Content Supplement: for use with North Dakota Property and Casualty online ExamFX courses and study guide version 22117en/22118en, per exam provider switch and outline updates effective 9/1/2019.

Please note that North Dakota is changing testing providers. Effective 9/1/2019, state insurance exams will be administered by Prometric. For additional information about exam requirements and complete exam content outlines, please refer to the testing provider's website: https://www.prometric.com/en-us/Pages/home.aspx

New exam breakdowns:

North Dakota Property Insurance
110 Total Questions (100 scored; 10 pretest)
Time Limit: 125 minutes

Chapter	Percent of Exam
General Knowledge	
General Insurance	6%
Property Insurance Basics	12%
Dwelling Policy	5%
Homeowners Policy – Section I	13%
Commercial Package Policy (CPP)	9%
Businessowners Policy – Property	10%
Other Coverages and Options	5%
Laws and Regulations	
Insurance Regulation	14%
North Dakota Laws and Regulations Pertaining to Property Insurance	26%

North Dakota Casualty Insurance Examination
110 Total Questions (100 scored; 10 pretest)
Time Limit: 120 minutes

Chapter	Percent of Exam
General Knowledge	
General Insurance	6%
Casualty Insurance Basics	9%
Homeowners Policy – Section II	10%
Auto Insurance	15%

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Commercial Package Policy (CPP)	6%
Businessowners Policy – Liability	9%
Other Coverages and Options	5%
Laws and Regulations	
Insurance Regulation	10%
North Dakota Law and Regulations Pertaining to Accident and Health Insurance	30%

*The following are **content additions** to supplement your existing text unless otherwise indicated.*

Insurance Regulation

Fraud and False Statements, Including 1033 Waiver

It is considered **unlawful insurance fraud** for any person engaged in the business of insurance to willfully, and with the intent to deceive, make any oral or written statement that are either false or omit material facts. This includes information and statements made on an application for insurance, renewal of a policy, claims for payment or benefits, premiums paid, and financial condition of an insurer.

Anyone engaged in the business of insurance whose activities affect interstate commerce, and who knowingly makes false material statements may be fined, imprisoned for up to **10 years** or both. If the activity jeopardized the security of the accompanied insurer, the punishment can be up to **15 years**.

Anyone acting as an officer, director, agent or other insurance employee who is convicted of embezzling funds faces the aforementioned fines and imprisonment. However, if the embezzlement was in an amount less than **$5,000**, prison time may be reduced to 1 year.

Federal law makes it illegal for any individual convicted of a crime involving dishonesty, breach of trust or a violation of the Violent Crime Control and Law Enforcement Act of 1994 to work in the business of insurance affecting interstate commerce without receiving written consent from an insurance regulatory official (Director of Insurance, or Commissioner of Insurance) - a **1033 waiver**. The consent of the official must specify that it is granted for the purpose of 18 U.S.C. 1033. Anyone convicted of a felony involving dishonesty or breach of trust, who also engages in the business of insurance, will be fined, imprisoned for up to 5 years or both.

Section 1034, Civil Penalties and Injunctions for Violations of Section 1033, states that the Attorney General may bring a **civil action** in the appropriate U.S. district court against any person who engages in conduct that is in violation of Section 1033 of not more than **$50,000** for each violation, or the amount of compensation the person received as a result of the prohibited conduct, whichever is greater.

General Insurance

A. Risk Management Key Terms

1. Exposure

Exposure is a unit of measurement used to determine rates charged for insurance coverage. A large number of units having the same or similar exposure to loss are referred to as **homogeneous**. The basis of insurance is sharing risk between a large homogeneous group with similar exposure to loss.

2. Loss

Loss is defined as the reduction, decrease, or disappearance of value of the person or property insured in a policy, caused by a named peril. Insurance provides a means to transfer loss.

B. Methods of Handling Risk

Sharing is a method of dealing with risk for a group of individual persons or businesses with the same or similar exposure to loss to share the losses that occur within that group. A reciprocal insurance exchange is a formal risk-sharing arrangement.

The most effective way to handle risk is to **transfer** it so that the loss is borne by another party. Insurance is the most common method of transferring risk from an individual or group to an insurance company. Though the purchasing of insurance will not eliminate the risk of death or illness, it relieves the insured of the financial losses these risks bring.

There are several ways to transfer risk, such as hold harmless agreements and other contractual agreements, but the safest and most common method is to purchase insurance coverage.

One of the methods of dealing with risk is **avoidance**, which means eliminating exposure to a loss. *For example,* if a person wanted to avoid the risk of being killed in an airplane crash, he/she might choose never to fly in an airplane. Risk avoidance is effective, but seldom practical.

Risk **retention** is the planned assumption of risk by an insured through the use of deductibles, co-payments, or self-insurance. It is also known as self-insurance when the insured accepts the responsibility for the loss before the insurance company pays. The purpose of retention is

1. To reduce expenses and improve cash flow;
2. To increase control of claim reserving and claims settlements; and
3. To fund for losses that cannot be insured.

Since we usually cannot avoid risk entirely, we often attempt to lessen the possibility or severity of a loss. **Reduction** would include actions such as installing smoke detectors in our homes, having an annual physical to detect health problems early, or perhaps making a change in our lifestyles.

C. Elements of Insurance Risk

Not all risks are insurable. As noted earlier, insurers will insure only **pure risks,** or those that involve only the chance of loss with no chance of gain. Furthermore, even pure risks must have certain characteristics in order to be insurable.

Insurable risks involve the following characteristics:

- **Due to chance:** a loss that is outside the insured's control.
- **Definite and measurable:** a loss that is specific as to the cause, time, place and amount. An insurer must be able to determine how much the benefit will be and when it becomes payable.
- **Statistically predictable:** Insurers must be able to estimate the average frequency and severity of future losses and set appropriate premium rates. (In life and health insurance, the use of mortality tables and morbidity tables allows the insurer to project losses based on statistics.)
- **Not catastrophic:** Insurers need to be reasonably certain their losses will not exceed specific limits. That is why insurance policies usually exclude coverage for loss caused by war or nuclear events: There is no statistical data that allows for the development of rates that would be necessary to cover losses from events of this nature.
- **Randomly selected and large loss exposure:** There must be a sufficiently large pool of the insured that represents a random selection of risks in terms of age, gender, occupation, health and economic status, and geographic location.

D. Adverse Selection

Insurance companies strive to protect themselves from **adverse selection,** the insuring of risks that are more prone to losses than the average risk. Poorer risks tend to seek insurance or file claims to a greater extent than better risks.

To protect themselves from adverse selection, insurance companies have an option to refuse or restrict coverage for bad risks, or charge them a higher rate for insurance coverage.

E. Types of Insurers

Fraternal Benefit Societies

A **fraternal benefit society** is an organization formed to provide insurance benefits for members of an affiliated lodge, religious organization, or fraternal organization with a representative form of government. Fraternals sell only to their members and are considered charitable institutions, and *not insurers.* They are not subject to all of the regulations that apply to the insurers that offer coverage to the public at large.

Risk Purchasing Groups

A **risk purchasing group** is an entity which offers insurance to groups of similar businesses with similar exposures to risk. The policy is based on the insured's loss and expense experience and is not afforded to other policyholders with respect to rates, policy forms, or coverages. Such programs and the groups that offer them are exempt from most state laws, rules, and regulations, except for the state in which the group is domiciled.

Risk Retention Groups

A **risk retention group** (RRG) is a liability insurance company owned by its members. The members are exposed to similar liability risks by virtue of being in the same business or industry. The purpose of a risk retention group is to assume and spread all or part of the liability of its group members. A risk retention group may reinsure another risk retention group's liability as long as the members of the second group are engaged in the same or similar business or industry.

Lloyd's Associations

Lloyd's is not an insurance company. Lloyd's provides support facilities for underwriters or groups of individuals that accept insurance risk.

Lloyd's associations are a group of individuals who operate an insurance mechanism using the same principles of individual liability of insurers that Lloyd's of London uses, in that each individual underwriter assumes a part of each risk. Each individual promises to pay a specified amount in the event that the contingency insured against occurs. Members are liable only for their portion of the risk and are not bound to assume any portion of a defaulting member.

While Lloyd's formed in this country operate in essentially the same manner as Lloyd's of London, they are not subject to the strict regulation which Lloyd's of London imposes upon its members. Most states have laws which prohibit the organization or licensing of American Lloyd's. Those Lloyd's which do exist operate almost exclusively in the property insurance field.

Private vs. Government Insurers

Federal and state governments provide insurance in the areas where private insurance is not available, called **social insurance programs**. Government insurance programs include Social Security, Medicare, Medicaid, Federal Crop insurance and National Flood insurance.

The major difference between government programs and private insurance programs is that the government programs are funded with taxes and serve national and state social purposes, while private policies are funded by premiums.

Marketing (Distribution) Systems

Insurance companies market their products in different ways: through agents or direct solicitation to the customers.

TYPE OF MARKETING ARRANGEMENTS	CHARACTERISTICS
Independent Agency System/ American Agency System	▪ 1 independent agent represents several companies ▪ Nonexclusive ▪ Commissions on personal sales ▪ Business renewal with any company
Exclusive Agency System/ Captive Agents	▪ 1 agent represents 1 company ▪ Exclusive ▪ Commissions on personal sales ▪ Renewals can only be placed with the appointing insurer
General Agency System	▪ General agent-entrepreneur represents 1 company ▪ Exclusive ▪ Compensation and commissions ▪ Appoints subagents
Managerial System	▪ Branch manager (supervises agents) ▪ Salaried ▪ Agents can be insurer's employees or independent contractors
Direct Response Marketing System	▪ No agents ▪ Company advertises directly to consumers (through mail, Internet, television, other mass marketing) ▪ Consumers apply directly to the company

Financial Status (Independent Ratings Services)

The financial strength and stability of an insurance company are two vitally important factors to potential insureds. The financial strength of an insurance company is based on prior claims experience, investment earnings, level of reserves (amount of money kept in a separate account to cover debts to policyholders), and management, to name a few. Guides to insurance companies' financial integrity are published regularly by the following various independent rating services:

- AM Best
- Fitch
- Standard and Poor's
- Moody's
- Weiss

F. Producers and General Rules of Agency

An agent/producer is an individual licensed to sell, solicit or negotiate insurance contracts on behalf of the **principal (insurer).** The **law of agency** defines the relationship between the principal and the agent/producer: the acts of the agent/producer within the scope of authority are deemed to be the acts of the insurer.

In this relationship, it is a given that

- An agent represents the insurer, not the insured;
- Any knowledge of the agent is presumed to be knowledge of the insurer;
- If the agent is working within the conditions of his/her contract, the insurer is fully responsible;
- When the insured submits payment to the agent, it is the same as submitting a payment to the insurer.

The agent is responsible for accurately completing applications for insurance; submitting the application to the insurer for underwriting; and delivering the policy to the policyowner.

The agency contract details the authority an agent has within his/her company. Contractually, only those actions for which the agent is authorized can bind the principal (insurer). In reality, an agent's authority is much broader. There are 3 types of agent authority: express, implied, and apparent.

Express

Express authority is the authority a principal intends to grant to an agent by means of the agent's contract. It is the authority that is written in the contract.

Implied

Implied authority is authority that is **not expressed or written into the contract, but which the agent is assumed to have in order to transact the business** of insurance for the principal. Implied authority is incidental to and derives from express authority since not every single detail of an agent's authority can be spelled out in the written contract.

Apparent

Apparent authority (also known as *perceived* authority) is the appearance or the assumption of authority based on the actions, words, or deeds of the principal or because of circumstances the principal created. *For example,* when an insurer furnishes an agent with a rate book, application forms, and sales literature, the insurer cannot later deny that such a relationship existed.

Responsibilities to the Applicant/Insured

Although the agents act for the insurer, they are legally obligated to treat applicants and insureds in an ethical manner. Because an agent handles the funds of the insured and the insurer, he/she has **fiduciary responsibility**. A *fiduciary* is someone in a position of trust.

More specifically, it is illegal for insurance producers to commingle premiums collected from the applicants with their own personal funds.

Market conduct describes the way companies and producers should conduct their business. It is a **Code of Ethics** for producers. Producers must adhere to certain established procedures, and failure to comply will result in penalties. Some of the market conduct regulations include, but are not limited to, the following:

- Conflict of interest;
- A request of a gift or loan as a condition to complete business; and
- Supplying confidential information.

Producers are required to perform in a professional manner at all times. *Professionalism* means that a person is engaged in an occupation requiring an advanced level of training, knowledge, or skill. Being professional means placing the public's interest above one's own in all situations. Any deviation could result in a penalty.

G. Contracts

1. Distinct Characteristics of an Insurance Contract

In addition to required elements, insurance contracts have unique characteristics that distinguish them from other types of legal contracts. It is important to understand these features and how they affect parties to an insurance contract.

Contract of Adhesion

A ***contract of adhesion*** is prepared by one of the parties (insurer) and accepted or rejected by the other party (insured). Insurance policies are not drawn up through negotiations, and an insured has little to say about its provisions. In other words, insurance contracts are offered on a take-it-or-leave-it basis by an insurer. Any ambiguities in the contract will be settled in favor of the insured.

Aleatory Contract

Insurance contracts are **aleatory*,*** which means there is an exchange of unequal amounts or values. The premium paid by the insured is small in relation to the amount that will be paid by the insurer in the event of loss.

Unilateral Contract

In a **unilateral contract,** only one of the parties to the contract is legally bound to do anything. The insured makes no legally binding promises. However, an insurer is legally bound to pay losses covered by a policy in force.

Personal Contract

In general, an insurance contract is a **personal contract** because it is between the insurance company and an individual. Because the company has a right to decide with whom it will and will not do business, the insured cannot be changed to someone else

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without the written consent of the insurer, nor can the owner transfer the contract to another person without the insurer's approval. Life insurance is an exception to this rule: A policyowner can transfer (or assign) ownership to another person. However, the insurer must still be notified in writing.

Conditional Contract

As the name implies, a **conditional contract** requires that certain conditions must be met by the policyowner and the company in order for the contract to be executed, and before each party fulfills its obligations. *For example*, the insured must pay the premium and provide proof of loss in order for the insurer to cover a claim.

2. Legal Interpretations Affecting Contracts

Indemnity

Indemnity (sometimes referred to as **reimbursement**) is a provision in an insurance policy that states that in the event of loss, an insured or a beneficiary is permitted to collect only to the extent of the financial loss, and is not allowed to gain financially because of the existence of an insurance contract. The purpose of insurance is to restore, but not let an insured or a beneficiary profit from the loss.

Reasonable Expectations

It is not always practical or necessary to state every direct and indirect provision or coverage offered by an insurance policy. If an agent implies through advertising, sales literature or statements that these provisions exist, an insured could **reasonably expect coverage**. *For example,* if an insurance company advertises in large print that insurance is available regardless of pre-existing conditions, the buyer could reasonably expect any pre-existing conditions to be covered, even if the small print on the back of the sales brochure specifies that not all pre-existing conditions would be covered.

Utmost Good Faith

The principle of **utmost good faith** implies that there will be no fraud, misrepresentation or concealment between the parties. As it pertains to insurance policies, both the insurer and insured must be able to rely on the other for relevant information. The insured is expected to provide accurate information on the application for insurance, and the insurer must clearly and truthfully describe policy features and benefits, and must not conceal or mislead the insured.

Ambiguities in a contract of adhesion

Because only the insurance company has the right to draw up a contract, and the insured has to adhere to the contract as issued, the courts have held that any ambiguity in the contract should be interpreted **in favor of the insured.**

Fraud

Fraud is the intentional misrepresentation or intentional concealment of a material fact used to induce another party to make or refrain from making a contract, or to deceive or cheat a party. Fraud is grounds for voiding an insurance contract.

Waiver and Estoppel

Waiver is the voluntary act of relinquishing a legal right, claim or privilege. **Estoppel** is a legal process that can be used to prevent a party to a contract from re-asserting a right or privilege after that right or privilege has been waived. Estoppel is a legal consequence of a waiver.

Property and Casualty Insurance Basics

A. Underwriting

Function

The underwriter's **function** refers to the operations of an insurance company where an employee, called an *underwriter*, is responsible for evaluating applications submitted to the insurer and determining whether a policy should be issued, and if so, the terms, conditions and rates for that policy.

Loss Ratio

Loss ratio refers to a formula used by insurance companies to compare premium income to losses, including claims paid and claim-related expenses. The formula is as follows:

(Incurred losses + Loss adjusting expense) ÷ Earned premium = Loss ratio

B. Rates

In simple terms, an **insurance rate** is the amount charged for a particular amount of coverage. It is the actuarially concluded unit of cost that is applied against the rating basis from which a policy premium is developed, or the charge per unit of exposure.

Rates may be developed by property values (e.g. property or fire insurance), revenues receipts (e.g. casualty or liability insurance) or payroll (e.g. workers compensation insurance).

The approach to setting rates is very similar in most instances, but it is possible to distinguish between two different types of rates: **class** and **individual**.

The term **class rating** (or **manual rating**) refers to the practice of computing a price per unit of insurance that applies to all applicants possessing a given set of characteristics (e.g., a class rate might apply to all types of dwellings of a given kind of construction in a specific city, or all drivers of a given gender and age driving in the same geographic area.).The advantage of the class-rating system is that it permits the insurer to apply a single rate to a large number of insureds, simplifying the process of determining their premiums. In establishing the classes to which class rates apply, the rate maker must compromise between a large class, which will include a greater number of exposures and thereby increase the credibility of predictions, and one sufficiently narrow to permit homogeneity.

Class rating is the most common approach in use by the insurance industry and is used in life insurance and most property and casualty fields.

In some areas of risks, the characteristics of the units to be insured vary so widely that is deemed desirable to depart from the *class* approach and calculate rates on the basis that attempts to measure more precisely the loss-producing characteristics of the **individual.** There are 5 basic individual rate-making approaches:

1. Judgment rating
2. Schedule rating
3. Experience rating
4. Retrospective rating
5. Merit rating

Judgment rating is used when credible statistics are lacking or when the exposure units are so varied that it is impossible to construct a class. This technique is used in Ocean Marine insurance, although it is also used in other lines where permitted by state's rate laws. (A risk that has been judgment rated may also be referred to as "A" rated.)

In **schedule rating**, the rates are developed by applying a schedule of charges and credits to some base rate to determine the appropriate rate for an individual exposure. Schedule rating is used less frequently today because of the introduction of ISO's *class-rating program* for many types of commercial building that had been previously schedule rated, leaving only the very largest and most complex risks to be schedule rated.

In **experience rating**, the insured's own past loss experience enters into the determination of the final premium. Experience rating is superimposed on a class-rating system and adjusts the insured's premium either up or down, depending on the extent to which his experience has deviated from the average experience of the class.

Retrospective rating is a *self-rating* plan under which the actual losses during the policy period determine the final premium, subject to a minimum and maximum premium. (A deposit premium is required at the inception of the policy. That premium then is adjusted at the end of the policy term based on the actual loss experience.)

Another type of rating is **merit rating**. Merit rating is most commonly used in personal auto insurance. In this method of rating, the insured's premium is based *not* on the actual loss record, but on other factors that indicate the *probability* that loss will occur. An example would be a bad driving record that does not include any at-fault accidents.

Loss costs is a rating method developed by ISO that provides an insurer with that portion of a rate that does not include provisions of expenses (other than adjusting expense) or profit and are based on historical aggregate loss and loss adjustment expenses projected through development to their ultimate value and through trending to a future point in time. The expense and profit components to develop the final rate must be added by the insurance company.

Components are factors that determine rates including loss reserves, loss adjusting expenses, operating expenses, and profits.

C. Basic Types of Construction

An important element in the underwriting and rating of property insurance is the type of construction of the building to be insured. A building constructed with materials that are less prone to fire damage would be more favorably rated than a building more prone to fire damage. The following are the basic classes of construction used for underwriting:

- **Fire-resistive** — Buildings constructed with masonry and/or other materials with a fire resistance rating of 2 hours or more. Fire-resistive usually receives the most favorable rating.
- **Modified fire-resistive** — Buildings constructed with masonry and/or other materials with a fire resistance rating between 1 hour and 2 hours.
- **Masonry noncombustible** — Buildings constructed with masonry or fire-resistive walls and noncombustible or slow-burning floors and roof.
- **Noncombustible** — Buildings constructed of noncombustible materials (materials that will not ignite and burn when subjected to fire).
- **Joisted-masonry** — Buildings constructed with masonry or fire-resistive walls and combustible floors and roof.
- **Frame** — Buildings constructed of combustible materials, or with noncombustible or slow-burning walls and combustible floors and roof. Frame usually receives the least favorable rating.

D. Loss Valuation

Functional Replacement Cost

Another loss valuation method allows the insurer, at the time of a loss, to adjust the loss on the basis of **functional replacement cost**, which is the cost to replace damaged property with less expensive and more modern construction or equipment. A building with lath and plaster walls may be replaced with drywall that is just as functional, but at a lower cost to repair.

Market Value

Market value is a seldom-used method of valuing a loss based upon the amount a willing buyer would pay to a willing seller for the property prior to the loss. This method takes into consideration the value of land and location, rather than just the cost of rebuilding the structure itself.

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Stated Amount

A **stated amount** is an amount of insurance scheduled in a property policy that is not subject to any coinsurance requirements in the event of a covered loss. This scheduled amount is the maximum amount the insurer will pay in the event of a loss.

Valued Policy

Valued policies are used when it is difficult to establish the value of insured property after a loss occurs, or when it is desirable to agree on a specific value in advance. A valued policy provides for payment of the full policy amount in the event of a total loss *without* regard to actual value or depreciation.

Valued policies often are used in marine coverages because it is very difficult to establish value of the cargo loss after a ship sinks.

E. Common Policy Provisions

The **policy period** is the time period, stated on the declarations page, during which the policy provides coverage.

The **policy territory** defines the location where coverage will be provided.

Nonconcurrency refers to other insurance written on the same risk, but not on the same coverage basis.

A **primary** policy is the policy that pays first in the event of a covered loss — or in a layered program of insurance, the policy that covers the first layer of loss.

Excess policy is the policy that only pays for a loss after the primary policy has paid up to its limit. All other insurance must be exhausted before the excess policy will apply.

Restoration and nonreduction of limits: Insurance policies covering property have a limit that shows the maximum amount the insurer will pay in the event of a total loss. In the event of a partial loss, the insurer only will pay for the actual amount of that loss. In the event of a partial loss and before the repairs are made, that limit is reduced by the amount of the partial loss. After the repairs are made, the policy limits are restored to the original limit.

In liability policies written with an occurrence limit, the insurer will not pay more than that limit for any one occurrence. However, the limit is restored to the original amount for the next occurrence. Liability policies written with an aggregate limit do not restore the limit following payment for an occurrence. The policy limit is restored only on the anniversary (renewal) of the policy.

Contribution by equal shares: a loss is paid under **contribution by equal shares** when 2 or more insurers issue policies on the same loss at the same level. Each insurer (primary or excess) contributes an equal amount to the loss settlement until the loss is paid, or until each insurer has exhausted its limits of insurance, whichever comes first.

Named Insured Provisions

In the event of a loss covered by the policy, the named insured is required to do the following:

- Protect the damaged property from further damage;
- Prepare an inventory of damaged property;
- Cooperate with the insurer in settling the loss;
- Notify the police in the case of a theft loss; and
- Submit to the insurer a signed sworn proof of loss within an allotted amount of time after being requested to do so.

Abandonment is the relinquishing of insured property into the hands of another, or into the possession of no one in particular. Most property insurance policies prohibit an insured from abandoning insured property following a loss, and require that the insured protect the property from further loss.

Insurer Provisions

Liberalization is a property insurance clause that extends broader legislated or regulated coverage to current policies, as long as it does not result in a higher premium. *For example*, if the insurer introduces a new coverage that is free and improves coverage, the insured gets the benefit of the new coverage immediately (liberalization clause), and won't have to wait for their policy renewal.

Claim settlement options: At the time of loss, the insurer's loss payment options, or claim settlement options, include paying the least of the following:

- The value of the lost or damaged property;
- The cost of repairing or replacing the lost or damaged property;
- The cost of taking all or part of the property at an agreed or appraised value; or
- The cost of repairing, rebuilding or replacing the property with other property of like kind and quality.

Duty to defend: In addition to the promise to pay all sums that the insurer becomes legally obligated to pay, liability coverage includes a promise to defend the insured in any lawsuit involving the type of liability insured under the coverage. Once the limit of the liability has been paid, the insurer has no further obligation to defend an insured.

Third-Party Provisions

Third-party provisions address the rights of a third party that may have a secured financial interest in the insured property.

Standard Mortgage Clause

The **standard mortgage clause**, also known as loss payable clause, is a basis provision of all property policies for *real* property. Nonmovable property such as houses and other structures is classified as real property, while movable property such as autos, mobile homes, furniture, and equipment is classified as *personal* property for insurance purposes.

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In the event of a loss to real property, payment will be made to the insured and the mortgagee as their insurable interest appears. In other words, the mortgagee's right to recover is limited to the amount of the remaining debt, and at no time will the mortgagee receive more than the insurable interest in the property. If an insurance policy is to be cancelled, a mortgagee must receive prior written notice of such cancellation.

When a mortgagee is named in a mortgagee clause attached to a fire or other direct damage policy, the loss reimbursement will be paid to the mortgagee as their interest may appear. The mortgagee's rights of recovery will not be defeated by any act or neglect of the insured. The mortgagee is also given other rights, such as bringing a suit in their own name to recover damages, paying policy premiums, and submitting a proof of loss. There is nothing that **either the insurer or the insured** can do to defeat the position of the mortgagee.

Loss Payable Clause

The **loss payable clause** is the clause used to cover the interest of a secured lender in personal property. If the insurer decides to cancel or not renew a policy, the loss payee must be notified in writing.

No Benefit to the Bailee

The **no benefit to the bailee** provision excludes any assignment or granting of any policy provision to any person or organization holding, storing, repairing, or moving insured property for a fee. A business that has temporary possession of property of another and will do something with that property for the mutual benefit of both parties is a bailee.

F. Negligence and Liability

Negligence is the failure to use the care that a reasonable, prudent person would have taken under the same or similar circumstances.

Elements of a Negligent act

Most people behave in a manner that is reasonable and prudent – with exceptions for minors and incompetent individuals. Failure to behave in this manner constitutes **negligence**, and if this negligence leads to injury to another or damage to property belonging to another, the negligent party may be held legally liable for the damage. Normally, the burden of proof is on the injured party to prove that the other party was negligent. However, there are also certain doctrines that impose liability by statute or that shift the burden of proof from the injured party to the defendant. There are four primary elements considered in establishing negligence, and all four must be present in order to prove negligence on the part of another party:

1. Legal duty;
2. Standard of care;
3. Unbroken chain of events; and
4. Actual loss or damage.

Defense against Negligence

An individual's negligent behavior does not necessarily mean that a person will be held legally liable. There are certain defenses that may be interposed by the negligent party in order to defeat a claim.

Vicarious Liability

The **vicarious liability** doctrine comes from the old English law "*respondeat superior,"* in which the master was liable for the acts of their servants. The purpose of this doctrine is to transfer the liability from one person to another person who would probably have a greater ability to pay. In some jurisdictions, parents may be held vicariously liable for negligent acts of the children and employers liable for the acts of their employees.

G. Limits of Liability

Limits of liability are the insurer's liability for payment as stated in an insurance policy. Limits of liability is the maximum amount of money the insurance company will pay for a particular loss, or for loss during a period of time.

Per Occurrence (Accident)

Per occurrence is a sublimit in a liability policy that puts a ceiling on the payment for all claims that arise from a single accident/occurrence.

Per Person

Per person is the maximum amount available for payment of bodily injury to a single person in an accident, regardless of the policy limit stated in the policy for bodily injury claims.

Aggregate

Aggregate limit is the maximum limit of coverage available under a liability policy during a policy year, regardless of the number of claims made or the number of accidents that occur. Losses paid under coverages subject to aggregate limits reduce the amount available for future losses. Aggregate limits are restored at the anniversary of the policy.

Split

Split limits are separately stated limits of liability for different coverages. The limits may be stated on a per person, per occurrence, or per policy period basis, or can be split between bodily injury and property damage. Many auto liability policies are written with split limits. *For example*, 25/50/25 would indicate that the policy would pay up to $25,000 for the injury of a single person; up to $50,000 for bodily injury to two or more people (but not more than $25,000 to any one person); and up to $25,000 for damage to property of others.

Combined Single

Combined single is a single dollar limit of liability applying to the total of damages for bodily injury and property damage combined, resulting from one accident or occurrence. The limit may be used in any combination of amounts, not to exceed the single limit.

Homeowners Policy

A. Section II – Liability Coverages

Unlike the dwelling policy, liability coverage is included in all of the homeowners policy forms. The liability section of all homeowners policies includes 2 liability coverages:

1. Coverage E – Personal Liability; and
2. Coverage F – Medical Payments to Others.

Coverage E – Personal Liability

Personal Liability (Coverage E) will respond if a claim is made or a suit is brought against an insured for damages due to bodily injury (BI) or property damage (PD) caused by an occurrence to which the coverage applies. This coverage will do the following:

- Pay up to the policy's limit of liability for the damages for which an insured is legally liable. Damages include prejudgment interest awarded against an insured.
- Provide a defense at the insurer's expense by counsel of the insurer's choice, even if the suit is groundless, false, or fraudulent. The insurer may investigate and settle any claim or suit that the insurer decides is appropriate. The insurer's duty to settle and defend ends when the policy's limit of liability for the occurrence has been exhausted by payment of a judgment or settlement.

Under Coverage E, a $100,000 basic limit of liability is included. However, the insured may purchase higher limits for an additional premium.

Coverage F – Medical Payments to Others

Medical Payments to Others (Coverage F) will pay for necessary medical expenses incurred within 3 years (36 months) of an accident causing bodily injury. Necessary medical expenses include medical, surgical, x-ray, dental, ambulance and funeral services.

Coverage applies if a person is injured on the residence premise with the insured's permission to be there (such as guests of the insured), or if a person is injured by an insured off the residence premise, and the injury:

- Arises from the residence premise or ways adjoining the premise;
- Is caused by the activities of an insured;
- Is caused by a residence employee of an insured during the course of their employment; or
- Is caused by an animal owned by or in the care of the insured.

This coverage **does NOT apply** to the insured or to regular residents of the insured's household, except residence employees.

Additional Coverages

As with the personal liability supplement, the liability section of the homeowners policy includes a few additional coverages that are **paid in addition** to the limit of liability:

- **Claims expense** — The policy will pay expenses incurred and costs taxed against the insured in any suit the insurer defends, premiums on bonds required in a suit, reasonable expenses incurred by the insured including up to $250 per day for loss of income, and interest on the entire judgment that accrues after judgment has been entered and before the insurer pays it.
- **First aid to others** — The policy will pay expenses the insured incurs to render first aid for bodily injury to third parties (note, however, that the insurer will *not* pay for first aid to an insured).
- **Damage to the property of others** — The policy will pay up to $1,000 per occurrence on a replacement cost basis for damage the insured causes to property of others. This coverage is not applicable to the extent a loss is covered in Section I, for intentional damage, unless done by an insured under the age of 13 to property owned by an insured or resident of the household, to property owned by or rented to a tenant of the insured, or arising out of a business of the insured.
- **Loss assessment coverage** — The policy will pay up to $1,000 per occurrence for the insured's share of loss assessment charged against them as owner or tenant of the residence premises, during the policy period, by a corporation or association of property owners.

B. Selected Endorsements

Limited Fungi, Wet or Dry Rot, or Bacteria Coverage

Limited fungi, wet or dry rot, or bacteria coverage is an endorsement that may be used to add special limits for losses caused by fungi, dry and wet rot, and bacteria. This endorsement applies to both property and liability losses.

Permitted Incidental Occupancies

Although certain types of incidental businesses, such as an office or studio, are permitted for eligibility, a separate **permitted incidental occupancies endorsement** must be attached to cover other structures used for business activity, remove the special limit of liability for business property and the personal liability and medical payments coverage. The limitations are eliminated only for the business described in the endorsement.

Scheduled Personal Property

If the insured requires higher limits for certain types of property, the **scheduled personal property endorsement** may be used to schedule individually described items or classes of items on a blanket basis. This endorsement typically provides open peril or special form coverage on listed items.

The endorsement provides for the scheduling of 9 different classes of property:

1. Jewelry;
2. Furs;
3. Cameras;
4. Musical instruments;
5. Silverware;
6. Golfer's equipment;
7. Fine arts (including porcelains and glassware);
8. Postage stamps; and
9. Rare and current coins.

Newly acquired jewelry, furs, cameras, and musical instruments are covered up to the lesser of the following limits:

- 25% of the amount of insurance for that class of property; or
- $10,000.

The new property must be reported within 30 days of acquisition, and the insured may be required to pay the additional premium from that date. For coverage to apply to fine arts, the report of acquisition must be provided within 90 days.

Insured perils: this endorsement insures against direct physical loss to property caused by any of the following perils:

- Wear and tear;
- Insects or vermin;
- War;
- Nuclear hazard;
- *If fine arts are covered* – breakage caused by fire or lightning, windstorm, earthquake or flood, explosions, and malicious damage or theft; or
- *If postage stamps are covered* – fading, creasing, denting or scratching, transfer of colors, and disappearance.

The following are additional benefits and features of the scheduled personal property endorsement:

- The Coverage C limits no longer apply for the property scheduled on this endorsement;
- Insured locations: scheduled personal property endorsement covers eligible property worldwide;
- Fine arts and antiques can be covered on an other than ACV basis;
- The special limits of liability no longer apply to items or classes or property scheduled; and
- No deductible will apply to a covered property loss.

Personal Property Replacement Cost

Personal property replacement cost endorsement changes the actual cash value settlement on personal property, household appliances, carpeting, awnings and outdoor equipment to a replacement cost basis. Certain types of property will not benefit from this coverage, such as fine arts, antiques, memorabilia, articles that are not in good working order, and items that are stored and have become outdated or obsolete.

There is no requirement that the personal property be insured to 80% of replacement cost at the time of loss. However, some insurers require that the amount of Coverage C be increased to 70% of Coverage A amount when this endorsement is purchased.

Home Day Care

If the insured operates a home day care business out of the insured residence, the **home day care coverage endorsement** may be attached to the policy to cover the liability exposure associated with the business. Coverage excludes loss or damage that results from sexual molestation, corporal punishment, physical or mental abuse, or draft and saddle animals – including vehicles used with such animals, motor vehicles, aircraft, or watercraft. The premium is based on the number of children kept in the home.

Additional Residence Rented to Others

The **additional resident rented to others endorsement** provides personal liability and medical payments coverage for the insured's liability arising from ownership of a residence that is regularly rented to others. The endorsement provides coverage by way of a definition naming the premises as an insured location.

Business Pursuits

Business pursuits is an endorsement that allows an insured to extend the Section II liability coverage to certain business pursuits that occur away from the premises. It covers the activities of the insured, but will not cover the liability of a business owned by an insured.

Personal Injury

Personal injury coverage, including injuries that result from false arrest, libel, slander, defamation of character, and invasion of privacy, may be added by endorsement.

Watercraft

Watercraft endorsement provides liability protection for bodily injury or property damage caused by the ownership or use of watercraft (excluding when used to carry persons for a fee or when rented to others).

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Commercial Package Policy

A. Commercial Property

Condominium Association

Because of the unique ownership situation that exists with condominiums due to multiple occupancy and multiple ownership, 2 different coverage forms have been developed to address the situation. The first coverage form, condominium association coverage form, provides coverage for common building property and other property that must be insured because of the condominium association agreement. The second form is the condominium unit-owners coverage form. It insures the owner's personal property.

Condominium association coverages form is used to cover buildings and permanent fixtures for condominium associations.

Covered property under the condominium association coverage form includes the building, business personal property, and property of others. The actual coverage is similar to what is provided under the building and personal property coverage form. However, the building coverage specifically includes the following:

- Fixtures;
- Improvements and alterations that are a part of the building; and
- Refrigeration, ventilation, cooking, dishwashing, laundering, security or housekeeping appliances contained in individual units if the condominium association agreement requires the association to provide the insurance protection.

Business personal property includes property owned by the association, or jointly by the unit owners, and leased business personal property that the association has a contractual agreement to insure. Business personal property is insured if in or within 100 feet of the described premises.

The same causes of loss forms used with the building and personal property coverage form are used with this coverage form. In addition, the same additional coverages and coverage extensions are included in the condominium association coverage form.

The coverage form also includes several other conditions that apply *in addition* to the common policy conditions and the commercial property conditions. These conditions are the same as the additional conditions found in the building and personal property coverage Form, with one exception: **unit owner's insurance**. If the unit owner has insurance on the same property, this insurance is intended to be primary and not to contribute to the unit owner's insurance.

There are 3 optional coverages built into the coverage form that are activated by a declarations page entry. These optional coverages are the following:

1. Agreed value
2. Inflation guard
3. Replacement cost

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Condominium Commercial Unit-Owners

Condominiums unit-owners coverage form. The condominium (commercial) unit-owners coverage form is used to cover business personal property for commercial condominium unit owners. This form is used to insure commercial condominium unit owners, not residential condominium unit owners, who are covered under homeowners and dwelling policies.

It has many of the same provisions as the condominium association coverage form, with 3 primary differences. These differences are as follows:

1. No building coverage is provided because the condominium building is jointly owned and insured under the association coverage form.
2. Improvements and betterments are included as business personal property if owned by the insured, unless the condominium association agreement states that the association will provide coverage for these items.
3. The condominium association insurance condition, which states that if both the unit owner and association have insurance covering the same property, this insurance is excess and will not contribute to the association insurance.

Selected Endorsements

Ordinance or Law

Ordinance or law is an endorsement that can be added to the property coverage form. It covers a building in the event that the enforcement of any building, zoning, or land use law results in loss or damage, any increased cost of repairs or reconstruction, or demolition and removal costs.

The endorsement is split into 3 different coverages which need to be activated by purchasing each coverage. The insured can purchase all or some of the coverages included. The ordinance or law coverage endorsement can be added only to a property policy written on a replacement cost basis and coinsurance does not apply.

The building listed in the endorsement must suffer covered direct damage to at least part of the structure. Only the part of the structure covered by a peril in the policy and subject to the ordinance or law will benefit from this endorsement.

Coverage is for completion of minimum requirements as stipulated by the ordinance or law. No coverage will be provided for ordinances or laws the insured was required to comply with prior to the loss.

This endorsement can provide the following coverages when selected:

- Coverage A — loss to the undamaged portion of the building-loss in value to the undamaged portion of the building;
- Coverage B — demolition cost of the undamaged portion of the covered building; and
- Coverage C — increased cost of construction for the damaged and undamaged portions of the building.

Spoilage

The **spoilage** endorsement classifies *perishable stock* as covered property when owned by the insured or when property of others in the care, custody and control of the insured. The endorsement extends coverage for the following causes of loss:

- Breakdown of refrigeration, cooling or humidity control equipment when located at the described premise;
- Contamination by a refrigerant; and
- Power outage, on or off the premise, when beyond the control of the insured.

This endorsement may add an additional condition for maintenance of a refrigeration agreement at the insured location to provide coverage.

Peak Season Limit of Insurance

The **peak season limit of insurance** endorsement adjusts the amount of insurance on business personal property to allow for the changes in value because of seasonal increases in stock. *For instance*, some retail businesses will have a much larger inventory on hand prior to winter holidays.

Value Reporting Form

The **value reporting form** is the usual method of determining premiums and amount of coverage on those properties insured for fluctuating values. At the reporting period (either daily, weekly, monthly, quarterly, or policy period, whichever is specified in the contract), the insured reports the values at risk and pays premiums for that period based upon the report.

The value reporting form allows the amount of coverage to float with the changing values. Premiums are adjusted at the end of the policy period based on the average values reported.

The policy limit must be the maximum value expected during the policy period. In the beginning of the policy period, a provisional (or advance premium) is paid, typically based on **75% of the policy limit**. During the policy period, the insured is required to file reports as to actual values for specified periods of time. At the end of the policy period, the premium is adjusted as if the average value was held every day of the policy period.

It is important the reports be kept current as required. Should a loss occur on a day when the reports are not current as required, the maximum payable will be whatever the last report said. If the reports are current, the policy will pay what the insured can prove was lost, up to the policy limit. Should a loss occur before the first report is due, up to the full amount of insurance applies. If the first report has not been submitted as required when a loss occurs, the insurer will pay no more than **75% of the amount** it would otherwise pay.

If values have been underreported, the insurer will not pay a greater portion of a loss than the amount reported divided by the actual value on the report due date. *For example*, if the insured reports $50,000 and the actual value is $75,000, only about 67% of the loss value has been reported, so only two-thirds (approximately 67%) of the loss will be covered.

B. Commercial Crime

Crime insurance can be added to a commercial package policy or written on a monoline basis. The crime program fills some of the deficiencies in the building and business personal property form as they pertain to crime losses. Crime insurance is usually written on an all risk, or open peril basis. The peril of theft is not included in the basic and broad cause of loss forms. The special cause of loss form has exclusions for dishonest acts of employees and sublimits for theft of jewelry, furs, patents, dies, molds and stamps.

The crime program offers policies in two major sections: **commercial entities** and **government entities**. For each section the insured can select a form that has different coverage triggers, **discovery form** or a **loss sustained form**. These trigger differences have some similarities to the general liability form – occurrence and claims-made.

Coverage Triggers – Discovery and Loss Sustained

Discovery — A covered occurrence taking place at any time and discovered during the policy period or extended reporting period. The extended reporting period to discover a loss in the discovery form is as follows:

- Loss must be reported within 60 days of policy cancellation;
- Loss must be reported within 1 year of policy cancellation with regard to any employee benefit plan; and
- The extended reporting period terminates upon replacement of coverage.

Loss Sustained — The policy will pay for a loss that was discovered during the policy period and an extended reporting period. Coverage will also apply if the loss occurred under a prior policy, in whole or in part, based on what insurer provided coverage and what coverage and limits were selected.

However, for a loss to be paid from a prior policy period, the insurance policy in place at the time of the loss must be effective when the current policy canceled (no lapse in coverage) and the type of loss must be insured in both policies. The most the insurer will pay is the *lesser* of the limit of insurance in the prior policy or the limit available on this policy as of its effective date.

The extended reporting period to discover a loss in a loss sustained coverage form has the following features:

- Loss must be reported within 1 year of cancellation; and
- The extended reporting period terminates upon replacement of coverage in whole or in part.

Coverages

Inside the Premises – Theft of Money and Securities

Inside the premises – theft of money and securities provides coverage for loss of money and securities from inside a premise or a banking premise resulting directly from theft, disappearance, or destruction. Coverage also applies to damage to the premises or its exterior, and loss or damage to a locked safe, vault, cash register, cash drawer, or cash box located inside the premises resulting from actual or attempted theft.

Several additional **exclusions** also apply to this coverage in addition to those found in the general provisions. This insuring agreement does not cover losses resulting from:

- Accounting or arithmetic errors or omissions;
- Surrendering of property in any exchange or purchase;
- Fire;
- Loss of money from a money-operated machine, unless the machine has a continuous deposit recording device;
- Loss or damage to motor vehicles, trailers, or semi-trailers, or equipment and accessories attached to them;
- Inducement or voluntarily parting with any property;
- Loss of property after it has been transferred to another person or place outside the premises or banking facility caused by unauthorized instructions or the threat of bodily harm (this exclusion does not apply to covered property in the care or custody of a messenger);
- Vandalism or malicious mischief; or
- Voluntary parting of title to or possession of property.

Inside the Premises – Robbery or Safe Burglary of Other Property

Inside the premises – robbery or safe burglary of other property provides coverage for loss or damage to other property inside the premises resulting from an actual or attempted robbery of a custodian, or from a safe or vault inside the premise.

This insuring agreement includes the same exclusions in the inside theft of money and securities, as well as the general crime exclusions.

In addition, certain property is specifically defined as not covered, including motor vehicles, trailers, and equipment and accessories. A special limit of $5,000 per occurrence applies to loss or damage to precious metals, precious and semiprecious stones, pearls, furs, manuscripts, drawings or records.

Outside the Premises

Outside the premises provides coverage for the loss resulting directly from theft, disappearance, or destruction of money, securities, and other property outside the premises in the care and custody of a messenger or an armored motor vehicle company. Exclusions are similar to the inside premise insuring agreements. The special limitation of $5,000 per occurrence to the same types of property applies.

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Computer Fraud

Computer and funds transfer fraud form provides worldwide coverage for loss or damage to money, securities, and other property resulting directly from the use of any computer to fraudulently cause a transfer of that property from inside those premises. Coverage would NOT be provided if a loss resulted from a fraudulent entry or change by a person or organization with authorized access to that computer system.

Funds Transfer Fraud

The **funds transfer fraud** insuring agreement provides coverage for loss of funds resulting from fraudulent instructions received by a financial institution to pay money from an insured's transfer account to someone else. Computer fraud is excluded from this coverage.

Money Orders and Counterfeit Paper Currency

Money orders and counterfeit paper currency provides coverage for loss resulting directly from the insured having accepted, in good faith, money orders issued by any post office, express company, or bank that are not paid upon presentation or counterfeit paper currency that is acquired during the regular course of business in exchange for merchandise, money or services.

Extortion – Commercial Entities

Extortion - Commercial Entities provides payment, up to the limits of coverage, made in response to threats of bodily harm directed against the insured, its employees, directors or those persons' relatives who are captured or allegedly captured.

The limits of insurance may be written with a loss participation percentage. If a percentage is shown in the policy declarations, the insurer will pay the *lesser* of the limit of insurance or the percentage of loss specified.

The form also includes the following additional exclusions:

- Dishonest acts of employees and representatives
- Property surrendered before a reasonable attempt has been made to report the crime to an associate, the FBI *and* the police (referred to as non-notification of authorities).

C. Boiler and Machinery

The equipment breakdown coverage form, formerly called the *boiler and machinery* coverage form, is used to insure most types of business risks and all industrial risks. Coverage will pay for direct loss to covered property caused by breakdown of covered equipment.

The equipment breakdown form is essentially a one-peril form. That peril is the breakdown to covered equipment. Property damage will be paid as long as that property incurs **direct damage** to **covered property** at the **premise** described in the Declarations.

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Some of the other coverages provided by this form include:

- **Expediting expenses** — up to $25,000 for temporary repairs or expediting permanent repairs or replacement of property; not considered an additional amount of insurance;
- **Spoilage damage** to raw materials, property in process or finished products;
- **Utility interruption** if the interruption is the direct result of a breakdown, the covered equipment is used to supply electric power, communication services, air conditioning, heating, gas, sewer, or water to the premises, and the interruption lasts at least the consecutive period of time shown in the Declarations.
- Automatic coverage for **newly acquired locations** if the coverage is the same as the coverage at the currently insured location.
- **Ordinance or law** coverage applies despite the ordinance or law exclusion, and provided the increases in loss are necessitated by the enforcement of any ordinance or law that is in force at the time of the breakdown.
- **Errors and omissions**
- **Brands and labels —** if branded or labeled merchandise that is covered property is damaged by a breakdown, the insurer may take all or any part of the property at an agreed or appraised value.
- **Contingent business income and extra expense, or extra expense only coverage —** subject to the same terms and conditions, this coverage is extended to cover a loss to covered equipment resulting from a breakdown.

This form contains a loss condition that affects the valuation of covered property. Property is insured on a **replacement cost basis**. However, if damaged property is not repaired or replaced within **24 months** after the accident, settlement is at the smaller of actual cash value or the cost to repair or replace.

The policy does not cover bodily injury liability or consequential losses, such as business interruption and extra expense. However, the insured may purchase optional business interruption coverage.

The policy defines *accident* as the sudden and accidental breakdown of an object, resulting in physical damage to the object. **Accident** does not include the following:

- Depletion, deterioration, erosion, or corrosion;
- Wear and tear;
- Leakage at valves, joints or fittings;
- Breakdown of any vacuum tube, gas tube, or brush;
- Breakdown of any computer, or electronic data processing equipment;
- Breakdown of a foundation supporting the object; or
- The functioning of any safety or protective device.

Unless a higher limit is shown in the Declarations, equipment breakdown coverage will pay for direct damage as a direct result of a breakdown to covered equipment up to **$25,000** for each of the following:

- Consequential loss;
- Data and media — the cost to research, replace, or restore the damaged data;
- Expediting expenses;

- Hazardous substance cleanup, or repair or replacement of contaminated property;
- Ammonia contamination; and
- Water damage.

Following a covered breakdown, coverage for fungus, wet or dry rot is generally limited to **12 months** and **$15,000** for testing, removal and restoration, regardless of the number of claims.

The insured usually can buy optional higher limits for each of these coverages. In addition, the losses are subject to a deductible shown in the declarations. If more than one object is involved in an accident, then the highest deductible will apply.

Equipment breakdown coverage specifically **excludes** losses that result from any of the following:

- **Ordinance or law** — except for the use and operation of electrical supply and emergency generating equipment located on the premises of a hospital;
- **Earth movement;**
- **Water** (flood, surface water, tidal waves and tsunami, overflow or spray of any body of water, mudslides and mudflow, sewer or drain backups, or water damage caused by the discharge or leakage of a sprinkler system);
- **Nuclear hazard;**
- **War or military action;**
- **Explosion** — If not otherwise excluded, the company will pay for direct loss or damage caused by an explosion of covered steam boilers, electric steam generators, steam piping, steam turbines, steam engines, or gas turbines. Moving or rotating machinery is covered if the explosion is caused by centrifugal force or mechanical breakdown;
- **Fire or combustion explosion** — including those that result in, occur at the same time as, or ensue (follows) from a breakdown;
- **Explosion within the furnace** — of a chemical recovery-type boiler or within the passage from the furnace to the atmosphere;
- **Fungus, wet rot and dry rot** (unless these conditions are caused by a breakdown);
- **Virus, bacterium, or other microorganism** (except if caused by a breakdown);
- **Damage to covered equipment undergoing a pressure or electrical test;**
- **Water or other means used to extinguish a fire, even when the attempt is unsuccessful;**
- **Depletion, deterioration, corrosion, erosion, or wear and tear** — If a breakdown results from these causes, the company will pay for the resulting loss or damage;
- **A breakdown caused by aircraft or vehicles, freezing caused by cold weather, lightning, sinkhole collapse, smoke, riot, civil commotion or vandalism, or weight of snow, ice or sleet;**
- **A breakdown caused by windstorm or hail;**
- **A delay in or an interruption of any business, manufacturing or processing activity** — except for any coverage provided by the business income and extra expense, extra expense only, and utility interruption coverages;

- **Lack or excess of power, light, heat, steam or refrigeration** — except for any coverage provided by the business income and extra expense, extra expense only, spoilage damage and utility interruption coverages;
- **Any indirect result of a breakdown to covered equipment** — except for any coverage provided by the Business Income And extra expense, extra expense only, spoilage damage, and utility interruption coverages; or
- **The insured's neglect to use all reasonable means to save and preserve covered property from further damage at and after the time of the loss.**

No coverage is provided under the business income and extra expense, extra expense only, and utility interruption coverages for the following situations:

- Business that would not or could not have been carried on if the breakdown had not occurred;
- The insured's failure to use due diligence and dispatch and all reasonable means to operate the business as nearly normal as practicable at the premises shown in the declarations;
- The suspension, lapse, or cancellation of a contract following a breakdown extending beyond the time business could have resumed if the contract had not lapsed, been suspended, or cancelled.

No coverage is provided under utility interruption coverage for acts of sabotage; collapse; deliberate acts of load shedding by the supplying utility; freezing caused by cold weather; impact of aircraft, missile or vehicle; impact of objects falling from an aircraft or missile; lightning; riot, civil commotion or vandalism; sinkhole collapse; smoke; and weight of snow, ice or sleet. Many of these perils can be covered using commercial property forms.

Because equipment breakdown insurance places a lot of emphasis on inspections and loss control (the majority of the premium pays for inspections), the policy contains a unique condition that allows the insurer to immediately suspend coverage whenever an object is found in or exposed to a dangerous condition. No advance notice is required, and the suspension will take effect when the insured is notified in writing. The suspension applies only to losses that result from a particular object, not to the entire policy if more than one object is insured.

In the equipment breakdown form, objects covered are defined as *covered equipment* and include pressure equipment, refrigeration equipment, mechanical equipment, electrical equipment, turbines, and production machinery.

If an accident causes other accidents, all related accidents will be treated as a single accident. All accidents at the same location at the same time, and by the same cause, will be considered **a single accident.**

Selected Endorsements

Equipment breakdown coverage forms also may include endorsements to add coverage for business interruption, consequential damage, and extra expense.

Business Income – Report of Values

Business Income - Report of Values endorsement is used to report the insured's business income. The information is used for calculating amount to be paid on a lost business claim after a direct loss.

The report contains the total of net sales and other earnings, less expenses, for the 12-month period ending prior to the inception of the beginning policy and an estimate of those values for the 12-month period starting at the inception of the current coverage.

Actual Cash Value

Property damage for covered equipment is valued as follows: the insurer will pay the lesser of the cost to repair or replace the damaged property with property of the same kind, or the actual cash value of the damaged property at the time of the breakdown. Damage to property that is obsolete or not used by the insured is not covered.

D. Farm Coverage

Farm Coverage is unique in the fact that it insures not only the property and liability exposures of the business of a farm operation, but also may include the personal residential exposures of property and liability of a family living on the farm premises. As in any commercial package policy, farm coverage may be written together in a single coverage (package), or separately as a single coverage (monoline).

In addition to the Common Policy Declarations and Common Policy Conditions, the Farm Coverage Part must include a Farm Declarations and a Farm Conditions Form, and one or more farm coverage forms. There are 4 primary farm coverage forms:

1. Farm Property — Farm Dwellings, Appurtenant Structures, and Household Personal Property;
2. Farm Property — Farm Personal Property;
3. Farm Property — Barns, Outbuildings, and Other Farm Structures; and
4. Farm Liability.

1. Farm Property Coverage Form

Farm property coverage forms are subject to the causes of loss selected in the Declarations page. Like the CPP, the cause of loss form will dictate coverage and exclusions for each property form. Farm property can be covered on basic, broad or special form.

Coverage A - Dwellings

Coverage A – Dwellings is similar to Coverage A of the Homeowners program. Antennas, towers, and satellite dishes are considered structures under Coverage A.

The limits in Coverage A provide coverage for the

- Dwelling located on or away from an insured location;
- Structures attached to the dwelling; and

- Materials and supplies located on the described insured location used to construct, alter or repair the dwelling or attached structures; and
- If not covered by other insurance, building and outdoor equipment used to service the dwelling, its grounds, or other structures.

A special limit of insurance ($1,000) applies to TV antennas, outdoor radio antennas and satellite dishes attached to a covered dwelling unless a higher limit is shown in the declarations. This limit is not in addition to the Coverage A limits.

Coverage B – Other Private Structures

Coverage B – Other Private Structures is similar to the homeowners coverage. However, this Coverage B excludes coverage for any detached structure used principally for farming purposes. Coverage B provides a special limitation of $1,000 for loss to antennas or satellite dishes. The policy provides an automatic limit of 10% of Coverage A as an additional limit of insurance for other private structures.

Coverage C – Household Personal Property

Coverage C – Household Personal Property applies to personal property owned by an insured while the property is on the insured location. The following are the special limits of insurance for Coverage C:

- $200 for gold, money, platinum, and silver;
- $1,500 for letters of credit, manuscripts, passports, and securities;
- $1,500 for watercraft and their equipment, furnishings, outboard engines, and trailers;
- $1,500 for trailers not used for watercraft or farming operations;
- $2,500 for business property on the insured location;
- $500 for business property away from the insured location;
- In the event of loss by theft:
  - $2,500 for furs, jewelry, precious and semiprecious stones, and watches
  - $2,500 for goldware, silverware, platinumware, and pewterware
  - $3,000 for firearms and related equipment;
- $1,500 for electronic apparatus and accessories in or on a motor vehicle only if equipped to be operated by power from the vehicle's electrical system and other power sources;
- $1,500 for electronic apparatus and accessories used primarily for farming or business operations while off of the insured location and not in or on a motor vehicle.

Coverage D – Loss of Use

Coverage D – Loss of Use provides coverage for additional living expenses if the insured's principal living quarters become uninhabitable. This coverage also includes the fair rental value in the event the dwelling at the described location that the owner rents to others becomes uninhabitable due to a loss from an insured peril.

Coverage E – Scheduled Farm Personal Property

Coverage E – Scheduled Farm Personal Property pays for direct physical loss of or damage to covered property. Covered property includes farm personal property insured on a scheduled basis and may include property such as the following:

- Grain and grain in stacks;
- Hay, straw, and fodder;
- Farm products, materials, and supplies;
- Livestock (excluding livestock in transit or at a stockyard);
- Bees, worms, fish, or other animals (except for the Basic or Broad Covered Causes of Loss);
- Poultry while in the open or in any building designated for poultry under the Declarations (excluding turkeys, unless specified);
- Computers related to farm management;
- Miscellaneous equipment; and
- Portable buildings and structures.

Coverage E does not provide coverage for growing crops, trees, or household personal property, and has **special limits of liability** that apply to the following:

- *Hay, straw, or fodder* in the open — $10,000 per stack;
- *Miscellaneous farm equipment* — not more than $3,000 per item;
- *Poultry* — market value; and
- *Livestock not specifically insured is limited to the least of ACV* — 120% of the amount obtained by dividing the limit of insurance on the class and type of animal by the number of head of that kind of animal owned at the time of loss, or $2,000 (each horse, mule, or head of cattle 1 year of age at the time of loss will be counted as 1/2 head).

Coverage F – Unscheduled Farm Personal Property

Under **Coverage F – Unscheduled Farm Personal Property**, a single limit of liability applies to all farm personal property located on the insured premise, unless specifically excluded. Off premise coverage is provided for grain, ground feed and other items while being stored, processed, or in the custody of a common carrier. Farm machinery, equipment and livestock can also be covered off premise.

Some of the excluded properties from this broad definition include household property, racehorses, crops and automobiles.

To discourage underinsurance, Coverage F is subject to an 80% coinsurance clause. This clause has a provision to provide for an inadequate amount of insurance carried due to the purchase of additional or replacement equipment. In the event of loss or damage to additional or replacement equipment within 30 days of purchase, up to $100,000 of the new equipment value, and $75,000 of the replacement equipment value will not be used to determine the required limit of insurance.

Coverage G – Other Farm Structures

Coverage G – Barns, Outbuildings, and Other Farm Structures covers farming structures such as

- Farm buildings or structures;
- Silos;
- Portable buildings and structures;
- Fences (other than field and pasture fences), corrals, pens, chutes, and feed racks;
- Outdoor radio and television equipment, antennas, masts, and towers;
- Improvements and betterments; and
- Building materials and supplies.

Coverage is subject to an 80% coinsurance clause.

2. Farm Liability Coverage Form

The **farm liability** form is similar to the commercial general liability coverage form. It provides protection for bodily injury and property damage, personal and advertising injury, and medical payments in the form of coverages H, I and J.

Coverage H – Bodily Injury and Property Damage Liability

Coverage H – Bodily Injury and Property Damage Liability provides protection for bodily injury and property damage claims from liability arising out of the farming business and personal acts of the insured. Although it covers the business of farming, it specifically excludes coverage for businesses other than farming and contains the business pursuits and professional services exclusions similar to personal liability coverage.

Coverage I – Personal and Advertising Injury Liability

Coverage I – Personal and Advertising Injury Liability is similar to the coverage as provided in the general liability coverage form. However, advertising injury is covered only if the offense is committed in the course of advertising the insured's farm-related goods, products, or services.

Exclusions under this coverage include intentional acts, contractual liability, breach of contract, failure of goods to perform, and any offense committed by an insured who is in the broadcasting business.

The personal injury coverage follows the coverage provided in the General Liability coverage form.

Coverage J – Medical Payments

Coverage J – Medical Payments agrees to pay reasonable medical expenses caused by an accident, regardless of fault, if the expenses are incurred and reported to the insurer within 3 years of the accident date. Coverage applies only to a person who is not an insured. This means that farm employees are excluded from this coverage. However, resident employees are included.

3. Other Farm Coverage Forms

Livestock Coverage Form

The **livestock coverage** form is a named peril coverage insuring losses resulting in death or necessary destruction of livestock by the basic causes of loss (except vehicles). Coverage may be extended to include death or necessary destruction by accidental shooting, drowning, electrocution, attack by dogs or wild animals (except attacks to sheep or by dogs or wild animals owned by the insured), loading or unloading accidents, and building collapse.

Mobile Agricultural Machinery and Equipment Coverage Form

Mobile agricultural machinery and equipment includes mobile devices used in the everyday farm operation, such as accessories (whether attached or not attached), and tools and spare parts specifically designed for use in the maintenance and operation of the mobile devices. The **mobile agriculture machinery and equipment coverage** form insures eligible equipment for open perils subject to policy limitations and exclusions. This coverage also may be written on a separate stand-alone policy.

Causes of Loss Forms

The causes of loss forms for farm coverage follow the same common perils in other types of property policies, with the following additions unique to Farm coverage forms:

Basic causes of loss form includes collision coverage for Coverages E and F in the event of a collision causing only the following:

- Damage to machinery;
- Death of covered livestock; and
- Damage to other farm personal property.

Broad form also includes the following perils:

- Electrocution of covered livestock;
- Attacks on livestock by dogs or wild animals (except attacks to sheep or by dogs or wild animals owned by the insured);
- Accidental shooting of covered livestock;
- Drowning of covered livestock (except swine under 30 days of age); and
- Accidental death due to loading or unloading of livestock.

Special form includes the usual open peril exclusions, but adds exclusion for fire if caused by curing tobacco.

Businessowners Policy

A. Section II – Liability

Coverages

Business liability: The liability coverage of the businessowners policy is very similar to the CGL policy. One major difference is that this section is included in all policies, and cannot be written on a monoline basis. The BOP liability section has the following features:

- Usually written with an occurrence coverage trigger;
- Includes coverage for bodily injury, property damage, and personal and advertising injury for an occurrence within the coverage period and coverage territory;
- Supplemental payment features are paid in addition to the limit of insurance noted on the declarations;
- The limit of liability is the most the insurer will pay subject to an aggregate amount for the policy term; and
- The insurer's duty to defend ends when the limits of insurance are exhausted.

Medical expenses: Medical payments coverage of a BOP will pay medical, dental, hospital, and funeral services incurred within **1 year** from the date of an accident to a person who suffers bodily injury by accident on or next to the insured's premises, or because of the insured's operations.

Exclusions

The following **exclusions** apply to the business liability and medical payments coverages:

- **Expected or intended injury** — This exclusion does not apply to bodily injury that results from the use of reasonable force to protect a person or property.
- **Contractual liability** — This exclusion does not apply to the insured contracts.
- **Liquor liability** — There is no coverage for liability arising out of causing or contributing to the intoxication of a person, furnishing alcoholic beverages to a minor or a person who is already intoxicated, or to any regulation or ordinance relating to the sale, gift, or distribution of alcoholic beverages. This exclusion applies only to insureds in the business of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages (host liquor).
- **Workers compensation and similar laws** — There is no coverage for any obligation the insured has under a workers compensation or similar law.
- **Employer's liability** — There is no coverage for bodily injury to an employee in the course of employment, including the spouse, children, or siblings of the employee. This exclusion does not apply to any liability assumed under an insured contract.
- **Pollution** — Bodily injury or property damage arising out of actual or alleged pollution is excluded. The exclusion does not apply to heat, smoke, or fumes from a hostile fire.

- **Aircraft, auto or watercraft** — There is no coverage for bodily injury or property damage caused by the ownership, maintenance, use, or entrustment to others of any aircraft, auto, or watercraft. However, this exclusion does not apply to the following property and perils, which will be covered:
  - Watercraft while on shore at a premises owned by the insured;
  - Nonowned watercraft **less than 51 feet long** and not being used to carry persons or property for a fee;
  - Parking an auto on or on the ways next to a premise owned or rented by the insured. The auto cannot be owned, rented or loaned to the insured;
  - Liability assumed under any insured contract;
  - Bodily injury or property damage arising out of the operation of machinery or equipment attached to or part of a vehicle that meets the definition of mobile equipment if not subject to a compulsory or financial responsibility law; and
  - Bodily injury or property damage caused by the operation of a cherry picker or similar equipment mounted on trucks, and air compressors, pumps and generators.
- **Mobile equipment** — There is no coverage for the transportation of mobile equipment by an auto, or the use of mobile equipment in any speed, demolition, or racing contest.
- **War —** There is no coverage for war, including undeclared civil war, warlike actions, insurrections, rebellions, revolutions, or actions taken by government authority.
- **Professional services** — There is no coverage for bodily injury, property damage, personal, or advertising injury due to the rendering or failure to render professional services listed in the exclusion.
- **Property damage to property the insured owns or in the insured's care, custody, or control**
- **Damage to the insured's product or work**
- **Damage to impaired property or property not physically injured**
- **Recall of products, work or impaired property**
- **Personal and advertising injury exclusions —** These are the same as discussed in the commercial general liability coverage form.
- **Electronic data** — There is no coverage for damages arising out of damage to or loss of use of electronic data.
- **Criminal acts of the insured**
- **Recording and distribution of information in violation of law** — There is no coverage for bodily injury, property damage, or personal and advertising injury resulting from a violation of laws such as the Telephone Consumer Protection Act, the CAN-SPAM Act, the Fair Credit Reporting Act, and any federal, state, or local statute, ordinance, or regulation
- **Medical expense exclusions —** These are similar to the exclusions already discussed for medical payments in the commercial general liability coverage form.
- **Nuclear energy liability exclusion —** This is applicable to all liability coverages.

Who is an Insured

If the named insured is designated in the Declarations as an **individual (or sole proprietor),** that individual and his or her spouse are the insureds, but only with respect to the conduct of a business of which they are the sole owners.

If the named insured is designated as a **partnership** or joint venture, the named insured and his or her spouse, members, and partners also are insureds, but only with respect to the conduct of the business.

If the named insured is designated as a **limited liability company (LLC)**, the named insured and members are also insureds, but only with respect to the conduct of the business. Managers are insureds, but only with respect to their duties as managers.

If the insured is a **trust**, the named insured and trustees are covered.

If the named insured is designated as an **organization other than a partnership (corporations)**, joint venture, or limited liability company, the named insured is covered. Executive officers and directors are insureds, but only with respect to their duties as officers and directors. Stockholders are also insureds, but only with respect to their liability as stockholders.

Each of the following is also considered to be an insured:

- Volunteer, while performing duties related to the insured business or its employees;
- Employee in the course of employment;
- Any person (other than an employee or volunteer) of any organization acting as the insured's real estate manager;
- Any person or organization having proper temporary custody of the property if the named insured dies; and
- The legal representative if the named insured dies, but only with respect to his or her duties as such.

No person or organization is considered to be an insured with respect to the conduct of any current or past partnership, joint venture, or limited liability company that is not shown as a named insured in the Declarations.

Limits of Insurance

The amount listed in the Declarations is the most the policy will pay regardless of the number of insureds, claims filed or suits brought, or persons or organizations bringing suit.

Medical expenses are paid on a per person basis and are also subject to the limit on the Declarations.

Aggregate limits exist in the BOP as they did in the CGL policy. The policy includes an aggregate for products and completed operations exposures that is two times the

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occurrence limit. Another aggregate similar to the general aggregate in the CGL, applies to all bodily injury, property damage, personal and advertising injury and medical expense claims that are not associated with products or completed operations. This aggregate is also twice the occurrence limit listed in the declarations.

In addition, the policy contains a **separate limit** of insurance for fire damage legal liability which can be included in either aggregate based on the nature of the claim.

The limits of insurance under the liability section apply separately to each consecutive annual period, and to any remaining period of less than 12 months, starting with the beginning of the policy period shown on the Declarations.

General Conditions

The following conditions for business liability coverage apply to the liability coverage in addition to the common policy conditions:

- **Bankruptcy** — Bankruptcy or insolvency of the insured does not relieve the insurer of any obligation.
- **Duties in event of occurrence, claim or suit** — In the event of a loss, the insured's duties include the following:
    - Promptly notifying the insurer of the occurrence (how, when, where, names and address of any injured persons);
    - Prompt written notice of a claim;
    - Promptly notifying the insurer of any legal papers received related to the loss; and
    - Cooperating and assisting in the investigation of a claim.
- **Legal action against the insurer** — No party has the right to join or bring the insurer into an action against the insured. In addition, no party can sue the insurer unless all the terms of the policy have been complied with. A party may sue the insurer to recover an agreed upon settlement; however, the settlement cannot exceed the policy limits, nor can it include items that are not covered by the policy.
- **Separation of insured** — The limit of insurance is paid only once per occurrence regardless of the number of claimants or the number of insured covered by the policy.

Definitions

The Definitions section of the business liability coverage form contains definitions of advertising injury, bodily injury, coverage territory, insured contract, mobile equipment, personal injury, products/completed operations hazard, insured product, and other terms related to liability and medical expenses forms.

Auto Insurance

A. Personal Auto Policy

Selected Endorsements

Towing and Labor Costs

The **towing and labor costs** endorsement provides a basic limit of $25 for towing and labor costs incurred at the place a vehicle is disabled. Higher limits are available for an additional premium. Coverage applies to a covered auto or a nonowned auto, but only applies to costs incurred at the place of disablement.

Loss Payable Clause

The **loss payable clause** is an endorsement that protects a lienholder's interest in an insured auto. With this endorsement, if the insured fraudulently damages the insured auto, any lienholder's financial interest in that auto is payable by the insurer.

Extended Nonowned Coverage

The **extended nonowned coverage for named individual** endorsement can broaden the liability only, or liability and medical payments coverage provided in the policy for individuals specifically named on the endorsement. It provides coverage for nonowned autos that are available for the regular use of the insured, the use of covered vehicles to carry persons or property for a fee, or use of covered vehicles in other businesses (excluding the automobile business).

Miscellaneous Type Vehicle

The **miscellaneous type vehicle** endorsement is used to expand the definition of a covered auto to include motorized vehicles such as motorcycles, motor homes, golf carts, dune buggies, and other recreational vehicles. The liability and medical payments exclusions regarding vehicles with less than 4 wheels do not apply when this endorsement is attached to the policy. Coverage is not provided for vehicles borrowed or rented unless a temporary substitute to a miscellaneous vehicle listed in the endorsement.

Joint Ownership Coverage

The **joint ownership coverage** endorsement is used when individuals own a vehicle together (insurable interest), but do not meet the traditional definition of an insured in the personal auto policy. Coverage applies to individuals, other than husband and wife, who reside in the same household and nonresident relatives. The vehicle owned must be listed in the endorsement, and coverage will not extend to any vehicle owned by any party that is not listed or included in the covered auto definition.

B. Commercial Carrier Regulations

The government, both state and federal, has implemented several regulations that pertain to trucking risks for truckers who travel across state lines and within the boundaries of a single state. The federal body that regulates interstate truckers is called the **Federal Motor**

Carrier Safety Administration (FMCSA). Federal regulation also applies to truckers, interstate or intrastate, that haul hazardous materials.

The Motor Carrier Act of 1980

The federal regulations that apply to contract carriers (haul goods of others under contract), common carriers (haul goods for anyone for a fee), and freight forwarders are established in the **Motor Carrier Act of 1980**. The act sets out the minimum financial responsibility requirements for for-hire interstate carriers and all carriers of hazardous property.

These minimum requirements for haulers of property are

- $750,000 for the transportation of nonhazardous property by for-hire carriers in interstate commerce;
- $1 million for the transportation of oil and certain categories of hazardous waste or material by for-hire or private (haul their own goods) in interstate commerce; and
- $5 million for the transportation of other specifically defined hazardous waste and materials, explosives, gas, or radioactive material hauled by for-hire or private carriers. This amount applies to both interstate and intrastate carriers.

Endorsement for Motor Carrier Policies of Insurance for Public Liability (MCS-90)

The Federal Motor Carrier Safety Administration (FMCSA) has developed an endorsement, **MCS-90,** that must be attached to all motor carriers' policies under its jurisdiction. This endorsement ensures that motor carriers comply with the federally mandated coverage for public liability, which includes bodily injury, property damage, and environment restoration. This endorsement allows the insurer to seek reimbursement from the insured for the payment of a claim for public liability if the claim would not have been covered under the policy without the MCS-90 endorsement provisions.

Environmental restoration is not typically covered in commercial auto policies unless it fits specific parameters defined in the policy. The environmental restoration definition in the MCS-90 endorsement is broad and includes coverage for damage done by commodities transported by a motor carrier. The endorsement does not use the word pollutants but instead, commodity, so the cleanup and mitigation expenses could be incurred for any commodity hauled by a carrier that is introduced into the environment.

<u>Other Coverages and Options</u>

A. Specialty Liability

Fiduciary Liability

Fiduciary liability covers individuals who administer pension or employee benefit plans and have a fiduciary responsibility to manage the funds in the best interests of the plan participants. Losses associated with errors or omissions, negligence, or poor management of these plans can be covered with professional liability coverage.

If the premiums for fiduciary liability insurance are *paid by the fund*, by law, the policy must allow for subrogation against the individual trustees involved in the loss.

Liquor Liability

Liquor liability (also known as **dram shop liability**) refers to the exposure that bars, restaurants and other similar establishments face due to the selling, distributing, manufacturing, or serving of alcoholic beverages. Liquor liability provides protection in the event of action brought against the insured for selling liquor to a customer who is later involved in an accident and suffers bodily injury or property damage.

Businesses of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages all may have liability exposure to actions under state or local statutes that establish responsibilities for those injuries arising from the distribution or use of alcoholic beverages and causing injuries to the user or caused to others by the user.

B. Crop Insurance

Crop insurance is designed to meet the needs of farmers and other crop growers who desire protection against loss to their investment in planted crops resulting from damage by the elements and other perils. The original crop insurance policy provided coverage against loss by hail only, and although this is still the major peril, coverage is now written to cover loss against fire and lightning as well. Insurance on growing crops is sold by specialty crop-hail insurers. In addition, coverage against loss from most any peril (multi-peril) is available from the Federal Crop Insurance Corporation (FCIC) through a federally subsidized multi-peril crop insurance program. Private insurers which are reinsured by the Federal Crop Insurance Corporation also offer multi-peril crop insurance.

Eligibility

There are over 200 different crops that may be insured under crop insurance policies; however, the eligibility list varies geographically. Crops eligible for coverage are classified into various classifications with different provisions applying to different classes. Some of the classifications include **large grain crops**, such as corn, maize and soybean; **small grain crops,** including cereal grains such as barley, oats, wheat, etc.; **cotton; tobacco; fruits and vegetables.** Only the marketable portion of the crop is insured.

Application

In the crop-hail field, the application, when completed, must be signed by the applicant and the agent, with the time and date of signing. When properly completed, dated, and signed, and accompanied by the premium or a promissory note, the application serves as a binder.

In addition to the applicant's name and address, the crop-hail application requires information on the type of crop to be insured, the location of the crop by section, township, range and county, as well as the applicant’s percentage interest in the crop, the number of acres to be insured and the amount of insurance per acre, the total amount of insurance and finally the rate and premium.

If insurance is being written on crops where the applicant's interest is less than 100%, the applicant must provide information as to whether they are the landlord or tenant, and the name of any other such party. Both a farm owner and a tenant farmer may have an insurable interest in a crop, and each may insure its interest separately.

If the applicant has any additional acres of the kinds of crops specified in the application but intends not to include them under the policy, the location of such crops must be given. The applicant must also indicate whether additional insurance has been purchased on the crops (other than FCIC insurance).

The insured must also indicate whether any of the crops have been hailed upon prior to the signing of the application. If so, no coverage will be provided.

Finally, the application provides that the insurer may reject the application within 240 hours of the effective date and hour of the application, upon giving 5 days' notice of its intent.

Terms of Coverage

Most crop-hail applications include a binder provision that stipulates that coverage becomes effective at 12:01 AM on the day following the signing of the application. If any acres of crops described in the schedule are damaged by an insured peril during this waiting period between the time the application is signed and 12:01 AM the next day, there is no coverage. If the crops are damaged by hail during this waiting period, the applicant must give the insurer notice of such damage within 72 hours after such damage. If the notice is given in a timely fashion, the applicant is entitled to return premium for insurance on any such acre of crop damaged. When the applicant fails to notify the insurer within 72 hours, the right to return premium is automatically forfeited.

The insurance coverage expires at 12:01 AM on a specified date determined by the crop insured and the state. The specific expiration dates are printed in the form and coincide with the particular harvest period of the crop. The expiration dates are set on the basis of typical growth and harvest patterns of individual crops, reflecting the climate of the state and county in which the crop is located. The purpose of scheduling different expiration dates for different crops is to eliminate coverage from crops that have been left out long past the time for harvest and have, therefore, been subject to loss exposure not anticipated in the rates.

Crop-hail policies allow the insured to cancel the policy prior to the inception of the insurance period and receive a refund of the paid premium for the amount of insurance canceled. Since the insurance does not become effective until a normal stand of crop is clearly visible above the ground, there is a period between inception of the contract, (12:01 AM on the day following the application) and the time that the insurance becomes effective (when a stand of crop is visible).

In the event of "known crop failure", the policy may be returned for flat cancellation up to a date specified in the policy.

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Covered Perils

The perils covered under the standard crop-hail policy are hail, fire and lightning. Coverage against fire and lightning applies before the crop is harvested and while it is still in the field or being transported to first storage. The policy does not cover losses or damage caused by wind, rain, flood or frost.

Limits of Coverage

Crop-hail insurance coverage can be purchased in any amount up to the full value of the expected crop. On early pre-season contracts, the coverage is usually for an average crop yield, but adjusted for the expectation of the individual insured. Some insured purchase coverage for potential value of the expected crop, while others may only insure for the cost of production.

Most crop-hail insurance is written on a "percentage plan". The insurer permits the insured to place a valuation on the crop, which is then the amount of insurance purchased. In the event of a loss, the indemnity is based on the percentage of the crop damaged by hail, fire, or lightning.

C. Federal Multi-Peril Crop Insurance Programs

The Federal Crop Insurance Act enacted in 1938 created the Federal Crop Insurance Corporation (FCIC), operated and managed by the Risk Management Agency (RMA), as an agency of the Department of Agriculture to administer a federal crop insurance program. The FCIC undertook to insure wheat yields against loss by drought, flood, hail, frost, insects, diseases and all natural hazards for a premium based on the past loss history of the particular area. Over the years there have been many amendments and revisions to this program. The current program dates from the Federal Crop Insurance Act of 1980, which established a new federal "all-risk" crop insurance program.

Basic Crop Insurance

The current program was intended to replace all other forms of federal disaster protection for farmers. The all-risk coverage of the FCIC protects against all losses caused by natural conditions beyond the control of the farmer. Farmers may purchase crop insurance from private insurers against named perils or on an all risk basis and receive a premium credit when purchasing a federal policy.

The 1980 Act authorized the FCIC to expand its coverage to include all commercial crops in all agricultural counties and to subsidize farmer premium payments.

The delivery system was expanded to include private insurance companies and licensed producers. Private insurance companies are permitted to sell federal crop insurance and have now become the primary marketing arm for multi-peril crop insurance.

Private insurance companies conduct all aspects of the business: marketing; loss adjustment, claim payments, and data and information services. These companies receive

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compensation for their administrative and operating expenses and these companies are reinsured by FCIC.

Eligibility

Nearly every crop is eligible for coverage so long as it has been approved as a viable crop for the particular location and the farmer used approved farming methods for such crop.

Coverage Level

The FCIC's multi-peril policies indemnify insureds through the use of what may be referred to as a "yield guarantee plan". The FCIC guarantees a specific yield at the approximate cost of production, and pays the farmer for every bushel or pound his yield falls below the guarantee. The maximum guarantee the FCIC will allow is 75% of the mean yield. Indemnity is limited to a maximum of 75% of the historical yield to reduce morale hazard. Under the current program for most crops, yield coverage options are 50, 65 and 75% of average yields.

Covered Causes of Loss

For most field crops, practically every unavoidable cause of loss is insured. For certain other crops, such as fruit, vegetables and specialty crops, only the most catastrophic and frequent cases of loss may be covered.

Losses due to mismanagement, theft, neglect or poor market conditions are not covered.

Application

The application deadline for crop insurance varies by crop but is generally about one month before the normal planting date for the crop.

Life of Policy

The policy provides coverage on an annual basis; however, it may be continued by the insured by making the necessary reports and paying a renewal premium.

Multi-Peril Policy Options

Levels of Coverage

The FCIC is required to offer two levels of yield coverage (one at 50% and the other at 75%) and is permitted to offer other coverages at any level below the 75% of average yields. However, under the current program for most crops, yield coverage options are 50, 65, and 75 percent of average yields. Premium costs rise with the coverage level. The mechanics are comparable to the deductible on any insurance policy.

Price Election

Price election coverage varies from crop to crop and is set several months before the application deadline based on a percentage of the estimated market price of the crop during the term of the policy. The 1980 Act requires FCIC to offer one price election that is not less than 90% of the projected market price for the commodity. Premium costs rise in tandem with increases in price protection.

Optional Units

In general, the insured must insure his interest in all acreage of a particular crop which is planted in the county. The principal exception to this rule stems from the "Unit" insurance rule.

"Unit" insurance permits the writing of separate coverage for separate acreage. The benefit of having unit insurance, if you qualify, is that for indemnity payment purposes production on each unit is considered without regard to production on other units, or without regard to the insured's total production of the insured crop.

There are two types of units:

1. **Units based on crop interest**—Unit insurance cover, at no extra cost, is automatic when there are different ownership interests.
2. **Optional units**—When certain locations, farming practice, and recordkeeping criteria are met, coverage can be written on a unit basis. For optional units, there is an additional 10% premium charge.

Other Provisions

Individual Crop

If the farmer elects to insure some crops and not to insure other crops for which insurance was available, any loss on noninsured crops will not be considered in computing the individual FMHA emergency loan eligibility.

Small Grain and Coarse Grain

Provisions that apply to small grains refer to cereal grains which include barley, wheat, oats, etc. Provisions that apply to coarse grains refer to corn, soybean, maize, etc.

Revenue Products

Income Protection (IP)

Under an **Income Protection** (IP) crop insurance policy, the farmer receives a payment when any combination of low harvest prices and low yield push gross income below the selected guaranteed income level, which is based on early board of trade commodity prices for the insured crop. In other words, if low harvest prices combined with a low yield bring the farmer a gross income that is below the guaranteed income level shown in the policy, the farmer will receive payment under the policy.

Crop Revenue Coverage (CRC)

Crop Revenue Coverage (CRC) provides comprehensive protection with a revenue guarantee that is based on the higher of the early market price or the harvest market price. It covers fluctuations in market price both up and down. The upward movement in harvest price is capped above the historic maximum price increase, and the CRC allows the farmer to capture some of the benefit or rising prices when yields drop.

Revenue Assurance (RA)

Revenue Assurance (RA) is very similar to Income Protection insurance. RA is different from IP in that commodity prices are adjusted to reflect average prices in a county to make them more representative of the local market conditions, which also leads to lower premiums than an IP policy. Revenue Assurance also has an optional harvest price option, which protects yield losses against rises in price. RA provides market security that allows the farmer to extend crop marketing into the growing season.

Supplements

Insurance coverage selection enables the producer to combine field locations for coverage purposes. **Unit structure** choices differ by insurance coverage programs. There are 4 types of unit structures determined by crop, by county, and by type of coverage selected:

1. *Basic Unit* - 100% of share land (owned & cash rented), is grouped together in one unit. Land share-cropped with each different landlord is another basic unit of its own. For basic units there is a 10% premium discount, in addition to the premium subsidies.
2. *Optional Unit* - For most crops, Basic Units of a given insurable crop can be divided into separate units by section and for irrigation practices. Optional units must have separate production records. There is no additional premium discount.
3. *Enterprise Unit* - All insurable acres of the same insured crop, lumped together into one unit regardless of site location. For enterprise units, there is a sizable premium discount in addition to the premium subsidies. The discounts include the premiums subsidy, the 10% basic unit discount, and a discount based upon the number of insured acres (up to 31%). Enterprise units are not available in all areas.
4. *Whole Farm Unit* - All insurable acres, of all insured crops, lumped together into one unit, regardless of land location. Whole farm unit structure is available with Revenue Assurance only.

D. Boatowners

Homeowners policies limit the amount of property and liability coverage available for watercraft. Only $1,500 of coverage is provided in the homeowners policy for damage to watercraft, accessories, equipment, and trailers. Liability coverage is afforded to the insured arising out of owning or using inboard powered boats up to 50 horsepower, outboard powered boats up to 25 horsepower, or sailing vessels **up to 26 feet** in length.

Additional protection is available either **by endorsement** or through the purchase of a **boatowners policy**. The coverage provides that the watercraft must be used solely for private, pleasure use and that coverage is excluded if the boat is hired out, chartered, used in an official speed or race contest, or used to transport people or property for a fee.

The policy consists of 2 sections:

- **Section I** contains the physical damage coverages, which includes the perils insured against, exclusions, and conditions applicable to Section I only; and
- **Section II** contains the insuring agreements for watercraft liability, medical payments, and uninsured boaters. Also included are Section II conditions, as well as general conditions applicable to both Section I and Section II.

Section I — Physical damage coverage on the boat is designated Coverage A in the boatowners policy. It includes coverage for the actual cash value (ACV) of

- The motor(s) described in the declarations, including remote controls and batteries;
- The boat described in the declarations, including its permanently attached equipment;
- The trailer described in the declarations if specifically designed for the transportation of the boat; and
- Equipment and accessories manufactured for marine use.

As indicated by the last item, the physical damage coverage usually extends to cover equipment pertaining to the use of the vessel, subject to a dollar limit.

Perils insured against — The boatowners policy insuring agreement is usually of the open peril type, providing that the insurer will pay for direct and accidental loss to the property insured.

In addition to the exclusion for loss by war and nuclear hazard, policies usually **exclude** coverage for the following types of damages:

- Due and confined to wear and tear, gradual deterioration, inherent vice, latent defect, mechanical breakdown, faulty manufacture, damage caused by any repairing or restoration process, and service or maintenance operation, unless fire results and then for loss caused by the resulting fire;
- While carrying persons or property for a fee, or while the covered property is rented to others; and
- While the covered property, except sailboats, is being operated in any official race or speed test.

Additional coverages for physical damage are the following:

- **Reasonable repairs —** Coverage applies for the expenses necessary to repair or to protect the covered property from further damage from an insured peril. Payment for loss under the reasonable repairs provision does not increase the policy limit.
- **Recovery —** Coverage applies for the reasonable cost incurred by the insured to recover the insured property in the event of stranding or sinking. This coverage is derived from an ocean marine provision entitled salvage. However, unlike the ocean marine salvage charges, which are payable in addition to the limits of coverage on

the hull, the recovery coverage of the boatowners policy does not increase the limits of liability under the policy.

- **Automatic coverage —** Automatic coverage is provided on replacements for the boat, motor, or trailer listed in the declarations, provided the insured notifies the insurer within 45 days of acquisition and pays any additional premium required.

Section II — The liability coverages of the boatowners policy parallel the coverages of the personal auto policy. They include the following:

- Watercraft liability;
- Medical payments; and
- Uninsured boaters.

Watercraft liability coverage provides protection up to the specified limits for claims or suits against a covered person for damages because of bodily injury or property damage caused by a watercraft occurrence. In addition to the promise to pay judgments arising out of such suits, the insurer also agrees to defend the insured, but reserves to the insurer the right to make settlement if it deems it expedient. As in the case of other liability policies, coverage for the cost of defense is payable in addition to the policy's limits.

Exclusions under the boatowners policy include bodily injury or property damage that is expected or intended by the insured, and the liability of any person using a watercraft without permission. Other exclusions are bodily injury to persons eligible for workers compensation, damage to owned or rented property in the care, custody, or control of the insured, and liability of a person engaged in the business of selling, repairing, storing, or moving watercraft. The policy also excludes liability arising out of racing, speed tests, war and nuclear hazards.

Claim-related expenses are paid as additional coverage, similar to the personal auto policy.

Medical payments coverage pays for accidents occurring while the injured party is in, upon, getting into or out of the insured boat. Some policies include medical payments coverage for persons who are injured while water-skiing.

Uninsured boaters coverage usually provides a stipulated amount of coverage (e.g. $10,000) that can apply for accidents with uninsured watercraft. Increased limits are available for additional premium.

Navigation and territorial definitions — This is an important part of the contract that an insured should be made aware of. The broadest policies cover the watercraft while being operated on any inland body of water within continental United States, Canada, and coastal waters in the same area up to a limit of 10 to 25 miles (depending on the insurer). The most restrictive policies provide coverage only on a specific body of water and within a narrow parameter around that particular area. Many policies provide no coverage for offshore waters, such as the Gulf of Mexico.

E. Types of Surety Bonds

Contract Bonds

Contract bonds are used to guarantee performance of a written contract. They are primarily used in construction contracts. The following are the most common types of contract bonds:

- **Bid bonds** — When construction projects are awarded based on the lowest bid, the obligee usually also requires a bid bond. The bid bond promises that if the contractor is awarded the contract, the contractor will actually accept the contract, and a performance bond will be issued.
- **Completion bonds** — If a contractor is required to borrow money to complete a construction project, the lender usually will require a completion bond. This bond guarantees that the money borrowed will be used to fund the construction project and that the project will be completed free of any other obligations.
- **Labor and materials bond** — These bonds guarantee that work and materials will be delivered free and clear of any liens or other burdens. These are sometimes called payment bonds.
- **Performance bonds** — These bonds guarantee that the principal will complete the contract as agreed upon.
- **Supply bonds** — These bonds guarantee that a supplier will furnish supplies, materials, products, and equipment as specified in the written contract.

License and Permit Bonds

License and permit bonds, which are usually required by state and local government, guarantee that the laws and regulations of a particular profession are followed. A license and permit bond guarantees that the recipient of a permit will comply with the laws, regulations, and ordinances associated with the use of the permit.

Judicial Bonds

The following **judicial bonds** are required because of legal or fiduciary obligations:

- **Appeal bond** — If a person appeals to a higher court after a judgment already has been entered, this bond may be required to guarantee that the judgment will be paid, as well as the cost of the appeal.
- **Attachment bond** — When a court order requires the attachment of assets of another party, this bond may be used to guarantee that if the action to attach property was wrong, any damages suffered will be paid for.
- **Release of attachment bond** — When a court order requires the attachment of assets of another party (the defendant), the defendant uses this type of bond to have the property returned by posting a release of attachment bond to serve in lieu of the property as security for the plaintiff's claim.
- **Bail bond** — This bond is issued to secure the release of a person from jail pending a courtroom appearance. It guarantees that the person will appear when specified.

- **Cost bond** — This bond guarantees that the person (plaintiff) who brings legal action against another (defendant) will be able to pay court costs and any resulting damages in the event the plaintiff loses the case.
- **Injunction bond** — This bond is required by courts whenever someone seeks an injunction against another. It guarantees that if the injunction should not have been issued, damages will be paid to the injured party.