

April 22, 2010

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Homeowners Blanket Policy Program
HB 32 32 – Special Provisions – North Carolina
HB 04 84 - Water Back-Up Endorsement Withdrawn
HO P 003 03 10 Advisory Notice to Policyholders

The Commissioner of Insurance has recently approved revised Endorsement HB 32 32 – Special Provisions – North Carolina and the withdrawal of Endorsement HB 04 84 designed for use in North Carolina with the Homeowners Blanket Policy Program. Endorsement HB 32 32 is revised to replace the current Water Damage Exclusion under Section 1– Exclusions. By withdrawing the HB 04 84, the Water Back-Up limits will now track with the Homeowners Policy and will allow the use of Endorsement HO 04 84 – Water Back –Up in lieu of the HB 04 84.

For your convenience, please find attached a revised copy of HB 32 32 – Special Provisions – North Carolina with the above changes to the Water Damage Exclusion.

As a result of the changes to the limits of liability in the Water Back-Up and Sump Discharge or Overflow endorsement, attached is a sample Advisory Notice to Policyholders (HO P 003 03 10) prepared by Insurance Services Office (ISO) for optional use by member companies. The sample notice is being provided to assist with notification of changes made to the Water Back-Up and Sump Discharge or Overflow – North Carolina HO 04 84 recently approved by the Commissioner of Insurance. The notice is provided only as a guide and each company is responsible for its own notice. ISO's general explanations of policy intent may not necessarily reflect every insurer's view and does not control any company's determination of coverage.

G.S.58-36-45 provides in part that whenever an insurer changes the coverage in a policy, it shall give the policyholder notice of such coverage change at least 15 days in advance of the effective date and provide a copy of such notice to the agent. It is suggested that companies consult with their legal departments as to the necessity, method, detail and language of your policyholder notification.

These changes become effective in accordance with the following Rule of Application:

These revisions become effective for use on an optional basis with policies effective on or after June 1, 2010 and on a mandatory basis with policies effective on or after December 1, 2010.

Please see to it that this circular is brought to the attention of all interested personnel in your company.

Sincerely,

F. Timothy Lucas

Personal Lines Manager

FTL:dms

Attachments

P-10-7

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

SPECIAL PROVISIONS – NORTH CAROLINA

DEFINITIONS

Definition **B.3.** is replaced by the following:

3. "Business" includes any full- or part-time activity of any kind engaged in for economic gain, including the use of any part of any premises for such purposes.

The following definition is added to Paragraph **B.** in all forms:

12. "Fungi"

- a. "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or by-products produced or released by fungi.
- b. Under Section **II**, this does not include any fungi that are, are on, or are contained in any good or product intended for consumption.

SECTION I – PROPERTY COVERAGES

C. Coverage C – Personal Property

4. Property Not Covered

Paragraph **c.(2)(a)** is replaced by the following:

- (a) Used to service an "insured's" residence; or

E. Additional Coverages

In all forms except **HO 00 06**:

10. Landlord's Furnishings

k. Accidental Discharge Or Overflow Of Water Or Steam

Paragraph **2.(d)** is replaced by the following in Form **HO 00 05**:

- (d) Caused by constant or repeated seepage or leakage of water or the presence or condensation of humidity, moisture or vapor, over a period of weeks, months or years; or

The following Additional Coverage is added to all forms except **HO 00 04**:

13. "Fungi", Wet Or Dry Rot, Or Bacteria

- a. We will pay up to a total of \$5,000 for:

- (1) Direct physical loss to property covered under Section **I** Coverage **A** – Dwelling, Coverage **B** – Other Structures and Coverage **C** – Personal Property caused by, resulting from, or consisting of "fungi", wet or dry rot, or bacteria if the direct result of a Peril Insured Against; and

- (2) The necessary increase in costs which you incur to maintain your normal standard of living when the "residence premises" is uninhabitable due to a loss caused by, resulting from, or consisting of "fungi", wet or dry rot, or bacteria which is the direct result of a Peril Insured Against.

The coverage provided above is the only coverage under Section **I** Coverage **A** – Dwelling, Coverage **B** – Other Structures, Coverage **C** – Personal Property and Coverage **D** – Loss Of Use for loss caused by, resulting from, or consisting of "fungi", wet or dry rot, or bacteria caused directly or indirectly regardless of any other cause or event contributing concurrently or in any sequence.

- b. The amount in **a.** above is the most we will pay for the cost:

- (1) To remove "fungi", wet or dry rot, or bacteria from covered property;
- (2) To tear out and replace any part of the building or other covered property as needed to gain access to the "fungi", wet or dry rot, or bacteria; and
- (3) Of any testing of air or property to confirm the absence, presence or level of "fungi", wet or dry rot, or bacteria whether performed prior to, during or after removal, repair, restoration or replacement. The cost of such testing will be provided only to the extent that there is a reason to believe that there is the presence of "fungi", wet or dry rot, or bacteria.

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- c. The coverage provided above applies only when such loss or costs are the result of a Peril Insured Against that occurs during the policy period and only if all reasonable means were used to save and protect the property from further damage at or after the time of the occurrence of that Peril Insured Against.
- d. If there is covered loss to covered property, not caused, in whole or in part, by "fungi", wet or dry rot, or bacteria, loss payment will not be limited by the terms of this Additional Coverage, except to the extent that "fungi", wet or dry rot, or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Additional Coverage.

This is additional insurance and is the most we will pay for the total of all loss or costs payable under the Additional Coverage regardless of the number of locations insured or the number of claims made. No deductible applies to this coverage.

(This is Additional Coverage 12. in Form HO 00 06.)

SECTION I – PERILS INSURED AGAINST

In Form HO 00 03:

A. Coverage A – Dwelling And Coverage B – Other Structures

Paragraph 2.c.(5) is replaced by the following:

- (5) Constant or repeated discharge, seepage or leakage of water or the presence or condensation of humidity, moisture or vapor, over a period of weeks, months or years; or

Paragraph 2.c.(6)(c) is deleted and replaced by the following:

- (c) Smog, rust, or other corrosion;

B. Coverage C – Personal Property

12. Accidental Discharge Or Overflow Of Water Or Steam

Paragraph b.(4) is replaced by the following:

- (4) Caused by constant or repeated seepage or leakage of water or the presence or condensation of humidity, moisture or vapor, over a period of weeks, months or years.

In Form HO 00 05:

Paragraph A.2.d. is replaced by the following:

- d. Constant or repeated seepage or leakage of water or the presence or condensation of humidity, moisture or vapor, over a period of weeks, months or years; or

Paragraph A.2.e.(3) is deleted and replaced by the following:

- (3) Smog, rust or other corrosion;

In Forms HO 00 04 and HO 00 06:

12. Accidental Discharge Or Overflow Of Water Or Steam

Paragraph b.(5) in Form HO 00 06 and Paragraph b.(4) in Form HO 00 04 is replaced by the following:

- (5) To a building caused by constant or repeated seepage or leakage of water or the presence or condensation of humidity, moisture or vapor, over a period of weeks, months or years.

SECTION I – EXCLUSIONS

In all forms except HO 00 05

3. Water Damage is replaced by the following:

3. Water

This Means:

a. Flood, including but not limited to flashflood, surface water, waves, including tidal wave and tsunami, seich, tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind, including storm surge;

b. Water which:

(1) Backs up through sewers or drains; or

(2) Overflows or is otherwise discharged from a sump, sump pump or related equipment;

c. Water below the surface of the ground, including water which exerts pressure on, or seeps, leaks or flows through a building, sidewalk, driveway, patio, foundation, swimming pool or other structure; or

d. Waterborne material carried or otherwise moved by any of the water referred to in 3.a. through 3.c. of this Exclusion.

This Exclusion (3.) applies regardless of whether any of the above, in 3.a. through 3.d., is caused by an act of nature, an act of man or is otherwise caused.

This Exclusion (3.) applies to, but is not limited to, escape, overflow or discharge, for any reason, of water or waterborne material from a dam, levee, seawall or any other boundary or containment system whether natural, man-made or is otherwise made.

However, direct loss by fire, explosion or theft resulting from any of the above, in 3.a. through 3.d., is covered.

(This is Paragraph A.3. in Form HO 00 03.)

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In form HO 00 05

3. Water Damage is replaced by the following:

3. Water

This Means:

a. Flood, including but not limited to flashflood, surface water, waves, including tidal wave and tsunami, seich, tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind, including storm surge;

b. Water which:

(1) Backs up through sewers or drains; or

(2) Overflows or is otherwise discharged from a sump, sump pump or related equipment;

c. Water below the surface of the ground, including water which exerts pressure on, or seeps, leaks or flows through a building, sidewalk, driveway, patio, foundation, swimming pool or other structure; or

d. Waterborne material carried or otherwise moved by any of the water referred to in 3.a. through 3.c. of this Exclusion.

This Exclusion (3.) applies regardless of whether any of the above, in 3.a. through 3.d., is caused by an act of nature, an act of man or is otherwise caused.

This Exclusion (3.) applies to, but is not limited to, escape, overflow or discharge, for any reason, of water or waterborne material from a dam, levee, seawall or any other boundary or containment system whether natural, man-made or is otherwise made.

However, direct loss by fire, explosion or theft resulting from any of the above, in 3.a. through 3.d., is covered.

Damage to property described in Coverage C away from a premises or location owned, rented, occupied or controlled by an "insured" resulting from any of the above, in 3.a. through 3.d., is covered.

Damage to property described in Coverage C on a premises or location owned, rented, occupied or controlled by an "insured" resulting from any of the above, in 3.a. through 3.d., is excluded even if weather conditions contribute in any way to produce the loss.

(This is Paragraph A.3. in Form HO 00 05.)

8. Intentional Loss is replaced by the following:

8. Intentional Loss

Intentional Loss means any loss arising out of any act an "insured" commits or conspires to commit with the intent to cause a loss.

This exclusion only applies to an "insured" who commits or conspires to commit an act with the intent to cause a loss.

(This is Paragraph A.8. in Forms HO 00 03 and HO 00 05.)

The following exclusion is added:

10. "Fungi", Wet Or Dry Rot, Or Bacteria

"Fungi", Wet Or Dry Rot, Or Bacteria means the presence, growth, proliferation, spread or any activity of "fungi", wet or dry rot, or bacteria other than as provided in Additional Coverage 13. "Fungi", Wet Or Dry Rot, Or Bacteria.

(This is Exclusion A.10. in Forms HO 00 03 and HO 00 05.)

SECTION I – CONDITIONS

B. Duties After Loss

The following is added to the end of Paragraph 8.:

However, if a state of disaster is proclaimed or declared for the State of North Carolina or for an area within the state in accordance with North Carolina law and the covered property that has sustained loss is located within the geographic area designated in the disaster proclamation or declaration, this 60-day period shall not commence until the expiration of the disaster proclamation or declaration, including all renewals of the proclamation or 45 days, whichever is later.

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E. Appraisal is replaced by the following:

E. Appraisal

If you and we fail to agree on the value or amount of any item or loss, either may demand an appraisal of such item or loss. In this event, each party will choose a competent and disinterested appraiser within 20 days after receiving a written request from the other. The two appraisers will choose a competent and impartial umpire. If they cannot agree upon an umpire within 15 days, you or we may request that a choice be made by a judge of a court of record in the state where the "residence premises" is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss. Each party will:

1. Pay its own appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

In no event will an appraisal be used for the purpose of interpreting any policy provision, determining causation or determining whether any item or loss is covered under this policy. If there is an appraisal, we still retain the right to deny the claim.

G. Suit Against Us is replaced by the following:

G. Suit Against Us

No action can be brought against us unless there has been full compliance with all of the terms under Section I of this policy and the action is started within three years after the date of loss.

I. Loss Payment is replaced by the following:

I. Loss Payment

We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. We will pay within 60 days after the amount is finally determined.

This amount may be determined by:

- a. Reaching an agreement with you;
- b. Entry of a final judgment; or
- c. **The filing of an appraisal award with us.**

SECTION II – EXCLUSIONS

A. "Motor Vehicle Liability"

Paragraph 2.b. is replaced in all forms by the following:

- b. Used to service an "insured's" residence;

E. Coverage E – Personal Liability And Coverage F – Medical Payments To Others

Paragraph 1. **Expected Or Intended Injury** is replaced in all forms by the following:

1. Expected Or Intended Injury

"Bodily injury" or "property damage" which is intended by or which may reasonably be expected to result from the intentional acts or omissions or criminal acts or omissions of one or more "insured" persons. This exclusion applies even if:

- a. The "insured" persons lack the mental capacity to govern their own conduct;
- b. The "bodily injury" or "property damage" is of a different kind, quality or degree than intended or reasonably expected; or
- c. The "bodily injury" or "property damage" is sustained by a different person or entity than intended or reasonably expected.

This exclusion applies regardless of whether or not an "insured" person is actually charged with, or convicted of, a crime.

Paragraph 2. **"Business"** is replaced by the following:

2. "Business"

- a. "Bodily injury" or "property damage" arising out of or in connection with a "business" engaged in by an "insured".

This Exclusion E.2. applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the "business".

- b. This Exclusion E.2. does not apply to:

- (1) The rental or holding for rental of an "insured location";
 - (a) On an occasional basis if used only as a residence;
 - (b) In part for use only as a residence, unless a single family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or

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- (c) In part, as an office, school, studio or private garage; and
- (2) An insured minor involved in part-time, self-employed "business" pursuits normally undertaken by minors, unless the minor is employed by a "business". A minor means a person who has not attained his or her 19th birthday (or age 23 if a full-time student);

The following exclusion is added:

9. "Fungi", Wet Or Dry Rot, Or Bacteria

"Bodily injury" or "property damage" arising directly or indirectly, in whole or in part, out of the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of or presence of any "fungi", wet or dry rot, or bacteria.

SECTIONS I AND II – CONDITIONS

The following Condition is added:

H. Choice Of Law

This policy is issued in accordance with the laws of North Carolina and covers property or risks principally located in North Carolina. Any and all claims or disputes in any way related to this policy shall be governed by the laws of North Carolina.

All other provisions of this policy apply.

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NORTH CAROLINA WATER BACK-UP AND SUMP DISCHARGE OR OVERFLOW ADVISORY NOTICE TO POLICYHOLDERS

No coverage is provided by this notice nor can it be construed to replace any provision of your policy. You should read your policy and review your Declarations Page for complete information on the coverages you are provided. If there is any conflict between the policy and this Advisory Notice to Policyholders, **THE PROVISIONS OF THE POLICY SHALL PREVAIL.**

When the Water Back-Up And Sump Discharge Or Overflow – North Carolina endorsement, **HO 04 84**, was attached to your policy previously, coverage was provided up to the policy limits of liability for direct physical loss, not caused by the negligence of an "insured", to property covered under Section I caused by water or waterborne material, which backs up through sewers or drains or which overflows or is discharged from a sump, sump pump, or related equipment.

The endorsement now, when attached to your policy, only provides coverage up to a basic limit of liability of \$5,000, which may be increased to \$10,000, \$15,000 or \$25,000, for direct physical loss, not caused by the negligence of an "insured", to property covered under Section I caused by water or waterborne material, which backs up through sewers or drains or which overflows or is discharged from a sump, sump pump, or related equipment.