

December 29, 2009

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Homeowners Policy Program
Special Provisions – North Carolina HO 32 32
Water Back-Up and Sump Discharge or Overflow
North Carolina HO 04 84
PC125284, PC125288, PC125289, PC125290

By Circular Letter P-09-20 dated September 2, 2009, the Rate Bureau notified Member Companies of revisions to the Special Provisions – North Carolina HO 32 32. However, it has come to our attention that the revised Water Exclusion contained in HO 32 32 inadvertently omitted the following two paragraphs related to the HO 00 05:

- Water damage to property described in Coverage **C** away from a premises or location owned, rented, occupied or controlled by an "insured" is covered.
- Water damage to property described in Coverage **C** on a premises or location owned, rented, occupied or controlled by an "insured" is excluded even if weather conditions contribute in any way to produce the loss.

For your convenience, please find attached Explanation of Changes and a revised copy of Special Provisions - North Carolina HO 32 32 with the above changes.

As a result of this change, it is necessary to delay the implementation until June 1, 2010 from the previously announced effective date of March 1, 2010.

In addition, as a result of the delay in implementation, it is necessary to delay implementation of the revised HO 04 84 Water Back-Up and Sump Discharge or Overflow – North Carolina with corresponding rules and rates until June 1, 2010 as stated in Circular Letter P-09-21.

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

These revisions becomes effective with respect to all new and renewal policies effective on or after June 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

Attachment

P-09-29

North Carolina Homeowners Special Provisions Endorsement Revised

About This Filing

This filing revises **HO 32 32**, Special Provisions – North Carolina, in order to further revise the Water Exclusion contained in **HO 00 05**, Homeowners 5 – Comprehensive Form, to more closely reflect the previous revisions to the Water Exclusion made in previously approved filing **PC125284**.

Revised Form

We are revising **HO 32 32 01 09**, Special Provisions – North Carolina.

We have used a format of ~~striking through~~ deletions, underlining additions and inserting a revision bar in the left margin to indicate changes from the **01 09** edition to the **06 10** edition. Concurrent with implementation, the **06 10** edition will supersede the **01 09** edition.

Background

In previously approved filing **PC125284**, we, in part, revised the Water Damage Exclusion in response to litigation related to Hurricane Katrina surrounding the applicability of the exclusion.

Currently, the Water Exclusion in **HO 00 05**, Homeowners 5 – Comprehensive Form, provides, in part, that:

- ◆ Water damage to property described in Coverage C away from a premises or location owned, rented, occupied or controlled by an "insured" is covered; and
- ◆ Water damage to property described in Coverage C on a premises or location owned, rented, occupied or controlled by an "insured" is excluded even if weather conditions contributed in any way to produce the loss.

Explanation of Changes

In order to more closely reflect the language of the recent revisions to the Water Exclusion, we are further revising the Water Exclusion contained in **HO 00 05**,

Homeowners 5 – Comprehensive Form, via **HO 32 32**, Special Provisions – North Carolina, to provide, in part, that:

- ◆ 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 events described in the Exclusion, is covered; and
- ◆ Damages to property described in Coverage C on a premises or location owned, rented, occupied or controlled by an "insured," resulting from any of the events described in the Exclusion, is excluded even if weather conditions contribute in any way to produce the loss.

We are also taking this opportunity to make minor editorial revisions to this endorsement.

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

3. Special Limits Of Liability

Paragraphs **f.** and **g.** are deleted in all forms except **HO 00 08**, and deleted in Endorsements **HO 32 95** and **HO 32 35** when made part of Forms **HO 00 04** and **HO 00 06**, respectively. Paragraphs **f.** and **g.** in those forms are replaced by the following:

- f. 10% of the Coverage **C** limit, subject to a maximum of \$10,000, for loss by theft* of firearms and related equipment.
- g. 25% of the Coverage **C** limit, subject to a maximum of \$10,000, for loss by theft* of silverware, silver-plated ware, goldware, gold-plated ware, platinumware, platinum-plated ware and pewterware. This includes flatware, hollowware, tea sets, trays and trophies made of or including silver, gold or pewter.

* In Form **HO 00 05** and Endorsements **HO 32 95** and **HO 32 35**, theft includes misplacing or losing.

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** and **HO 00 08**:

1. **Debris Removal** is replaced by the following:

1. Debris Removal

- a. We will pay your reasonable expense for the removal of:

- (1) Debris of covered property if a Peril Insured Against that applies to the damaged property causes the loss; or
- (2) Ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building.

This expense is included in the limit of liability that applies to the damaged property. If the amount to be paid for the actual damage to the property plus the debris removal expense is more than the limit of liability for the damaged property, an additional 5% of that limit of liability is available for debris removal expense.

- b. We will also pay your reasonable expense, up to \$500, for the removal from the "residence premises" of:

- (1) Your tree(s) felled by the peril of Wind-storm or Hail; or Weight of Ice, Snow or Sleet; or
- (2) A neighbor's tree(s) felled by a Peril Insured Against under Coverage **C**;

provided the tree(s):

- (3) Damages a covered structure; or
- (4) Does not damage a covered structure; but:

- (a) Blocks a driveway on the "residence premises" which prevents a "motor vehicle", that is registered for use on public roads or property, from entering or leaving the "residence premises"; or

- (b) Blocks a ramp or other fixture designed to assist a handicapped person to enter or leave the dwelling building.

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The \$500 limit is the most we will pay in any one loss regardless of the number of fallen trees.

This coverage is additional insurance.

In Form **HO 00 06**:

1. Debris Removal is replaced by the following:

1. Debris Removal

a. We will pay your reasonable expense for the removal of:

- (1) Debris of covered property if a Peril Insured Against that applies to the damaged property causes the loss; or
- (2) Ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building.

This expense is included in the limit of liability that applies to the damaged property. If the amount to be paid for the actual damage to the property plus the debris removal expense is more than the limit of liability for the damaged property, an additional 5% of that limit of liability is available for debris removal expense.

b. We will also pay your reasonable expense, up to \$500, for the removal from the "residence premises" of:

- (1) ~~A~~ Tree(s) you solely own felled by the peril of Windstorm or Hail; or Weight of Ice, Snow or Sleet; or
- (2) A neighbor's tree(s) felled by a Peril Insured Against under Coverage **C**;

provided the tree(s) damages a covered structure. The \$500 limit is the most we will pay in any one loss, regardless of the number of fallen trees.

This coverage is additional insurance.

In Form **HO 00 08**:

1. Debris Removal is replaced by the following:

1. Debris Removal

a. We will pay your reasonable expense for the removal of:

- (1) Debris of covered property if a Peril Insured Against that applies to the damaged property causes the loss; or
- (2) Ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building.

This expense is included in the limit of liability that applies to the damaged property. If the amount to be paid for the actual damage to the property plus the debris removal expense is more than the limit of liability for the damaged property, an additional 5% of that limit of liability is available for debris removal expense.

b. We will also pay your reasonable expense, up to \$500, for the removal from the "residence premises" of:

- (1) Your tree(s) felled by the peril of Windstorm or Hail; or
- (2) A neighbor's tree(s) felled by a Peril Insured Against under Coverage **C**;

provided the tree(s):

- (3) Damages a covered structure; or
- (4) Does not damage a covered structure; but:

(a) Blocks a driveway on the "residence premises" which prevents a "motor vehicle", that is registered for use on public roads or property, from entering or leaving the "residence premises"; or

(b) Blocks a ramp or other fixture designed to assist a handicapped person to enter or leave the dwelling building.

The \$500 limit is the most we will pay in any one loss, regardless of the number of fallen trees.

This coverage is additional insurance.

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

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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.

- 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** and Additional Coverage **9**. in Form **HO 00 08**.)

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.

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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 02**, **HO 00 04** and **HO 00 06**:

12. Accidental Discharge Or Overflow Of Water Or Steam

Paragraph **b.(5)** in Forms **HO 00 02** and **HO 00 06** and Paragraph **b.(4)** in Form **HO 00 04** are 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 flash flood, surface water, waves, including tidal wave and tsunami, seiche, 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 ~~E~~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 Forms **HO 00 03** ~~and HO 00 05.~~)

In Form **HO 00 05**:

Paragraph **A.3.** is replaced by the following:

3. Water

This means:

- a. Flood, including but not limited to flash flood, surface water, waves, including tidal wave and tsunami, seiche, 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 **(A.3.)** applies regardless of whether any of the above, in **A.3.a.** through **A.3.d.**, is caused by an act of nature, an act of man or is otherwise caused.

This Exclusion **(A.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 **A.3.a.** through **A.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 **A.3.a.** through **A.3.d.**, is covered.

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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 A.3.a. through A.3.d., is excluded even if weather conditions contribute in any way to produce the loss.

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.

C. Loss Settlement

In Forms **HO 00 02**, **HO 00 03** and **HO 00 05**, Subparagraph **2.a.** is replaced by the following:

2. Buildings covered under Coverage **A** or **B** at replacement cost without deduction for depreciation, subject to the following:

a. If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, after application of any deductible and without deduction for depreciation, but not more than the least of the following amounts:

- (1) The limit of liability under this policy that applies to the building;
- (2) The replacement cost of that part of the building damaged with material of like kind and quality and for like use; or
- (3) The necessary amount actually spent to repair or replace the damaged building on the "residence premises" or some other premises within the State of North Carolina.

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.

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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~~single-family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or

- (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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