

# Cash Settlements for Residential Insurance Claims

*InsuranceWatch.org.nz*

*This document is based on feedback InsuranceWatch has received. Our experience indicates that professional advice and support can make a significant difference in your outcome. InsuranceWatch strongly advises you to seek independent financial, legal and technical advice before entering into any cash settlement. In particular InsuranceWatch recommends that you obtain advice from a qualified legal advisor specialising in insurance advocacy to help you, most specifically where policy interpretation and settlement issues are involved.*

## **DISCLAIMER**

**Please note** that the material below is not offered on behalf of InsuranceWatch, nor does this document provide any financial advice. These opinions are general in nature and are not a recommendation, opinion or guidance to any individuals either in relation to their insurance policy or with regards to acquiring or disposing of financial products. Readers should not rely on these opinions and should always seek specific independent financial and legal advice appropriate to their own individual circumstances.

Email any comments, questions or suggestions to: [info@InsuranceWatch.org.nz](mailto:info@InsuranceWatch.org.nz)

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## **1. Check your Policy Wording Carefully**

**It can't be stressed enough how important it is to carefully check your policy document and the accompanying schedules to ascertain your rights and the insurer's obligations.**

As regards cash settlements, some insurance policies give the insurer the right to cash settle, others are silent, some are ambiguous. Confirm your rights and entitlement with your insurance law expert, in particular, if you believe that your insurer may not be following the policy document requirements.

## **2. Define your Objectives**

### **a. Repair or rebuild on site**

This situation is similar to "Opting Out" of the Fletcher repairs programme with EQC.

Pros:

- Gives control and may accelerate the process
- You can use your builder of choice

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Cons:

- You will have to project manage yourself
- You will need to organise your own contract work insurance (unless your insurer agrees to provide this)
- You bear the risks of cost overruns as well as technical and other project risks

Issues (see also list of general issues below):

- Make sure you receive full reinstatement costs and have quotes ready to be accepted from builders of your choice
- Ensure that the insurer arranges and/or pays for the demolition and removal of debris (if required)

Recommendations (see also list of general recommendations below):

- Get two quotes from builders for the design work completed, and get your construction portion of the settlement paid out based on the lower of the two – you'll probably need to go ahead with the winning builder, otherwise it might be unlikely that they would price the job. With a written quote, the builders are committed if you go ahead relatively quickly.
- If you're going to build a house that is completely different, choose one of the builders and/or designers that are accredited with the insurance company where possible, and ask them to give you a quote for your requirements.

### b. Rebuild elsewhere

The pros and cons for this option are similar to those for rebuilding on site. An additional benefit with this one is that building on a better TC land category may reduce foundation costs. The downside is that you will need to find and pay for another section and deal with your old property.

Issues:

In addition to the issues faced when rebuilding on site (see above), you need to consider:

- What happens to your old home – is it being demolished by your insurer?
- If so, are you able to sell the land?
- If rebuilding later on the old site, you may need to arrange and pay for geotech and other engineering reports.
- Will your insurer agree for you to keep the house as a rental or for sale? If so, is it safe, particularly in the case of further aftershocks?
- You may need a structural engineer's report if you want to sell your "broken home".
- What is the impact on the community if many people keep their "broken home" instead of rebuilding/repairing?
- Ask for documentation you will need to sign for your insurer (such as a Statutory Declaration confirming your intent to rebuild).
- Identify the consequences if your rebuild costs may fall short of the settlement amount.
- Plan your cash flows.

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Recommendations (in addition to the recommendations when rebuilding on site):

- If you're going to purchase a home that is already built, try to get your estimate peer reviewed by another Professional Quantity Surveyor – the insurance companies will normally use more than one QS.

c. **“Take the money and run”** (e.g. buy another property, move to Australia, etc.)

Pros:

- Gives most flexibility.

Cons:

- Insurer might request significant deductions. However, in some cases, insurers have paid full reinstatement costs even in this scenario, so it might be worth negotiating.

Issues:

- Confirm if you will receive full reinstatement costs (i.e. actual costs of a building a like-for-like home) or indemnity value (current value of the property).
- If your future plans are not confirmed yet, it might be useful to also look into the “Rebuild Elsewhere” option with your adviser. If you intend to rebuild elsewhere, deductions from your insurer might be lower than for the “take the money and run option”. However, some insurers may just require you to confirm that you intend to rebuild at some stage without you having to repay any money if this takes longer or eventually does not materialise. Independent legal/professional advice is highly recommended in such situations.
- If you buy another property, you will probably need to raise a deposit. There is a danger of falling into a vicious circle where the insurers won't consider settling on that house until you have a "sale and purchase agreement" to show you have secured the option of buying it... but to get that, you may have to pay a deposit. In addition, the insurers may take a long time to approve and settle on that property, because they may still be debating with EQC how much is due from them toward the settlement amount, etc. so you may want to ask your insurer to put in writing what will happen if they are still considering this when your purchase becomes unconditional. The insurer may have a document called "Deed of Assignment" which will allow them to settle on your old house and pay toward the house you are purchasing. This document could give them the rights they need to continue to sort out apportionment issues with EQC after your settlement has been paid out. Seek legal advice in such situations.

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### 3. General Issues

- Check your entitlements/offer as to whether it is based on full reinstatement costs (i.e. actual costs of a building a like-for-like home) or indemnity value (current value of the property).
  
- Check if your insurer's offer covers the following charges or fees:
  - Demolition and removal of debris (if required/appropriate)
  - Moving company/contents storage
  - Accommodation based on estimated construction period
  - Accommodation for pets (if required/appropriate)
  - Architect/design fees
  - Structural design/engineering fees (if applicable)
  - Geotechnical engineering fees (if required/appropriate)
  - TC3 compliant foundations (if applicable)
  - Consent fees/levies/reserve contributions (from applicable council)
  - Bank fees
  - Legal fees
  - Contract work insurance premium
  - Inflation adjustment (unless based on current prices)
  - Contingencies
  - Builders Preliminaries (confirm percentage with your builder)
  - Builders Margin (confirm percentage with your builder)
  - Whether you are able to keep your home or buy it from your insurer
  - Note that actual costs and fees can vary greatly depending on quality and current workload
  
- Ensure consultants are Chartered Engineers, Registered Surveyors, or Licensed Building Practitioners.

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### 4. Recommendations to boost your chances of a best possible outcome

When dealing with your insurance company:

- Regularly follow up with your insurer and request information on specific progress made, timeframes, etc.
- Be insistent and firm, but keep it professional
- Build relationships
- Try to get face-to-face meetings with your case manager and/or loss adjuster/project manager
- If your case manager proves non-responsive, ask to be reassigned
- Contact management if you get stuck. Don't take "no" for an answer, especially if you are talking mainly to your claims manager. A senior manager may approve an item (such as keeping your old home when rebuilding elsewhere or not at all and/or getting full rebuilding costs instead of indemnity/depreciated value) while the junior staff all said "no". Sometimes, internal policies change or can be overruled by management. State your case clearly and convincingly.
- Concentrate your efforts on the big issues that are most important to you and prioritise your negotiations with your insurer accordingly.

Challenging cost estimates and other terms:

- Don't assume the first cash settlement is cut and dried, or that it is complete and accurate. You should ensure it is carefully scrutinized both in terms of numbers and terms. Question offers made to you with regards to completeness, accuracy of numbers, and other terms. If you don't ask, you don't get – terms are often negotiable.
- If you challenge the numbers, back up your case with cost estimates from your own registered quantity surveyor (QS) and/or builder (ideally two builders with insurance industry affiliation). Note: Some claimants have found independent QS estimates to be essential; however, some insurers don't accept them and in some cases actual building costs as quoted by builders were significantly higher than QS estimates (differences of up to 50% have been noted). In other cases, QS estimates were higher.
- Even if you have to pay for obtaining the cost estimates, it might be money well spent. You might, for example, be entitled to design fees from your insurer if this is required for the pricing. Confirm your entitlements and check with your legal adviser.
- QS and builder's estimates will also help you to point out to your insurer missing/incorrect items as well as cost discrepancies. These should be readily accepted by your insurer and support your case that the offer is inaccurate.
- Ask for documentation (Settlement Agreement, Statutory Declarations if applicable, etc.) early on so you know what the deal is.
- Keep your options open – it may be beneficial to keep the repair/rebuild option open through your insurer, so you have a stronger negotiating position and a potential fall-back solution if negotiations fail.
- Get advice/support from someone with insurance advocacy experience to assist with negotiations. Note: You may be able to receive the "Independent Advice Grant" from the Red Cross. For eligibility criteria and more information visit [www.redcross.org.nz](http://www.redcross.org.nz)

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### 5. Where you can get help

*Please note that InsuranceWatch has not vetted any of the service providers listed below. Engaging any of the advisers will be at your own risk. Ensure that fees are agreed and transparent prior to engaging any adviser. InsuranceWatch does not take any responsibility for the quality of work or any other aspect of any engagement. Advisers are listed in alphabetical order.*

#### **Claims Consultants:**

(mostly these are professional negotiators, but some are also covering other areas):

- EQ East, 60 Fitzgerald Ave (cnr Fitzgerald and St. Asaph St) Phone: 377 8855
- EQ Lateral, 0800 262 624, [www.eqlateral.co.nz](http://www.eqlateral.co.nz)
- Dean Lester, ph. 352 0269
- Proclaims Management Ltd, ph 0800 776 252
- Recover Canterbury, [www.recovercanterbury.co.nz](http://www.recovercanterbury.co.nz)
- Worldclaim, 212 Antigua Street, Christchurch, ph. 0800 55 99 88

#### **Lawyers:**

- Buddle Findlay (Willie Palmer, Susan Rowe), ph. 371 3502, [www.buddlefindlay.com](http://www.buddlefindlay.com)
- GCA Lawyers, 22 Moorhouse Avenue, ph. 365 1347, [www.gcalawyers.com](http://www.gcalawyers.com)
- Leane Neave Lawyers (Duncan Webb, Karen Welsford), ph. 379 3720, [www.laneneave.co.nz](http://www.laneneave.co.nz)
- Ngairi Smith, Unit 7 The Sails, 1025 Ferry Road, Ferrymead., ph. 03 384 3880
- Wynn Williams (Peter Whiteside) ph.379 7622, [www.wynnwilliams.co.nz](http://www.wynnwilliams.co.nz)

#### **Members of Parliament:**

- See list of MPs by Electorate in the White Pages telephone phone book under Government and Council, Members of Parliament
- Find contact information or download PDF of parliamentary contacts from <http://www.parliament.nz>

#### **Registered Quantity Surveyors:**

- Ian Harrison and Associates Ltd (Stewart Harrison)  
100 Victoria Street, Christchurch, ph. 366 5881
- Independent Quantity Surveyors Ltd (Phillippa Goodman-Jones)  
ph 366 5238, 426 Manchester Street, [www.igsLtd.co.nz](http://www.igsLtd.co.nz)

If you would like to recommend any other service provider or share with us your experience with any of the listed providers, please email: [info@InsuranceWatch.org.nz](mailto:info@InsuranceWatch.org.nz)