



Current Articles 2001 – June

Vacancy

Property policies will contain clauses that exclude coverage if the property is vacant. The exclusions in commercial policies will apply if the property is vacant, unoccupied or all operations have ceased and with the exclusionary clause being effective after 30 consecutive days.

For years there were no legal definitions of vacancy and unoccupancy. However legal precedence from court cases has helped to remedy this problem. Generally speaking a building is vacant when it is devoid of contents and animate objects (people). Unoccupancy occurs when contents are still present but the occupants intend to return. Other cases, and most particularly the Reardon case, have modified specific decisions as a result of intending to occupy at a later date.

Newer personal lines policies may contain a definition of vacancy which means: "whether partially furnished or fully furnished, the occupants have moved out with no intent to return ".And , of course, the key words are -no intent to return. This means that when "snowbirds" go to Florida for several months, their principal residence is unoccupied and is not vacant as they intend to return. The only condition that affects unoccupancy is under the water damage clauses. If the building is unoccupied for more than 4 consecutive days, the insured must arrange for a competent person to inspect the dwelling daily or shut off the water and drain the system. If either of these conditions is not met, a claim for water damage will be denied but losses from all other perils are still covered.

Although the vacancy exclusion refers to commencing after 30 consecutive days of vacancy, the misconception is that this "30 window" applies to all losses. This is not the case because losses caused by vandalism & malicious acts, glass breakage, freezing or escape of water from the plumbing/heating system are not covered from the first day that the vacancy condition exists. The policy wording for these perils may read "you are not insured against loss or damage occurring while the building is vacant even if we have given permission or vacancy.. The permission in this clause is referring to the continuation of coverage for the first 30 days of vacancy and since such permission is not permitted for these perils, a claim will be denied.

When a vacancy permit or endorsement is attached it is also usual that coverage will be restricted to certain perils. Again, there will be no coverage for water, glass and vandalism.

A recent case, which brought this to my attention, involves a senior citizen who sold her house and moved into a retirement residence. Before title to the house was transferred to the purchaser, the lady moved into the retirement premise. Three days later, there was a sewer back up which did several thousands of dollars of damage. The broker had properly attached a sewer back up endorsement but this endorsement clearly stated that the coverage did not apply if the building was vacant, even if we grant permission for vacancy". There was no coverage for the loss. Policies that include sewer back up are no different. There is no coverage from "day 1" if the house is vacant.

The recommendation to limit your E & O exposure, is to always advise the client who has a vacancy condition that the policy is limited to certain perils and that coverage may not apply for water damage (all types) malicious damage & vandalism and glass breakage. Other insurers may be more restrictive and a review of a particular insurer's wording is advised.

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