarial principles, an insurance company may not treat you differently from other individuals of the same class and essentially the same hazard. If you sustain economic damages as a result of such unfair discrimination, you have the right to sue that insurance company in Travis County District Court.

If your suit prevails, you may recover economic damages, court costs and attorney and necessary expert witness fees. If the court finds the insurance company knowingly violated your rights, it may award up to an additional \$25,000 per claimant.

You must bring the suit on or before the second anniversary of the date you were denied insurance or the unfair act occurred or the date you reasonably should have discovered the occurrence of the unfair act. If the court determines your suit was groundless and you brought the lawsuit in bad faith, or brought it for the purposes of harassment, you will be required to pay the insurance company's court costs and attorney fees.

### **What you should know about insurance companies' use of credit information**

39. **REQUIRED DISCLOSURE.** If an insurance company uses credit information to make underwriting or rating decisions, the company must provide you a disclosure statement within 10 days after receiving your completed application for insurance.

The disclosure indicates whether the insurer will obtain and use your credit information and lists your specific legal rights, including:

- credit information insurance companies cannot use against you;
- how you can get reasonable exceptions that your insurer is required to make to its use of credit information if certain life events, such as divorce, death of a close family member, or identity theft, hurt your credit;
- the notice\* an insurer must send you when making a credit-based decision that harms your ability to get or keep insurance or requires you to pay a higher premium; and
- how you can dispute credit information and require an insurer to re-rate your policy if the rate was increased because of inaccurate or unverifiable credit information.

\* The notice must include a description of up to four primary factors that influenced the action taken by the insurer. Generalized terms such as "poor credit rating" are not sufficient.

Insurers must use the disclosure form (CD-1) adopted by the Commissioner or an equivalent disclosure form filed prior to use with TDI. The CD-1 is available at [www.tdi.state.tx.us/company/pccrdtds.html](http://www.tdi.state.tx.us/company/pccrdtds.html) or by calling 1-800-252-3439. Additional information regarding insurers' use of credit information is available at [www.tdi.state.tx.us/commish/credit.html](http://www.tdi.state.tx.us/commish/credit.html).

## What you should know about enforcing your rights

40. **FILING COMPLAINTS.** You have the right to complain to TDI about any insurance company and/or insurance matter and to receive a prompt investigation and response to your complaint. To do so, you should:

- call TDI's **Consumer Help Line** at 1-800-252-3439, in Austin 463-6515 for service in both English and Spanish;
- write to the Texas Department of Insurance, Consumer Protection (111-1A), P.O. Box 149091, Austin, Texas 78714-9091;
- e-mail TDI at [ConsumerProtection@tdi.state.tx.us](mailto:ConsumerProtection@tdi.state.tx.us);
- fax your complaint to (512) 475-1771;
- download or complete a complaint form on line from the TDI website at <http://www.tdi.state.tx.us>; or
- call the TDI Publications/Complaint Form order line (24 hours) at 1-800-599-SHOP (7467), in Austin 305-7211.

**NOTE:** TDI offers interpreter services and publications in alternate formats. Persons needing more information in alternate layouts or languages can call the *TDI Consumer Help Line* listed above.

41. **RIGHT TO SUE.** If an insurance company violates your rights, you may be able to sue that company in court, including small claims court, with or without an attorney.

42. **BURDEN OF PROOF.** If you sue to recover under your insurance policy, the insurance company has the burden of proof as to any application of an exclusion in the policy and any exception to or other avoidance of coverage claimed by the insurer.

43. **REQUESTING NEW RULES.** You have the right to ask in writing that TDI make or change rules on any residential property insurance issue that concerns you. Send your written request to: Texas Department of Insurance, Attn: Commissioner (113-2A), P.O. Box 149104, Austin, TX 78714-9104.



## **Consumer Federation of America**

1620 I Street, N.W., Suite 200 \* Washington, DC 20006

FOR IMMEDIATE RELEASE:  
November 2, 2012

CONTACT: J. Robert Hunter, 703-528-0062

### **NATIONAL FLOOD INSURANCE PROGRAM FACES \$8 BILLION IN PAYOUTS WITH ONLY \$4 BILLION IN FUNDS TODAY – CONGRESS WILL HAVE TO ACT**

#### **ALSO, WHAT CONSUMERS SHOULD DO TO GET FAIR CLAIMS PAYMENTS**

Washington, D.C. -- The Consumer Federation of America (CFA) today warned consumers to prepare to file claims for damage expected to occur as a result of Hurricane Irene. CFA believes that Hurricane Sandy could result in 200,000 thousand claims for wind damage and another 200,000 claims for flood damage. Hurricane Katrina resulted in 1,200,000 wind claims and over 500,000 flood insurance claims. Payments by private insurers for wind damage to homes and business properties from Hurricane Sandy will likely exceed \$10 billion dollars, while flood claims paid by the National Flood Insurance Program will be at least \$8 billion dollars and most likely also exceed \$10 billion, surely requiring a multi-billion dollar increase in the Program's borrowing since the program has less than \$4 Billion in available claims payment authority today. FEMA can only borrow \$500,000 unless the President approves an additional \$1 billion above that. Since these borrowings will be insufficient to pay all of Hurricane Sandy's flood damages, Congress will have to pass a supplemental authorization for additional borrowing for the Program to meet its obligations. Since overall damage is estimated by modeling companies at about \$50 billion, it appears that insurance will fund well under half of that, about 40 percent.

“Families should take every precaution to ensure their safety during this severe weather event, including evacuation if recommended by local authorities,” said J. Robert Hunter, Director of Insurance for CFA and former Federal Insurance Administrator and Texas Insurance Commissioner. “After the storm, however, we are concerned that families will have to dig deeper into their pockets because insurers have been steadily shifting liability to consumers by increasing hurricane wind coverage deductibles and imposing other policy limitations.”

Because so many consumers experienced claims problems in the wake of Hurricane Katrina and Irene, the CFA urges homeowners dealing with losses caused by Hurricane Sandy to be vigilant with their insurance companies to ensure that that they receive a full and fair settlement.

As consumers prepare to contact their insurance companies in the wake of the storm, the CFA offers the following tips.

#### **BEFORE THE STORM**

- 1.) Consumers in the path of the storm should locate their homeowner's policy now and keep it in a safe place so that you can refer to it after the storm, if needed.
- 2.) Review the policy now to find out how and where to report a claim (i.e. toll free claims number, website, or agent).

## AFTER THE STORM

- 1.) Report your claim as promptly as possible as insurance companies generally handle them first come, first serve.
- 2.) Once your claim is reported, be sure to get your claim number and write it down. Insurance company claims departments can locate your file easiest by your claim number.
- 3.) When the insurance company sends out an adjuster to survey your damage, ask if he/she is an employee of the insurance company or an independent adjuster (I.A.) hired by them. If an independent adjuster, try to secure the name of the actual company adjuster that the I.A. is sending your information to or are they authorized to make claim decisions and payments on behalf of your insurance company.

## KEEP GOOD RECORDS

When you file a claim, you should immediately start a notebook documenting contacts with your insurance company. List the date, time and a brief description of the exchange. If you need to complain later, this information will be vital (see below). If an adjuster says he or she will come and does not, write it down. If an adjuster is rude, write it down.

Get out your inventory of possessions or try, at once, to list your possessions. Take pictures of your possessions before the storm and keep them in a safe place. If you later realize you have no pictures when you file a claim, don't forget that your family likely has pictures of rooms in your house (for example, from holiday or other celebrations) that can be helpful in recreating a list of your belongings.

Obtain a repair estimate from a trusted local contractor to use as a guide in talking with the adjuster. Keep receipts from emergency repairs and any costs you incur in temporary housing. This may be reimbursable under the "Additional Living Expense" portion of your homeowners' policy.

You may be entitled to money up-front for living expenses, such as hotel costs, if your home becomes uninhabitable. Insurers are usually very good about these initial payments, while the media is focused on the hurricane aftermath. Most claims problems, if they arise, come later, when bigger payments are sought.

## DECIDING WHETHER TO FILE A CLAIM

You have paid your premium and are entitled to coverage. If you have a legitimate claim, do not hesitate to file it. Insurers treated many people poorly who filed claims for damages caused by Hurricane Katrina. For example, after Hurricane Katrina, insurers pulled back from offering coverage along the coasts, dumping people into higher priced, state run insurance pools. They also cut coverage and raised rates substantially. However, this should not deter you from seeking fair compensation for losses caused by Hurricane Sandy. Indeed, insurers should face greater scrutiny by regulators because of the serious claims problems that occurred after Hurricane Katrina. CFA is calling on state regulators not only to closely monitor insurers to prevent claims abuses but to stop insurers from moving unjustifiably after claims are paid to increase rates and cut back on the

coverage they offer. There is no reason, actuarially, for insurers to raise rates or cut back coverage due to Hurricane Sandy, which is a storm well within the projections of insurers' current rate schedules. Insurers have already raised prices and cut back coverage along the East Coast of America and no further price or coverage action is called for.

Consumers must also act to protect themselves. To do this, consumers must stand together and agree not to buy auto insurance and other coverage from any insurance company that refuses to renew policies with consumers who make claims related to Hurricane Sandy. Consumers stood together after Hurricane Andrew, persuading Florida to pass a moratorium on the non-renewal of policies and to look carefully at rate increase applications. Consumers should fight any attempt to use hurricane claims as an excuse not to renew homeowners' policies and should complain to state regulators to assure that insurers do not take such actions.

### WHAT IF THE CLAIM IS DENIED OR THE OFFER IS TOO LOW?

If the claim is denied or you feel the offer is too low, demand that the company identify the language in your homeowners' policy that served as the basis for denying your claim or offering so little. This approach has a number of benefits:

- The company may be right and you may not know it. Once they pinpoint the appropriate language in the policy, you should be able to make this determination. For example, you may have \$400 in damage, but the company could well point out that you have agreed to a \$500 deductible.
- The company may have slipped new limitations into the policy and not adequately informed you. If you feel that you have been misled in this regard, it might be a good idea to consult an attorney. The introduction of percentage deductibles (up to 10 percent of the value of a home) will greatly shift the cost of Hurricane Sandy from insurance companies to insurance consumers, as compared to earlier storms. The practice of shifting the cost of previously insured events back to consumers is acceptable, as long as consumers are clearly given the option to select the level of coverage they want with fully informed consent.
- Another restriction new to many policies is a limit on replacement cost payments, which might come into play in the event that a home is totally destroyed. A typical cap is 20 percent above the face value of the policy. If costs surge because of the spike in demand in materials or labor from a major storm like Hurricane Sandy (or if the state does not monitor price gouging sufficiently) this limit might apply. For example, if a home would cost \$200,000 to replace and that amount was the limit on the policy, the insurance company would pay no more than 20 percent more, or \$240,000. If the surge in construction costs due to extreme demand caused the price of replacing the home to jump to \$300,000, the homeowner would be short \$60,000.
- Once the insurance company tells you the reasons for its action, it cannot produce new reasons for denying payment or making a low offer at a later time. You have locked them in—a major advantage for the consumer.

- If you review the policy and find that, under a reasonable reading, you think you are entitled to the full amount of your claim as you read the language they relied upon, you will likely win if you go to court. Courts consistently rule that if an insurance policy is ambiguous, the reasonable expectation of the insured party will prevail since the consumer played no part in writing the language of the insurance policy.

### HOW/WHERE DO I COMPLAIN?

If you feel that the offer is too low or the claim denial is wrong, the best process for getting your complaint resolved is as follows:

- Complain to more senior staff in the insurance company. Use the records you have kept since the claim process began. The more serious the insurance company sees that you are in documenting how you were treated, the more likely they will make a more reasonable offer.
- Complain to your state insurance department. All states will at least seek a response to your complaint from your company. A few states may actually intervene on your behalf with the insurance company in clear cases of bad claims handling. It is important to dispassionately present your side of the story, using the notes you have been taking.
- See a lawyer. Now the notes you took are vital. In addition to an award covering your claim, if your treatment was particularly bad, the courts in many states will allow additional compensation when the insurance company acted in “bad faith.” Since insurance companies take your money in exchange for their promise to make you whole when disaster strikes, they must act in utmost good faith in performing that obligation.

### WHAT ISN'T COVERED IN THE HOMEOWNERS' POLICY?

Homeowners' policies do not cover flood, earthquake, tree removal (except when the tree damages the house) or food spoilage from power failures. Some insurers use an “anti-concurrent-causation” clause in their policies that, insurers allege, removes coverage for wind damage if a flood happens at about the same time. CFA believes that these clauses are ambiguous, so if an insurer uses such a clause to deny your claim, read the provision carefully to see if you think it is ambiguous and, if so, see an attorney right away.

### DO I USE THE SAME METHODS FOR A FLOOD INSURANCE CLAIM?

The federal government underwrites flood insurance coverage, although insurance companies often service claims. Follow the same procedures as above, except direct complaints to the Federal Emergency Management Agency, the government agency responsible for running the federal flood insurance program (1-800-427-4219, TDD# 1-800-427-5593). The FEMA flood insurance program tips on handling claims are located at [http://www.floodsmart.gov/floodsmart/pdfs/claims\\_tips.html](http://www.floodsmart.gov/floodsmart/pdfs/claims_tips.html).

Since the National Flood Insurance Program (NFIP) is paid for by taxpayers, and often the same insurance company will handle the claim for both the wind and the flood damage, it is very



important that consumers verify that insurers do not attribute an unjustifiably large portion of the losses they experience to flood damage. Consumers must be the first line of defense against insurers shifting costs for wind losses to the NFIP. If you see such potential abuse by insurers, contact your U.S. Representative and Senators so that they can make sure that taxpayers are protected.

"Not all insurance companies handle claims badly, so go into the claims process with an open mind," said Hunter. "Be vigilant though, or you run the real risk of being shortchanged," he concluded.

*The Consumer Federation of America is an association of nearly 300 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy, and education.*