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Local - San Diego Daily Transcript

Landslides may leave homeowners without options



Wed Feb 23, 9:46 PM ET

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When a landslide takes a person's home and turns it into a muddy heap of debris, who is at fault and therefore responsible for the cost of damages?

According to Patrick E. Catalano, an attorney representing 15 homeowners in Oceanside affected by the recent rain and subsequent landslides, there are three possible answers: the homeowner, the builder or a governmental entity.

However, in many cases, victims of landslides are caught in lengthy and expensive court battles to try and establish who is at fault and where the recovery for damages will come from. And because of changes in the law and the way insurance policies are set up, more burden and liability is being placed on the homeowner these days.

Catalano said the first source of recovery would come in the form of homeowner's insurance, which most landslide victims will quickly find out is laden with exclusions such as mudflow and landslides. He said in most cases, the insurance company is going to deny the claim and not come to the individual's assistance, resulting in court proceedings.

"Most people don't know to ask for [mudflow and landslide coverage]," Catalano said. "The average person today, believe it or not, assumes their insured for everything that damages their home because all the insurance companies try to sell these policies saying you're covered for everything." The second source of liability rests on the builder of the home.

"The best advice I can give a homeowner is to buy a house less than 10 years old from a solvent developer, because there's a 10 year statute against the original developer, or contractor, except for fraud or certain exclusions," Catalano said.

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The only other source of recovery would come from a governmental entity -- such as a city or county -- in which a water main or a sewage line malfunction is a substantial factor in the landslide occurring. This process is known as inverse condemnation. Catalano said the governmental entity will generally claim that they have no responsibility.

So if a landslide victim's home is over 10 years old, there are only two options for recovery, and both roads are costly and arduous. Catalano said the laws have changed over the last decade, making it necessary to prove negligence on the part of a governmental entity. And as for the insurance companies, they are working harder than ever before to challenge landslide claims.

Catalano said that in most cases, the landslide victim has to retain a lawyer on a contingency basis because of the hundreds of hours and expert-intensive court proceedings involved in such cases.

"[As a homeowner] your fighting against those with money who are willing to spend it so they don't have to pay damages," Catalano said.

In Oceanside's case, which is a rarity, said Catalano, the city could spend up to \$100,000 to perform emergency repairs on two streets being threatened by a slow-moving landslide. Work was scheduled to begin Wednesday.

"Is there a chance of recovery? Yes. Is it easy? No. And it's getting harder and harder to find an attorney willing to take on these types of cases," Catalano said.

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