



Examinations Under Oath

NOTE: *The following tips include general principles but are based on California law.* If you live outside California, your state may have rules or laws that apply when an insurance company wants to examine (question) you under oath. Consult with the consumer help department of your state insurance regulator's office or a local attorney specializing in representing insurance consumers. You will find a link to these resources in the state-specific section of our website (http://uphelp.org/state_help.html.) Click on your state on the map.

Insurance policies are full of requirements and procedures that are supposed to prevent people from submitting fraudulent claims. Requiring that every damaged or destroyed object be itemized, described and valued is an insurance company's way of making sure people don't claim things they didn't own or inflate their claims. Another example is the **Examination Under Oath** ("EUO") procedure that you will find in virtually every property insurance policy sold today. In the policy contract, your insurer has given itself the right to question you "under oath" about the details of the loss/claim. "Under oath" means you legally swear that your answers are truthful.

Insurance companies use this procedure to screen out fraudulent claims and test a policyholder's credibility and/or evaluate what kind of a witness he or she will make if a claim or coverage dispute goes into litigation. The EUO procedure was abused by insurers after past disasters to intimidate and frighten policyholders. So United Policyholders helped pass legislation in California to stop the abuses and protect policyholders. But the EUO procedure is still a legal and valid requirement in homeowners policies, and the law in most states is vague on the subject. A homeowner who makes a claim for policy benefits must cooperate when an insurer makes a reasonable request to examine them under oath or risk losing the right to recover the funds they're entitled to. Courts have traditionally been hard on policyholders who refused to cooperate in EUOs.

In California and in most states there are "Fair Claim Handling Regulations", and there are laws that tell insurers what they must, can and cannot do. Above all, your insurance company has the legal duty to investigate and process your claim fully, promptly and in **good faith** and **deal with you fairly**.

If you are asking your insurance company to pay above stated policy limits or waive policy requirements re: deadlines, proof of loss, or other items, they are very likely to ask you to answer questions "under oath" before they make a decision on your request. And, they make ask you to agree in writing to keep your settlement discussions confidential.

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Get legal advice from an experienced policyholder attorney before agreeing or refusing to be examined under oath and before signing a confidentiality agreement. Visit the “Find Help” section of [www.uphelp.org](http://uphelp.org) (<http://uphelp.org/sponsors.html>) for more information. And remember:

Your insurance company cannot legally require you to sign a “release” or “confidentiality agreement” if they are only paying benefits owed to you under your policy contract. If they are paying above policy limits or making other concessions – they can.

Examinations Under Oath (“EUO”)

Make sure to ask for and get all claim-related documents from your insurer’s files **before** you answer questions under oath and before you sign anything relating to settlements or confidentiality. In California, you are legally entitled to see what’s in your claim file, (CA. Ins. Code 2070), and this information will empower you in the process.

Here are some of the legal rights you have when your insurer asks you to submit to an examination under oath in the state of California:

1. An insurer that determines that it will conduct an examination under oath of an insured shall notify the insured of that determination and shall include a copy of this section in the notification.
2. An insurer may conduct an examination under oath **only to obtain information that is relevant and reasonably necessary to process or investigate the claim.**
3. An examination under oath may only be conducted upon **reasonable notice, at a reasonably convenient place and for a reasonable length of time.**
4. The insured may be represented by counsel and **may record the examination proceedings in their entirety.**
5. The insurer shall notify the insured that, upon request and free of charge, it will provide the insured with a copy of the transcript of the proceedings and a tape of the proceedings, if one exists. Where an insured requests a copy of the transcript, the tape, or both, of their examination under oath, the insurer shall provide it within 10 business days of receipt by the insurer or its counsel of the transcript, the tape, or both. An insured may make sworn corrections to the transcript so it accurately reflects the testimony under oath.
6. In an examination under oath, an insured may assert any objection that can be made in a deposition under state or federal law. However, if as a result of asserting an objection an insured fails to provide an answer to a material question, and that failure prevents the insurer from being able to determine the extent of loss and validity of the claim, the rights of the insured under the contract may be affected.

Reasonable requests for proof

An insurer cannot ask for unreasonable “proofs of loss” such as secondary proofs. For example, if you provide photographs or video of items in your home, you cannot then be compelled to provide receipts as well if they contain essentially the same information. [Cal Ins Code 790.03]

United Policyholders is a national 501(c) (3) non-profit organization serving insurance consumers since 1991. UP helps solve insurance problems and advocates for fairness in insurance transactions. The organization is funded by foundation grants and donations. Our work is divided into 3 program areas: Roadmap to Recovery™, Roadmap to Preparedness, and Advocacy and Action. We offer free tips, information and resources in print and online at <http://www.uphelp.org>.

The information presented in this publication is for general informational purposes, and should not be taken as legal advice. If you have a specific legal issue or problem, United Policyholders recommends that you consult with an attorney. Guidance on hiring professional help can be found in the “Find Help” section of <http://www.uphelp.org>. United Policyholders does not sell insurance or certify, endorse or warrant any of the insurance products, vendors or professionals identified at our website. United Policyholders respects and protects the privacy of all individuals who communicate with us. We do not sell or share our membership or mailing lists.

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