



**NORTH CAROLINA RATE BUREAU**  
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May 5, 2003

CIRCULAR LETTER TO ALL MEMBER COMPANIES  
VIA FAX

Re: Homeowners Enhancement Policy Program

The Commissioner of Insurance has recently approved the attached revised HE 32 32 04 03 Special Provisions - North Carolina designed for use on a mandatory basis in North Carolina with the Homeowners Enhancement Policy Program (HE-7). In addition, please find attached an Explanatory Memorandum explaining the changes.

This change becomes effective in accordance with the following Rule of Application.

This change becomes effective with respect to all new and renewal policies effective on or after September 1, 2003.

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

Very truly yours,

F. Timothy Lucas

Personal Lines Manager

FTL:dp

P-03-10

## EXPLANATORY MEMORANDUM

HE 32 32 04 03 - Special Provisions - North Carolina

We are proposing several changes in the North Carolina Homeowners Enhancement Program. These changes are to be implemented through amendments to the Special Provisions - North Carolina Endorsement HE 32 32 (Ed. 04 03).

The following outlines the amendments included in Endorsement HE 32 32 04 03.

### Clarification of the Policy regarding Mold

The HE 32 32 has been revised to provide and more specifically describe the intended mold and fungus coverage for the benefit of policyholders and to help companies better manage coverage for mold and fungus subject to certain limits. This change is designed to track the changes in the Homeowners Policy Program that went into effect August 15, 2002.

### Appraisal Provision

The Appraisal Provision was intended to provide an expeditious and inexpensive means of resolving simple disagreements on the value of an insured loss. However, attorneys and appraisers have begun trying to expand the use of this provision as a means to arbitrate insurance coverage disputes including the cause of loss. Therefore, we are proposing changes to the provision to emphasize its original intent to simply resolve disagreements as to the value of an insured loss.

### Choice of Law

A new Condition is being added to indicate that this policy is being issued in accordance with the laws in North Carolina and that all claims and disputes related to this policy shall be governed by the laws in North Carolina.

Material underlined is new.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**SPECIAL PROVISIONS - NORTH CAROLINA**

DEFINITIONS

**Item 2. Is deleted and is replaced by the following:**

2. "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 all forms:

**10. "Fungi"**

- a. "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts 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.

**ADDITIONAL COVERAGES**

The following **ADDITIONAL COVERAGE** is added:

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

- a. We will pay up to a total of \$5000 for:
  - (1) Direct physical loss to property covered under 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) Necessary increase in costs which you incur to maintain your normal standard of living when the Described Location 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 Coverage A - Dwelling, Coverage B - Other Structures, Coverage C - Personal Property, and if provided in this policy, Coverage D - Loss of use for damage or 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 \$5000 limit 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.

The coverage provided above applies only when such loss, costs or expenses 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.

If there is covered loss or damage 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 Other 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 Other Coverage.

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

## **SECTION I – PERILS INSURED AGAINST**

Item 1.b.(4)(c) is deleted and replaced by the following:

(c) Smog, rust, or other corrosion;

Item 1.b.(4)(i) is added.

(i) 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.

## **SECTIONS I – CONDITIONS**

**8. Appraisal** is deleted and replaced by the following:

**8. 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:

a. Pay its own appraiser: and

b. 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.

## **SECTION II - EXCLUSIONS**

**1. Coverage E - Personal Liability and Coverage F -**

**Medical Payments to Others do not apply to bodily injury or property damage:**

**Paragraph b.(1) is deleted and replaced by the following:**

**b.(1) Arising out of or in connection with a “business” engaged in by an “insured”. This exclusion 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”. However, this exclusion does not apply to 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 19<sup>th</sup> birthday (or age 23 if a full-time student).**

The following exclusion is added:

1. 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.

**3. Coverage E - Personal Liability, does not apply to personal injury arising out of:**

**Paragraph d. is deleted and replaced in all forms by the following:**

**d. Arising out of or in connection with a “business” engaged in by an “insured”. This exclusion 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”. However, this exclusion does not apply to 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 19<sup>th</sup> birthday (or age 23 if a full-time student).**

**SECTION I and II – CONDITIONS**

The following Condition is added:

**10. 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.