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Protecting Homeowners With High-End Policies

By Vedica Puri

Capitalizing on the exploding market of insuring luxury homes, insurance companies hit gold with this one — a marketing campaign to charge a higher premium to protect luxury homes with the promise of faster and better claims service. National insurance companies that sell millions of dollars worth of insurance to California insureds have created special policies and claims units dedicated exclusively to high-end homes. Firemans' Fund offers a "Prestige Home Premiere" policy that "responds with a higher level of protection for fine homes and lifestyles." AIG, now Chartis, issued a specialized policy for its "Private Client Group" and targets high-net worth individuals and their "unique" homes. The ACE Group of insurance companies issues policies called "Platinum Portfolio" in light of the fact "that fine homes often have unique features and high quality furnishings that require special treatment not found in standard industry policies."

The marketing idea is solid. The theory builds on the adage "you get what you pay for," leading an insured to believe that the more you pay — the better the product. But that is definitely not how it is playing out on multi-million water damage claims throughout California. From major El Nino storm damage to burst pipes, water damage claims are on the rise in California. Tapping into property insurance can be the first line of defense for a traumatized homeowner seeking to repair their home. Many policies exclude water damage from coverage. On those high-end platinum, private client prestige policies that do cover water damage, they typically promise to pay for water damage repair and for restoration of the home to its pre-damaged condition. The trick is ensuring that the professionals hired by the insurance companies — and the claims adjuster — understand the quality of craftsmanship of the home at issue. Often they don't and the claim goes awry almost from the start.

Homeowners are entitled to repair their homes using materials of "like kind and quality." It is usually an explicit standard set forth in the policy. This means that if a piece of marble imported from Carrera, Italy is damaged by a water leak, the homeowner is entitled to a replacement piece of marble from Carrera, Italy within policy limits. And yes, even if it is expensive and the adjuster can't quite believe how expensive it is — that is the promise of the policy. It is well known that this standard also means an insurance company cannot replace teak hardwood floors with linoleum, but what about the closer call?

What if only half the windows of a home are damaged by a storm? Or the hardwood floor for two out of a home's three bedrooms are damaged by leaking water? Should the insurer be responsible for paying to install a new set of windows? Or pay for installing new hardwood floor throughout the three bedrooms? An insurer would cry foul and argue that to do so would be placing the insured in a better position than before the water damage. An insured would insist that his or her home could not be left so sorely unmatched. The applicable standard here is that the "insurer shall replace all items in the damaged area so as to conform to a reasonably uniform appearance." See California Code of Regulation, Title 10, Section 2695.9(a)(2). While the case law interpreting this section is sparse, the statutory language seems to resolve the issues presented above in a fair way.

Another key is "additional living expenses" paid for by most homeowner policies. (ie. rent, electricity, cable, etc.) If the home at issue is so severely damaged that the owners have to move out while it is being repaired, the insurer is usually obligated to pay for these expenses. The high-end policies typically do not place a cap on the amount. The homeowner is entitled to rent a comparable home or apartment (same square footage) for the restoration period in the same city. A homeowner should not have to move from a five-bedroom luxury home into a one-bedroom apartment. Insurers can hire placement specialists and movers to assist an insured with the move.

Regardless of the gimmicky title of a policy, and despite paying high premiums, homeowners who purchase high-end policies face the same resistance — if not more depending on the size of the claim — to paying claims as insureds with regularly-priced policies. Insurers will hire general contractors to prepare a "cost of repair" to restore the home. Providing the adjuster and vendors with original architectural plans, a "spec book" (usually a binder containing specifications for the home) if available, and any other documents that will help the insurer understand the exceptional qualities of the home will make a difference. For example, substituting marble from a quarry in San Leandro for marble from Carrera, Italy will not do. If that is the route an insurer chooses, insureds may be better served by hiring their own general contractor — someone qualified to handle luxury homes — to prepare a competing cost of repair that takes all of the customizations the insured is concerned about into consideration.

So, what happens to competing bids — do they just sit in the insurer's files? Homeowner policies by and large provide that if the insurer and insured cannot agree on the cost or scope of repair, the parties can submit to an "appraisal" process. Appraisal, like arbitration, is an alternative to formal litigation and is intended to be a less expensive means of dispute resolution. The appraisal of a property insurance loss qualifies as a limited form of arbitration under the California Arbitration Act and is governed by the same rules that apply to arbitrations. See Code of Civil Procedure Sections 1280-1294.2; *Devonwood Condominium Owners Ass'n v Farmers Ins. Exch.* (2008) 162 CA4th 1498, 1505; *Appalachian Ins. Co. v Rivcom Corp.* (1982) 130 CA3d 818, 824. In this scenario, both parties present their bids, witnesses and evidence to an appraisal panel made up of construction experts who then make a finding of how much it will cost to repair the residence. The insured chooses one appraiser, the insurance company chooses another and together they choose an umpire appraiser. While meant to be a less costly alternative to litigation, the insured is required to pay the costs of their chosen appraiser and half the cost of the umpire appraiser's costs. It is not unusual for the insured to have to front tens of thousands of dollars in the appraisal process alone. If an insurance company waits years to invoke the appraisal, it is possible to argue the insurer has waived its right to appraisal.

Although California law "reflects a strong policy favoring arbitration agreements and requires close judicial scrutiny of waiver claims...a court may deny a petition to compel arbitration on the ground of waiver...." *Saint Agnes Med. Cntr. v. Pacificare of California* (2003) 31 Cal.4th 1187, 1195. California courts have found a waiver of the right to demand arbitration in a variety of contexts and "bad faith" or "willful misconduct" of a party may also constitute a waiver and thus justify a refusal to compel arbitration or appraisal. See *Engalla v. Permanente Med. Group* (1997) 15 Cal.4th 951, 983.

The problems and procedures for resolving a high-end homeowner damage claim require skilled negotiations that should ultimately result in making sure that insurance companies fulfill their lofty promises to provide insureds with what they have paid for.

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