

HOMEOWNER COVERAGE ISSUES

**(OR, HOW THE TEXAS SUPREME COURT ACCIDENTALLY
SLEW THE GOLDEN GOOSE, OPENED PANDORA'S BOX
AND CHANGED THE NATURE OF INSURANCE IN TEXAS)**

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I. INTRODUCTION

The \$32 million *Ballard* verdict is the most notorious salvo in the gold rush of 2001, but by no means the most expensive. Farmers Insurance Companies reported twelve mold claims in 1999, 499 claims in 2000, and as of September 1, 2001, over 8,000 in 2001 – and expects to lose \$100,000,000 on mold claims in 2001 alone.¹ State Farm, Farmers, and Allstate have all restricted sales of new policies. Numerous carriers have threatened to leave the Texas market and/or scale back available coverages.

Is mold the next great litigation wave, or will it become the next breast implant litigation fiasco, crashing on the twin breakers of bankruptcy and questionable science? How did a problem as old (almost) as dirt lie dormant for decades, then burst on the scene as a multi-billion dollar issue? If mold is actually covered by insurance policies, why is it only now becoming an issue? And, if it really is covered by the policy, why are there so many unanswered questions?

This paper will trace the unintentional shift in policy language and interpretation that created this crisis and will analyze the significant issues presented by these claims.

II. THE PURPOSE AND NATURE OF INSURANCE

Insurance is nothing more than shared risk. Homeowners who cannot afford to rebuild if catastrophe should strike their house are, in effect, pooling their resources (premiums) in exchange for a promise that they are each protected (indemnity) should catastrophe strike. In its simplest form, the system only works if the total premium dollars collected exceeds the total of losses. Too many claims and not enough premiums means that someone does not get paid.

Fundamental to the nature of the insurance relationship is the principle of fortuity, which holds that in order to be covered, losses must be accidental and unknown at the time the policy is issued. Because the purpose of insurance is to

protect insureds against fortuitous risks, fortuity is an inherent requirement of all risk insurance policies. *Two Pesos, Inc. v. Gulf Ins. Co.*, 901 S.W.2d 495, 502 (Tex. App.–Houston [14th Dist.] 1995, no writ). The fortuity doctrine precludes coverage for both a "known loss" and a "loss in progress." A "known loss" is a loss the insured knew had occurred prior to making the insurance contract. *Burch v. Commonwealth Mut. Ins. Co.*, 450 S.W.2d 838, 840-41 (Tex. 1970). A "loss in progress" occurs when the insured is, or should be, aware of an ongoing progressive loss at the time the policy is purchased. *Two Pesos*, 901 S.W.2d at 502. Insurance coverage is precluded where the insured is or should be aware of an ongoing progressive or known loss at the time the policy is purchased. *Id.* The doctrine has its roots in the prevention of fraud; because insurance policies are designed to insure against fortuities, fraud occurs when a policy is misused to insure a certainty. *Inland Waters Pollution Control, Inc. v. Nat'l Union Fire Ins. Co.*, 997 F.2d 172, 175-77 (6th Cir. 1993). Thus, intentional losses such as those caused by the policyholder's act of arson are excluded from coverage on public policy grounds. *See Greenfield v. San Jacinto Ins. Co.*, 319 S.W.2d 134 (Tex. 1958). Further, losses which are inevitable, such as wear and tear or deterioration, are expressly excluded from coverage (HOB-Section I-Exclusions). Generally speaking, a policy covers fortuitous losses, not ordinary maintenance and predictable incidents of ownership.

Consistent with these principles, the Homeowners Form B provides²:

² The discussion will concern the HOB. The homeowners form A policy is generally a named perils policy and does not include accidental discharge of water as a named peril. Therefore, unless the policy is worded to include a peril from which mold may have occurred, or it contains an endorsement providing accidental discharge of water or steam language, most mold claims will not be subject to coverage under the form A policy (*see attached*). The homeowners form B-tenant (HOB-T) policy generally has no "exclusion repeal provision" and no "ensuing loss" provision. As a result, the *Balandran* analysis probably does not apply to possibly allow mold coverage under this policy, nor is there coverage for mold under the "ensuing loss" provision.

¹ All statistics are from *The Houston Chronicle*, November 10, 2001.

SECTION I-EXCLUSIONS:

f. We do not cover losses caused by:

- (1) wear and tear, deterioration or losses caused by any quality in property that causes it to damage or destroy itself.
- (2) **rust, rot, mold, or other fungi.**
- (3) dampness of atmosphere, extremes of temperature.
- (4) contamination.
- (5) rats, mice, termites, moths, or other insects.

h. We do not cover loss under Coverage A (Dwelling) caused by settling, cracking, bulging, shrinkage, or expansion of foundations, walls, floors, ceilings, roofs, structures, walks, drives curbs, fences, retaining walls, or swimming pools.

* * *

i. We do not cover loss caused by or resulting from flood, surface water, waves, tidal waves, overflow of streams or other bodies of water or spray from any of these whether or not driven by wind.

* * *

k. We do not cover loss caused by earthquakes, landslides or earth movement.

Individually, these clauses each have a particular meaning. Collectively, however, they mean the policy does not cover losses that occur gradually over time, extraordinary events that require specific coverages, or losses that occur from lack of maintenance.

III. SHIFT IN POLICY LANGUAGE AND INTERPRETATION

Prior to 1978, the standard policy did not contain an exclusion repeal provision. However, beginning in 1978, the policy was amended to contain the following language:

EXCLUSIONS (Applicable to Property Insured under Coverages A and B and Perils Insured Against) – This insurance does not cover:

k. Loss under coverage A caused by settling, cracking, bulging, shrinkage, or expansion of foundations, walls, floors, ceilings, roof structures, walks, drives, curbs, fences, retaining walls or swimming pools.

The foregoing Exclusions a, b, c, f, h, i, j and k shall not apply to Accidental discharge, leakage or overflow of water or steam from within a plumbing, heating or air conditioning system or a domestic appliance (including necessary tearing out and replacing any part of the building covered).

Under this version of the policy, the exclusion repeal provision was contained in the Coverage A provisions. In 1990, the State Board of Insurance promulgated a new “readable form” policy. The exclusion repeal provision was moved to Coverage B (personal property) and now reads as follows:

Accidental Discharge, Leakage or Overflow of Water or Steam from within a plumbing, heating or air conditioning system or household appliance.

A loss resulting from this peril includes the cost of tearing out and replacing any part of the building necessary to repair or replace the system or appliance. But this does not include loss to the system or appliance from which the water or steam escaped.

Exclusions 1.a through 1.h under Section I Exclusions do not apply to loss caused by this peril.

It is the addition of repeal language in 1978, its transfer to Coverage B in 1990 and the Supreme Court decision in 1998 that created this mess.

The general question of whether mold damage is now covered at all when it results from a plumbing leak is probably controlled by *Balandran v. Safeco Ins. Co. of America*, 972 S.W.2d 738, 741 (Tex. 1998). In that case, the Supreme Court of Texas interpreted the accidental discharge clause (set out in the Coverage B named perils laundry list) in conjunction with Exclusion 1.h, which ordinarily

excludes foundation movement from coverage under the homeowners policy. The coverage dispute in *Balandran* arose because the accidental discharge clause contains an "exclusion repeal provision." The "exclusion repeal provision" expressly states that exclusions 1.a through 1.h do not apply to losses caused by perils covered under the accidental discharge clause.

Safeco, the defendant in *Balandran*, argued that the "exclusion repeal provision" of the accidental discharge clause applied ONLY to Coverage B (personal property), since that is the coverage under which the accidental discharge language is found in the policy. The Supreme Court reasoned, though, that the "exclusion repeal provision" would be meaningless regarding exclusion h (foundation movement) if the provision only applied to Coverage B (personal property), because exclusion h specifically states it only applies to losses under Coverage A (Dwelling). In other words, the accidental discharge clause under Coverage B would not have to contain language specifying exclusion h did not apply to that coverage, because exclusion h itself clearly states it applies only to Coverage A (Dwelling).

Because of this alleged ambiguity in the policy, the Supreme Court ruled that the language in the accidental discharge provision effectively negates Exclusion 1.h, resulting in coverage for all foundation movement resulting from plumbing leaks. The Court made this finding even though the exception to the exclusion was located in the Personal Property section of the policy. As a result, it is now generally held that foundation movement caused by an accidental discharge, leakage or overflow of water or steam from within a plumbing, heating or air conditioning system or household appliance is covered under the homeowners form B insurance policy.

IV. PROBABLE BASIS OF COVERAGE

When an insured submits a claim for mold damage resulting from a plumbing leak, there is an argument under the reasoning of *Balandran* that the same "exclusion repeal provision" found in the accidental discharge clause effectively negates Exclusion 1.f. (which excludes mold and other fungi) in the same way it negates 1.h. Since repeal (or exception) of exclusion 1.h has been found to

apply to Coverage A (Dwelling), it seems probable the Court would rule that repeal of exclusion 1.f would apply to Coverage A (Dwelling) as well.

Such a result is not certain, however. There are factors which could lead to a different coverage result for mold claims. First, *Balandran* was fact-specific. The Supreme Court made a very specific ruling which held that "exclusion 1(h) in the 1991 Texas Standard Homeowner's Policy--Form B does not apply to loss caused by the accidental discharge, leakage or overflow of water or steam from within a plumbing, heating or air conditioning system or household appliance." *Balandran* at 742. This holding does not necessarily affect Exclusion 1.f. Additionally, the text of Exclusion 1.f reads differently from the text of Exclusion 1.h, possibly leading to a different interpretive result. While the Supreme Court's decision in *Balandran* relied on the Exclusion 1. h language that limits it to Coverage A (Dwelling), Exclusion 1.f does not contain such limiting language.

In summary, it is not certain *Balandran* leads to the conclusion that mold caused by accidental discharge of water from a plumbing system is covered under the homeowners form B policy. *Balandran* is, though, an indication of how Texas courts probably would rule if specifically confronted with the issue. With this in mind, most attorneys assume it probable that mold claims caused by an accidental discharge, leakage, or overflow of water or steam from within a plumbing, heating, or air conditioning system or household appliance, would be a covered loss.

V. QUESTIONABLE BASES OF COVERAGE

The Coverage B (Personal Property) provision under which the Texas Supreme Court found coverage in *Balandran* is limited to water discharge from plumbing, heating, or air conditioning systems or household appliances. In claims where the water damage which allegedly results in mold is NOT caused by any of those named perils, a different coverage analysis occurs. For those claims, the "ensuing loss" provision of Exclusion 1.f (rust, rot, mold and other fungi) must be analyzed. Unfortunately, the ensuing loss provision has undergone at least two different interpretations:

Interpretation 1: We do cover (ensuing loss) (caused by) (collapse of building or water damage). *i.e.*, water damage occurs and leads to another loss (like mold or mildew).

Interpretation 2: We do cover (ensuing) (loss caused by collapse of building) or (ensuing) (loss caused by water damage). *i.e.*, water damage is the ensuing loss that results from some other cause (like water damage occurring from rain that enters a house after a windstorm damages the house).

The Fourth Court of Appeals, in *Lambros v. Standard Fire Ins. Co.*, 530 S.W.2d 138 (Tex.Civ.App.—San Antonio 1975, writ ref'd) discussed the ensuing loss clause in an insurance policy. The court found that to "ensue" means "to follow as a consequence or in chronological succession; to result, as an ensuing conclusion or effect." *Id* at 141. The court then stated that an ensuing loss must be a loss which follows as a consequence of some preceding event or circumstance. *Id*. "If we give to the language of the exception its ordinary meaning, we must conclude that an ensuing loss caused by water damage is a loss caused by water damage where the water damage itself is the result of a preceding cause." *Id*. "'Ensuing loss caused by water damage' refers to water damage which is the result, rather than the cause, of 'settling, cracking, bulging, shrinkage, or expansion of foundations, walls, floors, ceilings....' Thus the *Lambros* court appears to be adopting Interpretation 2, a loss caused by water damage where the water damage itself ensues from something else. The court used this reasoning to deny coverage for a claim of foundation damage that was caused by water leaking under the house.

More recently, at least one court has followed the reasoning in *Lambros* and adopted Interpretation 2. *Zeidan v. State Farm Fire & Cas. Co.*, 960 S.W.2d 663 (Tex. App.—El Paso 1997, no writ). The court denied coverage for foundation settling as a result of rainwater causing earth movement. There was no actual water damage to the house, so the court concluded the ensuing loss clause could not possibly apply.

In *Merrimack Mut. Fire. Ins. Co. v. McCaffree*, the court held under similar facts that rot, mold, and termite damage is not an ensuing loss caused

by water damage. The court apparently believed that to qualify, the damage would have to be characterized as a type of water damage, which it is clearly not. 486 S.W.2d 616 (Tex. Civ. App.—Dallas 1972, writ ref'd n.r.e.). The *Merrimack* court favorably cited two other cases with similar outcomes. See *Aetna Casualty & Surety Co. v. Yates*, 344 F.2d 939 (5th Cir. 1965); *Park v. Hanover Insurance Co.*, 443 S.W.2d 940 (Tex.Civ.App., Amarillo 1969). Because it found that the loss could not be covered unless it was itself a loss caused by water damage, it also appears to be adopting Interpretation 2.

Other cases, however, have applied the ensuing loss clause to cover mold and rot damage. *Employers Casualty Co. v. Holm*, 393 S.W.2d 363 (Tex.Civ.App., Houston 1965, no writ) and *Allstate Insurance Co. v. Smith*, 450 S.W.2d 957 (Tex.Civ.App., Waco 1970, no writ). The *Holm* court adopted Interpretation 1 and held that because the parties stipulated the water penetrating the wood caused the rot and deterioration, it was a covered ensuing loss. *Smith* followed similar reasoning. However, *Merrimack* subsequently considered and declined to follow these cases. It appears that *Home Ins. Co. v. McClain*, an unpublished opinion, is the only recent case to be influenced by these opinions. No. 05-97-01479-CV, 2000 WL 144115 (Tex. App.—Dallas Feb. 10, 2000) (no pub.). This line of reasoning appears to be a minority rule, and since *McClain* is unpublished, it has no precedential value and cannot be cited as authority. Tex. R. App. P. 47.7. Interestingly, none of the Courts have considered the policy language to be ambiguous.

The most recent case concerning the ensuing loss clause is an unpublished opinion in *Harrison v. USAA Insurance Company*, 2001 WL 391539 (Tex. App.—Austin 2001, no pet.). *Harrison* is a mold case in which the mold allegedly resulted from water seeping through caulking at the juncture of the bathtub and the tile above it.

The first issue was whether the ensuing loss provision provided coverage. The Court noted inconsistent treatment of this issue by other courts, then held:

Harrison's argument that the ensuing loss clause provides coverage for her

loss reverses the causation required by that exception. To qualify for the exception, ensuing water damage must follow from one of the types of damage enumerated in exclusion (f). *Lambros*, 530 S.W.2d at 141-42. **In other words, the ensuing loss provision covers water damage that results from, rather than causes, rotting.** *Id.* Assuming that the leaking of water into the wood constitutes water damage, the leaking preceded, rather than followed, Harrison's excluded loss. The ensuing loss provision therefore does not extend coverage to Harrison's loss.

(2001 WL 391539, 2, *emphasis added*).

Interestingly, the Court also considered whether the leaking through the caulk was a "plumbing leak," and held that it was not.

Harrison is a well reasoned opinion that provides strong support for the argument that mold is covered when it results from a plumbing leak, but not as an ensuing loss. Unfortunately, it has not been published and cannot be cited as authority.

Until clearer guidance is given by Texas courts or the legislature, many carriers handling mold claims that follow water damage treat them as ensuing losses and cover them if the water damage which leads to the mold is otherwise covered under the policy. However, there is clear authority indicating that mold is not an ensuing loss. Therefore, a carrier who decides to follow Interpretation 2 should be protected from bad faith, Insurance Code art. 21.21, or DTPA exposure even if that policy interpretation is subsequently held to be erroneous.³

³ The Texas Supreme Court has held that the tort of bad faith is not committed where there is a reasonable basis for the denial of the claim. *Lyons v. Miller Casualty Company*, 866 S.W.2d 597 (Tex. 1993). Numerous courts have held that where there is a bona fide controversy of law or facts, the carrier has the right to deny the claim and submit liability to the jury. *Aranda v. Insurance Company of North America*, 747 S.W. 2d 210 (Tex. 1988). In the absence of bad faith, the denial of a claim cannot give rise to a cause of action of Insurance Code Article 21.21 or the Texas Deceptive Trade Practices Act. *Emmert v. Progressive County Mutual Insurance Company*, 882 S.W. 2d (Tex. App.— Tyler 1994, no writ history).

Contents Coverage for Mold Loss. The difference between Coverage A (Dwelling) and Coverage B (Personal Property) mold claims is that Coverage A is all-risk insurance, while Coverage B is a named peril coverage. Coverage B, then, only provides coverage to personal property for a list of 11 specified causes of loss. Neither general water losses nor mold are listed perils. The only type of water loss specifically covered is accidental discharge from a plumbing, heating, or air conditioning system or household appliance. The "ensuing loss" provision, however, might allow coverage for ensuing mold after a listed water loss if the structure is also covered (see above discussion).

VI. ADDITIONAL COVERAGE ISSUES

A. Multiple Policy Limits

Whether one occurrence caused the alleged mold growth or whether the mold growth was caused by repeated exposures to covered events may determine whether one policy limit or multiple limits are implicated in the loss. Under the homeowner's policy, an "occurrence" is defined as "an accident, including exposure to conditions, which results in bodily injury or property damage during the policy period." Most of the Texas case law discussing the meaning of occurrence is within the context of CGL policies, which generally mention repeated or continuous exposure to harmful conditions. Several different analyses are presented below, but the underlying question is whether several water intrusion events contributed to a single mold growth occurrence, or whether each water intrusion caused its own resultant mold growth.

To some extent, courts determining the number of occurrences have applied one of two different analyses to make the determination— the causation theory or the effect theory. The Fifth Circuit first applied the effect theory in *Anchor Casualty Co. v. McCaleb*, 178 F.2d 322 (5th Cir. (Tex.) 1949). There, an oil well suffered a blowout and intermittently spewed sand, mud, and oil onto several adjacent properties over a period of two days. The court stated that several wind changes during this time resulted in damage to different properties and thus was a supervening cause, and held that the damage must be analyzed from the

point of view of the injured persons. The court concluded that the injury to the different properties resulting from the wind changes constituted a series of accidents. (This was decided under a CGL policy that provided a single-accident limit and a higher aggregate limit.)

Under the causation theory, exemplified in *Saint Paul Mercury Indemnity Co. v. Rutland*, 225 F.2d 689 (5th Cir. 1955), the Fifth Circuit examined the conduct forming the causative act. In *Rutland*, the collision of a truck with a train resulted in the derailling of the train and damage to sixteen railroad cars and their contents, owned by fourteen separate parties. The court held that because there was a single collision that resulted in injuries to multiple parties with no intervening cause, there was only one "accident" under the policy terms and thus only one policy limit available to compensate the injured parties. The court acknowledged *Anchor*, but limited it to its facts and noted that the intervening cause of the wind was a key factor.

In Texas, the causation theory appears to have prevailed, although there is some indication that the decision of which theory to apply will be based on the facts before the court. See *Maurice Pincoffs Co. v. St. Paul Fire & Marine Ins. Co.*, 315 F. Supp. 964 (S.D. Tex. 1970) reversed by 447 F.2d 204 (5th Cir. 1971). In that case, contaminated birdseed injured a large number of buyers. The trial court applied the causation theory and held that because one batch of birdseed was contaminated at one time, there was only one occurrence. The Fifth Circuit, still applying the causation theory, disagreed and reversed, holding that because the insured's liability arose from sale of the seed and not the act of contamination, the number of sales was the key causative factor. The Fifth Circuit concluded that because portions of the batch of seed were sold to eight different distributors, there were eight occurrences under the policy. See also *Goose Creek Cons. I.S.D. v. Continental Cas. Co.*, 658 S.W.2d 338 (Tex. App.—Houston [1st Dist.] 1983, no writ) (describing causation theory as majority rule in Texas and holding that two fires started in the same night on two separate properties were two occurrences, regardless of the fact that they were probably started by the same person or group of people).

A few other cases discussing multiple occurrences did not expressly reference either of the above described theories. The relevance of these cases is somewhat limited because the courts were interpreting policies with different language from the HOB policy. See, e.g., *Bethany Christian Church v. Preferred Risk Mutual Insurance Company*, 942 F. Supp 330 (S.D. Tex. 1996) (discussing coverage for employee dishonesty expressly defining a series of employee acts as one occurrence); *Cullen/Frost Bank of Dallas v. Commonwealth Lloyds Ins. Co.*, 852 S.W.2d 252 (Tex. App.—Dallas 1993, writ denied per curiam, 889 S.W.2d 266 (Tex. 1994)) (discussing CGL policy which included continuous or repeated exposure to harmful conditions in its definition of occurrence).

Although the language found in the CGL policy is not identical to that in the homeowner policy, it is largely similar, and an argument by analogy may be in order. The *Cullen/Frost* court examined whether property damage occurring in a set of condominiums constituted one or several occurrences. The court noted that the damage complained of included drainage problems, excessive floor displacement, rotten woodwork, roof leaks, and continual elevator breakdowns. The court held that under the controlling definition of occurrence, there was a new occurrence every time the complaining party suffered damage. (Although the court did not expressly reference it, this would appear to be a use of the effect theory discussed above.) Although the controlling definition was different from the definition in the homeowner policy, the relevant portions were substantially similar. The court appeared to base its analysis on the fact that different elements of the damage manifested themselves at different times, and concluded that each manifestation of damage was a separate occurrence. See *id* at 258.

The most apposite Texas case discussing multiple occurrences and their actual effect on policy limits is *State Farm Lloyds v. Williams*, 960 S.W.2d 781 (Tex. App.—Dallas 1997, writ dismissed). In that case, the insured shot two of his family members, killing one and injuring another. The insured had liability coverage through State Farm Lloyds in the amount of \$300,000 per occurrence. The claimants, the injured victim and the relatives of the deceased victim, claimed they were entitled to

a total recovery of \$600,000 because the two shootings were two separate occurrences. State Farm contended that there was only occurrence because the injuries arose from a single "fit of violence." The court found that there were two separate occurrences because the two victims were not injured by a single bullet. Their injuries each separately gave rise to liability on the part of the insured. Although the court did not expressly state it in its opinion, it appears that the court found the appropriate policy limit to be \$600,000 because of the two occurrences.

The problem with the cause and effect theories is that they are typically applied in a liability context, where the conduct of a party is at issue, which is more amenable to such analysis. This was not the case in *Anchor*, where the event examined was an oil well blowout. However, an event consisting of mold growth would seem to be particularly unsuitable for analysis under either theory. Please note, though, in almost all of the cases dealing with how many policy limits apply, the court selected the theory that gave rise to the most coverage.

A related question which has not been addressed by the courts is how a mold loss is allocated between insurers if Texas courts begin allowing (1) multiple policy limits on claims where multiple covered water damage occurrences cause mold; (2) the date of loss to be considered the date the mold manifests; and (3) more than one insurer has insured the premises during the time the water damage occurrences have happened. Should the insurer at the time of manifestation be obligated for the entire loss -- even if it implicates more than one policy limit?

Although not directly addressed in Texas case law, a somewhat analogous line of cases deals with a single claim caused by a continuance occurrence over the course of multiple consecutive liability insurers' policy periods -- such as repeated, continuous exposure to a toxic substance like asbestos or silica, or benzene. In some of those cases, the courts found the subject insurance policies did not provide for a reduction of the insurer's liability limits if an injury occurred only partially during a policy period. Therefore, each insurer who had contracted to cover all sums the insured was legally obligated to pay, was

responsible up to its policy limit for such a loss. When more than one policy applied to the loss, the "other insurance" clause of the respective policies would apply to apportion the actual amount of the loss between the applicable policies. See *Keene Corp. v. Ins. Co. of North America*, 667 F.2d 1034 (D.C. Cir. 1981) cert. denied, 455 U.S. 1007, 102 S.Ct. 1644, 71 L.Ed.2d 875 (1982); *American Physicians Ins. Exch. v. Garcia*, 876 S.W.2d 842, 854-55 (Tex. 1994); *Tex. Prop. and Cas. Ins. Guaranty Assoc. v. Southwest Aggregates, Inc.*, 982 S.W.2d 600, 606 (Tex. App. -- Austin 1999, no pet.); *CNA Lloyds of Tex. v. St. Paul Ins. Co.*, 902 S.W.2d 657, 661 (Tex. App. -- Austin 1995, writ dismissed by agr.). This may be how courts would treat mold claims if it appears mold has been growing but hidden over a period of time in which more than one policy applied to the premises.

Finally, it does not logically seem there could be any loss in excess of policy limits to any one house or structure at any given time unless one loss had been completely repaired before the second occurred. To some extent, this logic is supported by *State Farm Fire & Casualty v. Griffin*, 888 S.W.2d 150 at 157 (Tex. App. -- Houston [1st Dist.] 1994, no writ), in which the court upheld State Farm's reduction of a total fire loss claim by approximately \$16,000 which represented the amount of a previous water damage claim that had been paid but not repaired at the time of the fire. There are differences in the *Griffin* case, though, that a court may use to distinguish it from a mold claim. For example, *Griffin* dealt with an ACV policy, not RCV, and *Griffin* also dealt with identifiable damage which had been paid for and not repaired at the time of the second loss.

B. Personal Injury Claims

Although there is little law in this area, it appears relatively clear that health care costs potentially associated with mold exposure are not covered losses. First, the insuring agreement covers physical loss to the described property and does not cover illness regardless of causation. Second, the science with respect to health effects of mold is simply not well-defined enough for causation of health problems alleged to be related to mold exposure to be proven with any reasonable degree of certainty. This was the situation in the recent

Ballard case in Austin where the trial judge refused to allow evidence of health effects because of the lack of reliable scientific evidence linking health problems to mold. However, assuming the causation issue is resolved, Plaintiffs may attempt to make personal injury claims as tort claims resulting from an alleged breach of the duty of good faith and fair dealing.

C. Duties of Homeowners

A separate issue which should be considered in any mold claim is the extent to which the policyholder inadvertently made the damage worse. Under Condition 3.a of the policy, the insured has a duty to protect the property from further damage and to make reasonable repairs to protect the property. It is common knowledge that mold generally requires damp conditions in order to proliferate, and that water-damaged wood or other cellulose materials, if left unrepaired, are likely to harbor fungal growth.

In particular, if a water loss occurred in the area of the mold in the past and the repairs were not made or were made incompletely, Condition 3.a may apply to the claim. In order to protect itself from future mold claims, and perhaps to allow reliance on Condition 3.a for potential future mold claims arising out of water loss claims, an insurer could send a cover letter to the insured with its payment on all water loss claims explaining that mold, mildew, or rot can result from water loss that is not completely and promptly repaired. In such a letter, the insured should be alerted to his/her duty to protect the property from further damage and should be encouraged to perform all repairs promptly before mold, mildew, or rot can begin.

D. Pro-active Responses by Insurers

Although the health effects of mold have not been demonstrated, many insurers are moving their insureds out of their homes for the entire claims process, regardless of the extent of contamination. Moreover, the remediation clearance testing is often an attempt to reach zero. We strongly recommend the industry (or the Texas Department of Insurance) conduct random sampling of houses with no water loss claims to determine the normal expected levels of mold in each area, and further recommend that testing and remediation be

designed to reach normal, not zero. We further wonder if carriers would be better served to request allergy/toxicity testing as an alternative to payment of ALE.

E. ALE

Whether ALE is owed on a mold claim is generally determined by whether the mold damage is caused by a covered risk. If the mold is caused by what is determined to be a covered risk, ALE should apply as does the rest of the policy. If the mold is determined to be caused by something other than a covered risk, ALE should not apply. If some mold is caused by a covered risk and some is caused by another source which is not covered, ALE applies in proportion to the percentage of the total loss caused by a covered peril. The policy limit, however, is not reduced proportionately. The total ALE expense is reduced or offset by the percentage of the loss not caused by a covered risk – up to policy limits.

F. When Did the Loss Occur

Since mold is an organism that develops over time, it may be difficult to determine when a loss occurred for purposes of determining what policy applies. It has generally been held in Texas that an insurable loss to property occurs when the injury or damage to property is manifested. *State Farm Mut. Auto. Ins. Co. v. Kelly*, 945 S.W.2d 905, 910 (Tex. App.–Austin 1997, writ denied); *Cullen/Frost Bank v. Commonwealth Lloyd's*, 852 S.W.2d 252, 258 (Tex. App. – Dallas 1993, writ denied); *Dorchester Dev. Corp. v. Safeco Ins. Co.*, 737 S.W.2d 380, 383 (Tex. App. – Dallas 1987, no writ). Therefore, it will be important to pinpoint when the loss or damage manifested in order to determine date of loss and the applicable policy.

Since there is usually no policy language nor is there any legal authority setting out a time period beyond which a loss under a policy may be made (i.e., that all claims must be made within one year of occurrence), it is possible with mold claims for manifestation to appear years after a plumbing leak or as the result of a plumbing leak that has gone undetected over a period of time. Although there is no hard and fast limitations rule limiting the policyholder's ability to bring such claims, policy

Condition 3.a requires the insured to take reasonable steps to protect the property. If there is evidence the insured knew of a water or plumbing problem and did not comply with the duties set out in Condition 3.a, this failure may result in the claim not being covered under the policy.

Regarding lawsuits which may be brought by policyholders for breach of contract, most homeowners' policies do shorten the usual legal four year breach of contract limitations period to two years and one day after the "cause of action accrues." In *Jett v. Truck Ins. Exchange*, 952 S.W.2d 108 (Tex. App. – Texarkana 1997, no writ), the court upheld the validity of the shortened two years and one day limitations period contained in a fire policy. This limitations period governs any breach of contract claim or bad faith claim, and begins to run on the date the insurer denies coverage. See *Pena v. State Farm Lloyds*, 980 S.W.2d 949 (Tex. App. – Corpus Christi 1998, no writ)(limitations for breach of an insurance policy begins to run when the loss is denied); *Murray v. San Jacinto Agency, Inc.*, 800 S.W.2d 826, 828 (Tex. 1990) (limitations for a bad faith claim accrues on the date the insurer denies coverage).

Given the moist, humid climate in many areas of Texas, it is quite possible to encounter mold or mildew claims in which there has been a water damage loss, but mold or mildew has appeared in areas unrelated to the prior loss location. In such claims, the concurrent cause doctrine may apply. The concurrent cause doctrine provides that when a covered and a non-covered peril combine to cause the claimed damage, the insured is entitled to recover only that portion of the damage caused solely by the covered peril. See *Wallis v. United Services Automobile Association*, 2 S.W.3d 300, 303 (Tex. App.– San Antonio 1999, writ denied) (citing *Travelers Indem. Co. v. McKillip*, 469 S.W.2d 160, 163 (Tex.1971)). The doctrine grows out of the basic insurance contract principle that insureds are only entitled to recover for damages covered by the policy. See *Employers Casualty Co. v. Block*, 744 S.W.2d 940, 945 (Tex.1988) overruled in part on other grounds, 925 S.W.2d 696 (Tex.1996). Therefore, the burden is on the insured to present evidence by which the jury can allocate the damage caused by the covered peril. See *Lyons v. Millers Casualty Ins. Co. of Texas*, 866 S.W.2d 597, 601 (Tex.1993).

Causation questions will undoubtedly arise on many of the claims. As is the case with any claim, the insureds have the duty to demonstrate they have a claim covered under their policy, or that the damage claimed was caused by a plumbing leak and is covered. It is well established that insureds are not entitled to recover under an insurance policy unless they prove their damage is covered by the policy. See *Employers Casualty Co. v. Block*, 744 S.W.2d 940, 944 (Tex.1988) overruled in part on other grounds by *State Farm Fire & Cas. Co. v. Gandy*, 925 S.W.2d 696 (Tex.1996). Thus, under the concurrent cause doctrine, if a covered and a non-covered peril combine to cause the claimed damage, the insured has the burden to present evidence by which the jury can allocate the damage caused by the covered peril. *Lyons*, 866 S.W.2d at 601. Likewise, the insured has the burden of proof regarding whether several water intrusion events contributed to a single mold growth occurrence, or whether separate water intrusions caused separate resultant mold growths.

The insurer, however, has the burden of proof as to any avoidance or affirmative defense that must be affirmatively pleaded under the Texas Rules of Civil Procedure. This includes any language of exclusion in the policy and any exception to coverage claimed by the insurer. See Tex. Ins. Code Art. 21.58. However, the burden of proof shifts back to the insured to establish an exception to the exclusion which will create coverage. See *Telepak v. United Services Auto. Assoc.*, 887 S.W.2d 506, 507-08 (Tex.App.– San Antonio 1994, writ denied); *The Millers Cas. Ins. Co. of Texas v. Lyons*, 798 S.W.2d 339, 345 (Tex. App.– Eastland 1990) *affirmed* 866 S.W.2d 597 (Tex. 1993).

VII. CONCLUSION

The 1978 amendments, 1990 revisions and 1998 Supreme Court decision in *Balandran* have had unintended consequences for the insurance industry. The standard homeowners form B is ill equipped to address the growing number of mold claims. To complicate matters, the *Ballard* verdict has so intimidated insurers, many are paying claims they do not owe, raising premiums for homeowners and postponing clarification of these important issues.

**QUICK REFERENCE
TEXAS HOMEOWNERS POLICY - FORM A**

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YOUR DUTIES AFTER A LOSS

Section I:

1. Protect the property from further damage.
2. Give prompt written notice to the company.
3. Call the police if a law has been broken.
4. Make a list of all damaged personal property, including costs.
5. If requested, obtain proof of loss form from your agent or the company and submit within 91 days of the request.

Section II:

1. Do not make any voluntary payments except for first aid to others at the time of the accident.
2. Give written notice to agent or company, including details about the accident and any witnesses.
3. Send copies of legal notices you receive to the company.
4. Help the company get the necessary information to make settlement.

**FOR A COMPLETE LIST OF YOUR DUTIES SEE
 PAGES 5 AND 10 OF YOUR POLICY.**

**Prescribed by the State Board of Insurance
 Homeowners Form A - Effective July 8, 1992
 (Revised January 1, 1994)**

HOMEOWNERS FORM A

AGREEMENT

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

DEFINITIONS

In this policy, "you" and "your" refer to the "named insured" shown on the declarations page and the spouse if a resident of the same household. "We", "us" and "our" refer to the company providing this insurance. In addition, certain words and phrases are defined as follows:

1. **"Bodily Injury"** means bodily harm, sickness or disease. This includes required care, loss of services and death that results.
2. **"Business"** includes trade, profession or occupation.
3. **"Business day,"** when used in this policy, means a day other than a Saturday, Sunday or holiday recognized by the state of Texas.
4. **"Insured"** means you and residents of your household who are:
 - a. your relatives; or
 - b. other persons under the age of 21 and in the care of any person named above.

Under Section II Liability, **"insured"** also means:

- c. any person or organization legally responsible for animals or watercraft to which this policy applies. You or a person included in 4.a. or 4.b. above must own the animal or watercraft. A person or organization using or having custody of these animals or watercraft without consent of the owner is not an **insured**.
- d. With respect to any vehicle to which this policy applies:
 - (1) any employee of an **insured** while engaged in the employment of the **insured**; or
 - (2) any other person using the vehicle on an **insured location** with your consent.
5. **"Insured location"** means:
 - a. the **residence premises**.
 - b. the part of other premises, other structures and grounds you use as a residence and:

- (1) which is shown on the declaration page; or
- (2) which you acquire during the policy period for your use as a residence.
- c. any premises you use in connection with a premises in 5.a. or 5.b. above.
- d. any part of a premises:
 - (1) not owned by an **insured**; and
 - (2) where an **insured** is temporarily residing.
- e. vacant land, other than farm land, owned by or rented to an **insured**.
- f. land owned by or rented to an **insured** on which a one or two family dwelling is being built as a residence for an **insured**.
- g. individual or family cemetery plots or burial vaults of an **insured**.
- h. any part of a premises occasionally rented to an **insured** for other than **business** use.

6. **"Occurrence"** means an accident, including exposure to conditions, which result in **bodily injury** or **property damage** during the policy period.
7. **"Property damage"** means injury to, destruction of, or loss of use of property.
8. **"Residence employee"** means an employee of an **insured** who performs duties related to the ownership, maintenance or use of the **residence premises**, including maintenance or use of a motor vehicle. This includes employees who perform similar duties elsewhere for an **insured**. This does not include employees while performing duties related to the **business** of an **insured**.
9. **"Residence premises"** means the **residence premises** shown on the declarations page. This includes the one or two family dwelling, including other structures, and grounds where you reside or intend to reside within 60 days after the effective date of this policy.

SECTION I - PROPERTY COVERAGE

COVERAGE A (DWELLING)

We cover:

1. the dwelling on the **residence premises** shown on the declarations page including structures attached to the dwelling:
 - a. while occupied by an **insured** as a dwelling; or
- b. if an **insured** intends to occupy the dwelling within 60 days after the effective date of this policy.
2. other structures on the **residence premises** set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line or similar connection. The total limit of

liability for other structures is the limit of liability shown on the declaration page or 10% of Coverage A (Dwelling) limit of liability, whichever is greater. This is additional insurance and does not reduce the Coverage A (Dwelling) limit of liability.

We do not cover other structures:

- a. used for commercial, manufacturing or farming purposes; or
 - b. wholly rented to any person, unless used solely as a private garage.
3. wall to wall carpeting attached to a building on the residence premises.

COVERAGE B (PERSONAL PROPERTY)

We cover:

1. a. personal property owned, worn or used by an insured while on the residence premises. This includes window or wall air conditioning units.
- b. at your request, property of others while the property is on the part of the residence premises occupied by an insured.
2. a. personal property owned, worn or used by an insured anywhere in the world.
- b. at your request, personal property of a residence employee when:
 - (1) the property is away from the residence premises of the residence employee and in the control of the residence employee; and
 - (2) while the residence employee is performing work for you.

Our total limit of liability under 2.a. and 2.b. above is 10% of the Coverage B (Personal Property) limit of liability or \$1,000, whichever is greater. This is additional insurance and does not reduce the Coverage B (Personal Property) limit of liability.

SPECIAL LIMITS OF LIABILITY. These limits do not increase the Coverage B (Personal Property) limit of liability. The special limit for each numbered category below is the total limit for each loss for all property in that category.

1. Money/Bank Cards. \$100 on money or numismatic property or loss by theft or unauthorized use of bank fund transfer cards registered to an insured.
2. Bullion/Valuable Papers. \$500 on gold or silver bullion, manuscripts, notes, securities, stamps, philatelic property, accounts, bills, deeds, evidences of debt, letters of credit, passports, documents, transportation or other tickets.
3. Jewelry/Watches/Furs. \$500 for loss by theft of gems, watches, jewelry or furs.
4. Business Personal Property. \$2,500 on business property or farm and ranch property.

We do not cover any business property or farm and ranch property:

- a. that consists of samples or articles for sale or delivery; or
- b. if the property is away from the residence premises.

PROPERTY NOT COVERED. We do not cover:

1. articles separately described and specifically insured by this or other insurance.
2. animals or birds.
3. motor or engine propelled vehicles or machines designed for movement on land, including attached machinery or equipment.

However, we do cover such vehicles which are not subject to motor vehicle registration and are:

- a. devices and equipment for assisting the handicapped.
 - b. power mowers.
 - c. golf carts.
 - d. vehicles or machines used for recreational purposes while located on the residence premises.
 - e. farm equipment not designed for use principally on public roads.
4. trailers, semi-trailers or mobile homes.

However, we do cover:

- a. trailers and semi-trailers that are designed for use principally off public roads.
 - b. boat trailers while on the residence premises.
5. aircraft meaning any device used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo.
6. watercraft, including outboard motors and furnishings or equipment.
- We do cover watercraft, including outboard motors and furnishings or equipment, while located on land on the residence premises.
7. property of roomers or tenants.
 8. property usually rented to others off the residence premises.

EXTENSIONS OF COVERAGE.

1. **DEBRIS REMOVAL.** We will pay your expense for the removal from the residence premises of:
 - a. debris of covered property if a Peril Insured Against causes the loss.
 - b. a tree that has damaged covered property if a Peril Insured Against causes the tree to fall.

This does not increase the limit of liability that applies to the damaged property.
2. **LOSS OF USE.** If a loss caused by a Peril Insured Against under Section I makes the residence premises wholly or partially untenable, we cover:

- a. additional living expense, meaning any necessary and reasonable increase in living expense you incur so that your household can maintain its normal standard of living.
- b. fair rental value, meaning the fair rental value of that part of the residence premises usually rented to others by you, less any expenses that do not continue.

The total limit of liability for all loss of use is 10% of the Coverage A (Dwelling) limit of liability. This is additional insurance and does not reduce the Coverage A (Dwelling) limit of liability. The deductible clause does not apply to loss of use coverage.

Payment will be for the reasonable time required to repair or replace the damaged property. If you permanently relocate, payment will be for the reasonable time required for your household to become settled.

The periods of time for loss of use are not limited by expiration of this policy.

- 3. **REASONABLE REPAIRS.** If a Peril Insured Against causes the loss, we will pay the reasonable cost you incur for necessary repairs made solely to protect covered property from further damage. This coverage does not increase the limit of liability that applies to the property being repaired.
- 4. **TREES, SHRUBS, PLANTS AND LAWNS.** We cover trees, shrubs, plants and lawns, on the residence premises, only for loss caused by the following Perils Insured Against: Fire or Lightning, Explosion, Aircraft, Vehicles not owned or operated by a resident of the residence premises, Vandalism and Malicious Mischief, Riot and Civil Commotion and Theft or attempted theft.

The limit of liability for this coverage is 5% of the Coverage A (Dwelling) limit of liability. We will not pay more than \$250 for any one tree, shrub or plant, including the cost of removal. We do not cover property grown for business purposes.

This is not additional insurance and does not increase the Coverage A (Dwelling) limit of liability. The deductible clause does not apply to trees, shrubs, plants and lawns.

- 5. **PROPERTY REMOVED.** We pay for expense and damage incurred in the removal of covered property from an insured location endangered by a Peril Insured Against. This coverage exists on a pro rata basis for 30 days at each location to which such property is removed for preservation. This is not additional insurance and does not increase the Coverage B (Personal Property) limit of liability.

- 6. **CONSEQUENTIAL LOSS.** We insure:

- a. property contained in a building on the residence premises against loss due to change in temperature as a direct result of physical damage to the dwelling, or any equipment contained in the dwelling, caused by a Peril Insured Against. The deductible clause does not apply to this coverage.
- b. property contained in a building on the residence premises against loss due to change in temperature as a direct result of physical damage to any power, heating or cooling equipment (including connections and supply pipes) not contained in or on the dwelling, caused by a Peril Insured Against.

The total limit of liability for the coverage described in 6.b. above is \$500. This is not additional insurance and does not increase the Coverage B (Personal Property) limit of liability.

- 7. **AUTOMATIC REMOVAL.** If you move from the residence premises shown on the declarations page to another location within the United States, to be occupied as your principal residence, we cover:

- a. the personal property under Coverage B (Personal Property) at each location in the proportion that the value at each location bears to the total value of all the personal property covered under Coverage B (Personal Property).
- b. property in transit up to 10% of the Coverage B (Personal Property) limit of liability or \$1,000, whichever is greater.

We provide coverage for only 30 days from the date the removal begins.

SECTION I - PERILS INSURED AGAINST

COVERAGE A (DWELLING) AND COVERAGE B (PERSONAL PROPERTY)

We insure against physical loss to the property described in Coverage A (Dwelling) and Coverage B (Personal Property) caused by a peril listed below, unless the loss is excluded in Section I exclusions.

- 1. **Fire and Lightning.**
- 2. **Sudden and Accidental Damage from Smoke.**
This peril does not cover loss caused by smog or by smoke from industrial or agricultural operations.
- 3. **Windstorm, Hurricane and Hail.**

This peril does not cover:

- a. loss to the following:
 - (1) cloth awnings, greenhouses and their contents, buildings or structures located wholly or partially over water and their contents.
 - (2) radio and television towers, outside satellite dishes, masts and antennas, including lead-in wiring, wind chargers and windmills.
- b. loss caused by rain, snow, sand or dust, whether or not driven by wind, unless the direct force of wind or hail makes an opening in the roof or wall

and the rain, snow, sand or dust enters through this opening and causes the damage.

4. **Explosion.**

5. **Aircraft and Vehicles.**

This peril does not cover loss caused by any vehicle owned or operated by an occupant of the residence premises

6. **Vandalism and Malicious Mischief.**

7. **Riot and Civil Commotion.**

8. **Theft, including attempted theft and loss of property from a known place when it is likely that the property has been stolen.**

The peril does not cover:

a. personal property while away from the residence premises at any other residence owned by, rented to or occupied by an insured, except while an insured is temporarily living there.

b. personal property while away from the residence premises and unattended in or on any motor vehicle or trailer, other than a public conveyance, unless all its doors, windows and other openings are closed and locked and there are visible marks of forcible entry.

Property is not unattended when the insured has entrusted the keys of the vehicle to a custodian.

c. building materials and supplies not on the residence premises.

SECTION I - EXCLUSIONS

1. We do not cover property described under Coverage A (Dwelling) or Coverage B (Personal Property) for loss caused by any of the following. These exclusions do not apply to an ensuing loss caused by fire, smoke or explosion.

a. We do not cover loss to electrical devices or wiring caused by electricity other than lightning.

b. We do not cover loss caused by or resulting from flood, surface water, waves, tidal water of tidal waves, overflow of streams or other bodies of water or spray from any of these whether or not driven by wind.

We do cover an ensuing loss by theft or attempted theft or any act or attempted act of stealing.

2. **GOVERNMENTAL ACTION.**

We do not cover loss caused by the destruction of property by order of governmental authority.

But we do cover loss caused by acts of destruction ordered by governmental authority taken at the time of a fire to prevent its spread, if the fire would be covered under this policy.

3. **BUILDING LAWS.**

We do not cover loss caused by or resulting from the enforcement of any ordinance or law regulating the construction, repair or demolition of a building or structure.

4. **WAR DAMAGE.**

We do not cover loss resulting directly or indirectly from war. This includes undeclared war, civil war, insurrection, rebellion, revolution, warlike act by military personnel, destruction or seizure or use for military purpose, and any consequence of these. Discharge of a nuclear weapon will be deemed a warlike act even if accidental.

5. **NUCLEAR DAMAGE.**

We do not cover loss resulting directly or indirectly from nuclear reaction, radiation or radioactive contamination, all whether controlled or uncontrolled or however caused. We cover direct loss by fire resulting from nuclear reaction, radiation or radioactive contamination.

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SECTION I - DEDUCTIBLES

DEDUCTIBLE CLAUSE 1 - WINDSTORM, HURRICANE AND HAIL. - The amount shown on the declarations page for Deductible Clause 1 will be deducted from the combined amount of each loss under Coverage A (Dwelling) and Coverage B (Personal Property) that results from windstorm, hurricane or hail.

DEDUCTIBLE CLAUSE 2 - ALL OTHER PERILS - The amount shown on the declarations page for

Deductible Clause 2 will be deducted from the combined amount of each loss under Coverage A (Dwelling) and Coverage B (Personal Property), unless the loss results from windstorm, hurricane or hail.

If a single event causes loss by windstorm, hurricane or hail and loss by lightning, only the larger deductible will apply.

SECTION I - CONDITIONS

1. **Insurable Interest and Limit of Liability.** Even if more than one person has an insurable interest in the property covered, we will not be liable in any one loss:

a. to the insured for more than the amount of the insured's interest at the time of loss; or

b. for more than the applicable limit of liability.

Each time there is a loss to any building insured under Coverage A (Dwelling), the amount of insurance applicable to that building for loss by fire will be reduced by the amount of the loss. As repairs are made, the amount of insurance will be reinstated up to the limit of liability shown on the declarations page.

Article 6.13. Policy A Liquidated Demand. A fire insurance policy, in case of a total loss by fire of property insured, shall be held and considered to be a liquidated demand against the company for the full amount of such policy. The provisions of this article shall not apply to personal property.

2. **Residential Community Property Clause.** This policy, subject to all other terms and conditions, when covering residential community property, as defined by state law, shall remain in full force and effect as to the interest of each spouse covered, irrespective of divorce or change of ownership between the spouses unless excluded by endorsement attached to this policy until the expiration of the policy or until cancelled in accordance with the terms and conditions of this policy.

3. **Duties After Loss.**

a. **Your Duties After Loss.** In case of a loss to covered property caused by a peril insured against, you must:

- (1) give prompt written notice to us of the facts relating to the claim.
- (2) notify the police in case of loss by theft.
- (3)
 - (a) protect the property from further damage.
 - (b) make reasonable and necessary repairs to protect the property.
 - (c) keep an accurate record of repair expenses.
- (4) furnish a complete inventory of damaged personal property showing the quantity, description and amount of loss. Attach all bills, receipts and related documents which you have that justify the figures in the inventory.
- (5) as often as we reasonably require:
 - (a) provide us access to the damaged property.
 - (b) provide us with pertinent records and documents we request and permit us to make copies.
 - (c) submit to examination under oath and sign and swear to it.
- (6) send to us if we request, your signed sworn proof of loss within 91 days of our request on a standard form supplied by us. We must request a signed sworn proof of loss within 15 days after we receive your written notice, or we waive our right to require a proof of loss. Such waiver will not waive our other rights under this policy.

(a) This proof of loss shall state, to the best of your knowledge and belief:

- (i) the time and cause of loss.
- (ii) the interest of the **insured** and all others in the property involved including all liens on the property.
- (iii) other insurance which may cover the loss.
- (iv) the actual cash value of each item of property and the amount of loss to each item.

b. **Our Duties After Loss.**

(1) Within 15 days after we receive your written notice of claim, we must:

(a) acknowledge receipt of the claim.

If our acknowledgment of the claim is not in writing, we will keep a record of the date, method and content of our acknowledgment.

(b) begin any investigation of the claim.

(c) specify the information you must provide in accordance with "Your Duties After Loss" (Item 3.a. above).

We may request more information, if during the investigation of the claim such additional information is necessary.

(2) After we receive the information we request, we must notify you in writing whether the claim will be paid or has been denied or whether more information is needed:

(a) within 15 business days; or

(b) within 30 days if we have reason to believe the loss resulted from arson.

(3) If we do not approve payment of your claim or require more time for processing your claim, we must:

(a) give the reasons for denying your claim; or

(b) give the reasons we require more time to process your claim. But, we must either approve or deny your claim within 45 days after requesting more time.

4. **Loss Settlement.** Our limit of liability and payment for covered losses under Section I Property Coverage will not exceed the smallest of the following:

- a. the actual cash value at the time of loss determined with proper deduction for depreciation;
- b. the cost to repair or replace the damaged property with material of like kind and quality, with proper deduction for depreciation; or
- c. the specified limit of liability of the policy.

5. **Loss to a Pair or Set.** In case of loss to an item which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set. The importance of the item will be considered in assessing the loss. Such loss will not be considered a total loss of the pair or set.

6. **Salvage Rights.** If we notify you that we will pay your claim or part of your claim, the notice must also state whether we will or will not take all or any part of the damaged property. We must bear the expense of our salvage rights.

7. **Appraisal.** If you and we fail to agree on the actual cash value, amount of loss or the cost of repair, either can make a written demand for appraisal. Each will then select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a district court of a judicial district where the loss occurred. The two appraisers will then set the amount of loss, stating separately the actual cash value and loss to each item.

If the appraisers fail to agree, they will submit their differences to the umpire. An itemized decision agreed to by any two of these three and filed with us will set the amount of loss. Such award shall be binding on you and us.

Each party will pay its own appraiser and bear the other expenses of the appraisal and umpire equally.

8. **Loss Payment.**

a. If we notify you that we will pay your claim, or part of your claim, we must pay within 5 business days after we notify you.

b. If payment of your claim or part of your claim requires the performance of an act by you, we must pay within 5 business days after the date you perform the act.

9. **Catastrophe Claims.**

If a claim results from a weather related catastrophe or a major natural disaster, each claim handling deadline shown under the Duties After Loss and Loss Payment provisions is extended for an additional 15 days.

Catastrophe or Major Natural Disaster means a weather related event which:

a. is declared a disaster under the Texas Disaster Act of 1975; or

b. is determined to be a catastrophe by the State Board Insurance.

10. **Other Insurance - Section I.** Other insurance is permitted on property covered by this policy, but other insurance covering the dwelling is not permitted. If a loss covered by this policy is also covered by other insurance, we will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss.

11. **Suit Against Us.** No suit or action can be brought unless the policy provisions have been complied with. Action brought against us must be started within two years and one day after the cause of action accrues.

12. **Abandonment or Property.** There can be no abandonment of property to us.

13. **Vacancy.** If the insured moves from the dwelling and a substantial part of the personal property is removed from that dwelling, the dwelling will be considered vacant. Coverage that applies under Coverage A (Dwelling) will be suspended effective 60 days after the dwelling becomes vacant. The coverage will remain suspended during such vacancy.

14. **Mortgage Clause (without contribution).**

a. The word "mortgagee" includes trustee.

b. We will pay for any covered loss of or damage to buildings or structures to the mortgagee shown on the declarations page as interests appear.

c. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building or structure.

d. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the mortgagee has the right to receive loss payment if the mortgagee:

(1) at our request, pays any premiums due under this policy, if you have failed to do so.

(2) submits a signed, sworn statement of loss within 91 days after receiving notice from us of your failure to do so.

(3) has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgagee.

All of the terms of this policy will then apply directly to the mortgagee. Failure of the mortgagee to comply with d.(1), d.(2) or d.(3) above shall void this policy as to the interest of the mortgagee.

e. If we pay the mortgagee for any loss or damage and deny payment to you because of your acts or because you fail to comply with the terms of this policy:

(1) the mortgagee's rights under the mortgagee will be transferred to us to the extent of the amount we pay.

(2) the mortgagee's right to recover the full amount of the mortgagee's claim will not be impaired.

At our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

HO-A

- f. If this policy is cancelled, we will give the mortgagee specifically named on the declarations page written notice of cancellation.

If we cancel the policy, we will give the mortgagee the same number of days notice of cancellation we give to you.

If you cancel the policy, we will give the mortgagee notice of cancellation to be effective on the date stated in the notice. The date of cancellation cannot be before the 10th day after the date we mail the notice.

We will not give notice of cancellation to any successor or assignee of the mortgagee named in this policy.

- g. If the property described under Coverage A (Dwelling) is foreclosed upon under the deed of trust, the mortgagee may cancel this policy of

insurance and will be entitled to any unearned premiums from this policy.

The mortgagee must credit any unearned premium against any deficiency owed by the borrower and return any unearned premium not so credited to the borrower. The unearned premium will be figured using the customary pro rata procedures.

- h. If we elect not to renew this policy, the mortgagee specifically named on the declarations page will be given 30 days written notice of the non-renewal.

15. **No Benefit to Bailee.** We will not recognize any assignment or grant any coverage for the benefit of a person or organization holding, storing or moving property for a fee.

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**Section II Coverages
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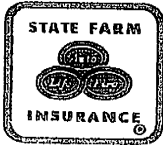
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**YOUR
TEXAS**

HOMEOWNERS

POLICY



**QUICK REFERENCE
TEXAS HOMEOWNERS POLICY - FORM B**

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YOUR DUTIES AFTER A LOSS

Section I:

1. Protect the property from further damage.
2. Give prompt written notice to the company.
3. Call the police if a law has been broken.
4. Make a list of all damaged personal property, including costs.
5. If requested, obtain proof of loss form from your agent or the company and submit within 91 days of the request.

Section II:

1. Do not make any voluntary payments except for first aid to others at the time of the accident.
2. Give written notice to agent or company, including details about the accident and any witnesses.
3. Send copies of legal notices you receive to the company.
4. Help the company get the necessary information to make settlement.

**FOR A COMPLETE LIST OF YOUR DUTIES SEE
PAGES 5 AND 10 OF YOUR POLICY.**

HOMEOWNERS FORM B

AGREEMENT

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

DEFINITIONS

In this policy, "you" and "your" refer to the "named insured" shown on the declarations page and the spouse if a resident of the same household. "We", "us" and "our" refer to the Company providing this insurance. In addition, certain words and phrases are defined as follows:

1. "**Bodily injury**" means bodily harm, sickness or disease. This includes required care, loss of services and death that results.
2. "**Business**" includes trade, profession or occupation.
3. "**Business day**", when used in this policy means a day other than a Saturday, Sunday or holiday recognized by the state of Texas.
4. "**Insured**" means you and residents of your household who are:
 - a. your relatives; or
 - b. other persons under the age of 21 and in the care of any person named above.

Under Section II Liability, "**insured**" also means:

- c. any person or organization legally responsible for animals or watercraft to which this policy applies. You or a person included in 4.a. or 4.b. above must own the animal or watercraft. A person or organization using or having custody of these animals or watercraft without consent of the owner is not an **insured**.
- d. With respect to any vehicle to which this policy applies:
 - (1) any employee of an **insured** while engaged in the employment of the **insured**; or
 - (2) any other person using the vehicle on an **insured location** with your consent.
5. "**Insured location**" means:
 - a. the **residence premises**.
 - b. the part of other premises, other structures and grounds you use as a residence and:

- (1) which is shown on the declarations page; or
- (2) which you acquire during the policy period for your use as a residence.

- c. any premises you use in connection with a premises in 5.a. or 5.b. above.
- d. any part of a premises:
 - (1) not owned by an **insured**; and
 - (2) where an **insured** is temporarily residing.
- e. vacant land, other than farm land, owned by or rented to an **insured**.
- f. land owned by or rented to an **insured** on which a one or two family dwelling is being built as a residence for an **insured**.
- g. individual or family cemetery plots or burial vaults of an **insured**.
- h. any part of a premises occasionally rented to an **insured** for other than **business** use.

6. "**Occurrence**" means an accident, including exposure to conditions, which results in **bodily injury** or **property damage** during the policy period.
7. "**Property damage**" means injury to, destruction of, or loss of use of property.
8. "**Residence employee**" means an employee of an **insured** who performs duties related to the ownership, maintenance or use of the **residence premises**, including maintenance or use of a motor vehicle. This includes employees who perform similar duties elsewhere for an **insured**. This does not include employees while performing duties related to the **business** of an **insured**.
9. "**Residence premises**" means the **residence premises** shown on the declarations page. This includes the one or two family dwelling, including other structures, and grounds where an **insured** resides or intends to reside within 60 days after the effective date of this policy.

SECTION I - PROPERTY COVERAGE

COVERAGE A (DWELLING)

We cover:

1. the dwelling on the **residence premises** shown on the declarations page including structures attached to the dwelling.
2. other structures on the **residence premises** set apart from the dwelling by clear space. This includes

structures connected to the dwelling by only a fence, utility line or similar connection.

The total limit of liability for other structures is the limit of liability shown on the declaration page or 10% of the Coverage A (Dwelling) limit of liability, whichever is greater. This is additional insurance and does not reduce the Coverage A (Dwelling) limit of liability.

We do not cover other structures:

- a. used for business purposes; or
 - b. wholly rented to any person, unless used solely as a private garage.
3. wall to wall carpeting attached to a building on the residence premises.

COVERAGE B (PERSONAL PROPERTY)

We cover:

- 1. a. personal property owned, worn or used by an insured while on the residence premises. This includes window or wall air conditioning units.
- b. at your request, property of others while the property is on the part of the residence premises occupied by an insured.
- 2. a. personal property owned, worn or used by an insured anywhere in the world.
- b. at your request, personal property of a residence employee when:
 - (1) the property is away from the residence premises of the residence employee and in the control of the residence employee; and
 - (2) while the residence employee is performing work for you.

Our total limit of liability under 2.a. and 2.b. above is 10% of the Coverage B (Personal Property) limit of liability or \$1000, whichever is greater. This is additional insurance and does not reduce the Coverage B (Personal Property) limit of liability.

SPECIAL LIMITS OF LIABILITY. These limits do not increase the Coverage B (Personal Property) limit of liability. The special limit for each numbered category below is the total limit for each loss for all property in that category.

- 1. Money/Bank Cards. \$100 on money or numismatic property or loss by theft or unauthorized use of bank fund transfer cards registered to an insured.
- 2. Bullion/Valuable Papers. \$500 on gold or silver bullion, manuscripts, notes, securities, stamps, philatelic property, accounts, bills, deeds, evidences of debt, letters of credit, passports, documents, transportation or other tickets.
- 3. Jewelry/Watches/Furs. \$500 for loss by theft of gems, watches, jewelry or furs.
- 4. Business Personal Property. \$2,500 on business property.

We do not cover any business property:

- a. that consists of samples or articles for sale or delivery; or
- b. if the property is away from the residence premises.

PROPERTY NOT COVERED. We do not cover:

- 1. articles separately described and specifically insured by this or other insurance.
- 2. animals or birds.

- 3. motor or engine propelled vehicles or machines designed for movement on land, including attached machinery or equipment.

However, we do cover such vehicles which are not subject to motor vehicle registration and are:

- a. devices and equipment for assisting the handicapped.
 - b. power mowers.
 - c. golf carts.
 - d. vehicles or machines used for recreational purposes while located on the residence premises.
 - e. farm equipment not designed for use principally on public roads.
4. trailers, semi-trailers or mobile homes.

However, we do cover:

- a. trailers and semi-trailers that are designed for use principally off public roads.
 - b. boat trailers while on the residence premises.
5. aircraft meaning any device used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo.
6. watercraft, including outboard motors and furnishings or equipment.
- We do cover watercraft, including outboard motors and furnishings or equipment, while located on land on the residence premises.
- 7. property of roomers or tenants.
 - 8. property usually rented to others off the residence premises.

EXTENSIONS OF COVERAGE.

- 1. **DEBRIS REMOVAL.** We will pay your expense for the removal from the residence premises of:
 - a. debris of covered property if a Peril Insured Against causes the loss.
 - b. a tree that has damaged covered property if a Peril Insured Against causes the tree to fall.

This does not increase the limit of liability that applies to the damaged property.
- 2. **LOSS OF USE.** If a loss caused by a Peril Insured Against under Section 1 makes the residence premises wholly or partially untenable, we cover:
 - a. additional living expense, meaning any necessary and reasonable increase in living expense you incur so that your household can maintain its normal standard of living.
 - b. fair rental value, meaning the fair rental value of that part of the residence premises usually rented to others by you, less any expenses that do not continue.

The total limit of liability for all loss of use is 20% of the Coverage A (Dwelling) limit of liability. This is additional insurance and does not reduce the

Coverage A (Dwelling) limit of liability. The deductible clause does not apply to loss of use coverage.

Payment will be for the reasonable time required to repair or replace the damaged property. If you permanently relocate, payment will be for the reasonable time required for your household to become settled.

The periods of time for loss of use are not limited by expiration of this policy.

3. **REASONABLE REPAIRS.** If a Peril Insured Against causes the loss, we will pay the reasonable cost you incur for necessary repairs made solely to protect covered property from further damage. This coverage does not increase the limit of liability that applies to the property being repaired.

4. **TREES, SHRUBS, PLANTS AND LAWNS.** We cover trees, shrubs, plants and lawns, on the residence premises, only for loss caused by the following Perils Insured Against: Fire or Lightning, Explosion, Aircraft, Vehicles not owned or operated by a resident of the residence premises, Vandalism and Malicious Mischief, Riot and Civil Commotion and Theft or attempted theft.

The maximum limit of liability for this coverage is 5% of the Coverage A (Dwelling) limit of liability. We will not pay more than \$250 for any one tree, shrub or plant, including the cost of removal. We do not cover property grown for business purposes.

This is not additional insurance and does not increase the Coverage A (Dwelling) limit of liability. The deductible clause does not apply to trees, shrubs, plants and lawns.

5. **PROPERTY REMOVED.** We pay for expense and damage incurred in the removal of covered property from an insured location endangered by a Peril Insured Against. This coverage exists on a pro rata basis for 30 days at each location to which such

property is removed for preservation. This is not additional insurance and does not increase the Coverage B (Personal Property) limit of liability.

6. **CONSEQUENTIAL LOSS.** We insure:
- a. property contained in a building on the residence premises against loss due to change in temperature as a direct result of physical damage to the dwelling, or any equipment contained in the dwelling, caused by a Peril Insured Against. The deductible clause does not apply to this coverage.
 - b. property contained in a building on the residence premises against a loss due to change in temperature as a direct result of physical damage to any power, heating or cooling equipment (including connections and supply pipes) not contained in or on the dwelling, caused by a Peril Insured Against.

The total limit of liability for the coverage described in 6.b. above is \$500. This is not additional insurance and does not increase the Coverage B (Personal Property) limit of liability.

7. **AUTOMATIC REMOVAL.** If you move from the residence premises shown on the declarations page to another location within the United States, to be occupied as your principal residence, we cover:

- a. the personal property under Coverage B (Personal Property) at each location in the proportion that the value at each location bears to the total value of all the personal property covered under Coverage B (Personal Property).
- b. property in transit up to 10% of the Coverage B (Personal Property) limit of liability or \$1,000, whichever is greater.

We provide coverage for only 30 days from the date the removal begins.

SECTION I - PERILS INSURED AGAINST

COVERAGE A (DWELLING)

We insure against all risks of physical loss to the property described in Section I Property Coverage, Coverage A (Dwelling) unless the loss is excluded in Section I Exclusions.

COVERAGE B (PERSONAL PROPERTY)

We insure against physical loss to the property described in Section I Property Coverage, Coverage B (Personal Property) caused by a peril listed below, unless the loss is excluded in Section I Exclusions.

1. Fire and Lightning.
2. Sudden and Accidental Damage from Smoke.
3. Windstorm, Hurricane and Hail.
4. Explosion.
5. Aircraft and Vehicles.
6. Vandalism and Malicious Mischief.
7. Riot and Civil Commotion.

8. Collapse of Building or any part of the building.
9. Accidental Discharge, Leakage or Overflow of Water or Steam from within a plumbing, heating or air conditioning system or household appliance.

A loss resulting from this peril includes the cost of tearing out and replacing any part of the building necessary to repair or replace the system or appliance. But this does not include loss to the system or appliance from which the water or steam escaped.

Exclusions 1.a. through 1.h. under Section I Exclusions do not apply to loss caused by this peril.

10. Falling Objects.

This peril does not include loss to property contained in a building unless the roof or outside wall of the building is first damaged by the falling object.

11. Freezing of household appliances.

12. Theft, including attempted theft and loss of property from a known place when it is likely that the property

has been stolen.

SECTION I - EXCLUSIONS

1. The following exclusions apply to loss to property described under Coverage A (Dwelling) or Coverage B (Personal Property), but they do not apply to an ensuing loss caused by fire, smoke or explosion.

- a. We do not cover loss to electrical devices or wiring caused by electricity other than lightning.
- b. We do not cover loss caused by smog or by smoke from industrial or agricultural operations.
- c. We do not cover loss caused by windstorm, hurricane or hail to:

- (1) cloth awnings, greenhouses and their contents, buildings or structures located wholly or partially over water and their contents.
- (2) radio and television towers, outside satellite dishes, masts and antennas, including lead-in wiring, windchargers and windmills.
- (3) personal property contained in a building unless direct force of wind or hail makes an opening in a roof or wall and rain, snow, sand or dust enters through this opening and causes the damage.

d. We do not cover loss of the following property by theft, including attempted theft and loss of property from a known place when it is likely that the property has been stolen.

- (1) personal property while away from the residence premises at any other residence owned by, rented to or occupied by an insured, except while an insured is temporarily living there.
- (2) building materials and supplies not on the residence premises.

e. We do not cover loss to machinery, appliances and mechanical devices caused by mechanical breakdown.

f. We do not cover loss caused by:

- (1) wear and tear, deterioration or loss caused by any quality in property that causes it to damage or destroy itself.
- (2) rust, rot, mold or other fungi.
- (3) dampness of atmosphere, extremes of temperature.
- (4) contamination.
- (5) rats, mice, termites, moths or other insects.

We do cover ensuing loss caused by collapse of building or any part of the building, water damage or breakage of glass which is part of the building if the loss would otherwise be covered under this policy.

g. We do not cover loss caused by animals or birds owned or kept by an insured or occupant of the residence premises.

We do cover ensuing loss caused by collapse of building or any part of the building, water damage or breakage of glass which is part of the building if the loss would otherwise be covered under this policy.

h. We do not cover loss under Coverage A (Dwelling) caused by settling, cracking, bulging shrinkage, or expansion of foundations, walls floors, ceilings, roof structures, walks, drives curbs, fences, retaining walls or swimming pools.

We do cover ensuing loss caused by collapse of building or any part of the building, water damage or breakage of glass which is part of the building if the loss would otherwise be covered under this policy.

i. We do not cover loss caused by or resulting from flood, surface water, waves, tidal water or tide waves, overflow of streams or other bodies of water or spray from any of these whether or not driven by wind.

We do cover an ensuing loss by theft or attempted theft or any act or attempted act of stealing.

j. We do not cover loss caused by or resulting from freezing while the building is unoccupied unless you have used reasonable care to:

- (1) maintain heat in the building; or
- (2) shut off the water supply and drain plumbing, heating and air conditioning systems of water.

k. We do not cover loss caused by earthquake landslide or earth movement.

2. GOVERNMENTAL ACTION.

We do not cover loss caused by the destruction of property by order of governmental authority.

But we do cover loss caused by acts of destruction ordered by governmental authority taken at the time of a fire to prevent its spread, if the fire would be covered under this policy.

3. BUILDING LAWS.

We do not cover loss caused by or resulting from the enforcement of any ordinance or law regulating the construction, repair or demolition of a building or structure.

4. WAR DAMAGE.

We do not cover loss resulting directly or indirectly from war. This includes undeclared war, civil war, insurrection, rebellion, revolution, warlike act by military personnel, destruction or seizure or use of

military purpose, and any consequence of these. Discharge of a nuclear weapon will be deemed a warlike act even if accidental.

5. **NUCLEAR DAMAGE.**

We do not cover loss resulting directly or indirectly from nuclear reaction, radiation or radioactive contamination, all whether controlled or uncontrolled or however caused. We cover direct loss by fire resulting from nuclear reaction, radiation or radioactive contamination.

SECTION I - DEDUCTIBLES

DEDUCTIBLE CLAUSE 1 - WINDSTORM, HURRICANE, HAIL OR WIND DRIVEN RAIN - The amount shown on the declarations page for Deductible Clause 1 will be deducted from the combined amount of each loss under Coverage A (Dwelling) and Coverage B (Personal Property) that results from windstorm, hurricane, hail or wind driven rain.

DEDUCTIBLE CLAUSE 2 - ALL OTHER PERILS - The amount shown on the declarations page for Deductible

Clause 2 will be deducted from the combined amount of each loss under Coverage A (Dwelling) and Coverage B (Personal Property), unless the loss results from windstorm, hurricane, hail or wind driven rain.

If a single event causes loss by windstorm, hurricane, hail or wind driven rain and loss by lightning, only the larger deductible will apply.

SECTION I - CONDITIONS

1. **Insurable Interest and Limit of Liability.** Even if more than one person has an insurable interest in the property covered, we will not be liable in any one loss:
- a. to the insured for more than the amount of the insured's interest at the time of loss; or
 - b. for more than the applicable limit of liability.

Each time there is a loss to any building insured under Coverage A (Dwelling), the amount of insurance applicable to that building for loss by fire will be reduced by the amount of the loss. As repairs are made, the amount of insurance will be reinstated up to the limit of liability shown on the declarations page.

Article 6.13. Policy A Liquidated Demand. A fire insurance policy, in case of a total loss by fire of property insured, shall be held and considered to be a liquidated demand against the company for the full amount of such policy. The provisions of this article shall not apply to personal property.

2. **Residential Community Property Clause.** This policy, subject to all other terms and conditions, when covering residential community property, as defined by state law, shall remain in full force and effect as to the interest of each spouse covered, irrespective of divorce or change of ownership between the spouses unless excluded by endorsement attached to this policy, until the expiration of the policy or until cancelled in accordance with the terms and conditions of this policy.

3. **Duties After Loss.**

- a. **Your Duties After Loss.** In case of a loss to covered property caused by a peril insured against, you must:
- (1) give prompt written notice to us of the facts relating to the claim.
 - (2) notify the police in case of loss by theft.
 - (3) (a) protect the property from further damage.

- (b) make reasonable and necessary repairs to protect the property.
- (c) keep an accurate record of repair expenses.
- (4) furnish a complete inventory of damaged personal property showing the quantity, description and amount of loss. Attach all bills, receipts and related documents which you have that justify the figures in the inventory.
- (5) as often as we reasonably require:
 - (a) provide us access to the damaged property.
 - (b) provide us with pertinent records and documents we request and permit us to make copies.
 - (c) submit to examination under oath and sign and swear to it.
- (6) send to us if we request, your signed sworn proof of loss within 91 days of our request on a standard form supplied by us. We must request a signed sworn proof of loss within 15 days after we receive your written notice, or we waive our right to require a proof of loss. Such waiver will not waive our other rights under this policy.
 - (a) This proof of loss shall state, to the best of your knowledge and belief:
 - (i) the time and cause of loss;
 - (ii) the interest of the insured and all others in the property involved including all liens on the property.
 - (iii) other insurance which may cover the loss.
 - (iv) the actual cash value of each item of property and the amount of loss to each item.

(b) If you elect to make claim under the Replacement Cost Coverage of this policy, this proof of loss shall also state, to the best of your knowledge and belief:

- (i) the replacement cost of the described dwelling.
- (ii) the replacement cost of any other building on which loss is claimed.
- (iii) the full cost of repair or replacement of loss without deduction for depreciation.

b. **Our Duties After Loss.**

(1) Within 15 days after we receive your written notice of claim, we must:

(a) acknowledge receipt of the claim.

If our acknowledgement of the claim is not in writing, we will keep a record of the date, method and content of our acknowledgement.

(b) begin any investigation of the claim.

(c) specify the information you must provide in accordance with "Your Duties After Loss" (item 3.a. above).

We may request more information, if during the investigation of the claim such additional information is necessary.

(2) After we receive the information we request, we must notify you in writing whether the claim will be paid or has been denied or whether more information is needed:

(a) within 15 business days; or

(b) within 30 days if we have reason to believe the loss resulted from arson.

(3) If we do not approve payment of your claim or require more time for processing your claim, we must:

(a) give the reason for denying your claim; or

(b) give the reasons we require more time to process your claim. But, we must either approve or deny your claim within 45 days after requesting more time.

4. **Loss Settlement.** Covered property losses are settled as follows:

a. Our limit of liability and payment for covered losses to personal property, wall to wall carpeting, cloth awnings and fences will not exceed the smallest of the following:

(1) the actual cash value at the time of loss determined with proper deduction for depreciation.

(2) the cost to repair or replace the damaged property with material of like kind and

quality, with proper deduction for depreciation; or

(3) the specified limit of liability of the policy.

b. Our limit of liability for covered losses to dwelling and other structure(s) under Coverage A (Dwelling), except wall to wall carpeting, cloth awnings and fences, will be at replacement cost settlement subject to the following:

(1) If, at the time of loss, the Coverage A (Dwelling) limit of liability is 80% or more of the full replacement cost of the dwelling, we will pay the repair or replacement cost of the damaged building structure(s), without deduction for depreciation.

(2) If, at the time of loss, the Coverage A (Dwelling) limit of liability is less than 80% of the full replacement cost of the dwelling, we will pay only a proportionate share of the full replacement cost of the damaged building structure(s). Our share is equal to:

Replacement Cost of the Loss

X

Coverage A (Dwelling) Limit of Liability
80% of Replacement Cost of the Dwelling

(3) If, at the time of loss, the actual cash value of the damaged building structure(s) is greater than the replacement cost determined under (1) or (2) above, we will pay the actual cash value up to the applicable limit of liability.

In determining the amount of Insurance required to equal 80% of the full replacement cost of the dwelling, do not include the value of excavations, underground pipes, and wiring and foundations which are below the surface of the ground.

We will pay only the actual cash value of the damaged building structure(s) until repair or replacement is completed. Repair or replacement must be completed within 365 days after loss unless you request in writing that this time limit be extended for an additional 180 days. Upon completion of repairs or replacement, we will pay the additional amount claimed under replacement cost coverage, but our payment will not exceed the smallest of the following:

(1) the limit of liability under this policy applicable to the damaged or destroyed building structure(s);

(2) the cost to repair or replace that part of the building structure(s) damaged, with material of like kind and quality and for the same use and occupancy on the same premises; or

(3) the amount actually and necessarily spent to repair or replace the damaged building structure(s).

5. **Loss to a Pair or Set.** In case of loss to an item which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set. The importance of the item will be considered in assessing the loss. Such loss will not be considered a total loss of the pair or set.

6. **Salvage Rights.** If we notify you that we will pay your claim or part of your claim, the notice must also state whether we will or will not take all or any part of the damaged property. We must bear the expense of our salvage rights.

7. **Appraisal.** If you and we fail to agree on the actual cash value, amount of loss, or cost of repair or replacement, either can make a written demand for appraisal. Each will then select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a district court of a judicial district where the loss occurred. The two appraisers will then set the amount of loss, stating separately the actual cash value and loss to each item. If you or we request that they do so, the appraisers will also set:

- a. the full replacement cost of the dwelling.
- b. the full replacement cost of any other building upon which loss is claimed.
- c. the full cost of repair or replacement of loss to such building, without deduction for depreciation.

If the appraisers fail to agree, they will submit their differences to the umpire. An itemized decision agreed to by any two of these three and filed with us will set the amount of the loss. Such award shall be binding on you and us.

Each party will pay its own appraiser and bear the other expenses of the appraisal and umpire equally.

8. **Loss Payment.**

- a. If we notify you that we will pay your claim, or part of your claim, we must pay within 5 business days after we notify you.
- b. If payment of your claim or part of your claim requires the performance of an act by you, we must pay within 5 business days after the date you perform the act.

9. **Catastrophe Claims.**

If a claim results from a weather related catastrophe or a major natural disaster, each claim handling deadline shown under the Duties After Loss and Loss Payment provisions is extended for an additional 15 days.

Catastrophe or Major Natural Disaster means a weather related event which:

- a. is declared a disaster under the Texas Disaster Act of 1975; or
- b. is determined to be a catastrophe by the State Board of Insurance.

10. **Other Insurance - Section I.** Other insurance is permitted on property covered by this policy, but other insurance covering the dwelling is not permitted. If a loss covered by this policy is also covered by other insurance, we will pay only the proportion of the loss that the limit of liability that applies under this policy

bears to the total amount of insurance covering the loss.

11. **Suit Against Us.** No suit or action can be brought unless the policy provisions have been complied with. Action brought against us must be started within two years and one day after the cause of action accrues.

12. **Abandonment of Property.** There can be no abandonment of property to us.

13. **Vacancy.** If the insured moves from the dwelling and a substantial part of the personal property is removed from that dwelling, the dwelling will be considered vacant. Coverage that applies under Coverage A (Dwelling) will be suspended effective 60 days after the dwelling becomes vacant. This coverage will remain suspended during such vacancy.

14. **Mortgage Clause (without contribution).**

- a. The word "mortgagee" includes trustee.
- b. We will pay for any covered loss of or damage to buildings or structures to the mortgagee shown on the declarations page as interests appear.
- c. The mortgagee has the right to receive loss payment even if the mortgagee has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the mortgagee has the right to receive loss payment if the mortgagee:

- (1) at our request, pays any premiums due under this policy, if you have failed to do so.
- (2) submits a signed, sworn statement of loss within 91 days after receiving notice from us of your failure to do so.
- (3) has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgagee.

All of the terms of this policy will then apply directly to the mortgagee. Failure of the mortgagee to comply with d.(1), d.(2) or d.(3) above shall void this policy as to the interest of the mortgagee.

e. If we pay the mortgagee for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:

- (1) the mortgagee's rights under the mortgage will be transferred to us to the extent of the amount we pay.
- (2) the mortgagee's right to recover the full amount of the mortgagee's claim will not be impaired.

At our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If this policy is cancelled, we will give the mortgagee specifically named on the declarations page written notice of cancellation.

If we cancel the policy, we will give the mortgagee the same number of days notice of cancellation we give you.

If you cancel the policy, we will give the mortgagee notice of cancellation to be effective on the date stated in the notice. The date of cancellation cannot be before the 10th day after the date we mail notice.

We will not give notice of cancellation to any successor or assignee of the mortgagee named in this policy.

- g. If the property described under Coverage A (Dwelling) is foreclosed upon under the deed of trust, the mortgagee may cancel this policy of

insurance and will be entitled to any unearned premiums from this policy.

The mortgagee must credit any unearned premium against any deficiency owed by the borrower and return any unearned premium not so credited to the borrower. The unearned premium will be figured using the customary pro rata procedures.

- h. If we elect not to renew this policy, the mortgagee specifically named on the declarations page will be given 30 days written notice of the non-renewal.

15. **No Benefit to Bailee.** We will not recognize an assignment or grant any coverage for the benefit of person or organization holding, storing or moving property for a fee.

SECTION II - LIABILITY COVERAGE

COVERAGE C (Personal Liability)

If a claim is made or a suit is brought against an insured for damages because of bodily injury or property damage caused by an occurrence to which this coverage applies, we will:

1. pay up to our limit of liability for the damages for which the insured is legally liable. Damages include pre-judgment interest awarded against the insured; and
2. provide a defense at our expense by counsel of our choice even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate.

COVERAGE D (Medical Payments to Others)

We will pay the necessary medical expenses incurred or medically determined within three years from the date of an accident causing bodily injury. Medical expenses means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic

devices and funeral services. This coverage does not apply to you or regular residents of your household. This coverage does apply to residence employees. As to others, this coverage applies only:

1. to a person on the insured location with the permission of an insured.
2. to a person off the insured location, if the bodily injury:
 - a. arises out of a condition on the insured location or the ways immediately adjoining.
 - b. is caused by the activities of an insured.
 - c. is caused by a residence employee in the course of the residence employee's employment by an insured.
 - d. is caused by an animal owned by or in the care of an insured.

SECTION II - EXCLUSIONS

1. Coverage C (Personal Liability) and Coverage D (Medical Payments to Others) do not apply to:
 - a. bodily injury or property damage which is caused intentionally by or at the direction of the insured;
 - b. bodily injury or property damage arising out of or in connection with a business engaged in by an insured. But this exclusion does not apply to activities which are ordinarily incidental to non-business pursuits.
 - c. bodily injury or property damage arising out of the rental or holding for rental of any part of any premises by an insured. This exclusion does not apply to the rental or holding for rental of an insured location:
 - (1) on an occasional basis if used only as a residence.
 - (2) in part for use only as a residence, unless a single family unit is intended for use by the occupying family to lodge more than two roomers or boarders.
 - (3) in part, as an office, school or studio.
 - (4) if the rental is for not more than three car spaces or stalls in garages or stables.
 - d. bodily injury or property damage arising out of the rendering of or failure to render professional services.
 - e. bodily injury or property damage arising out of a premises:
 - (1) owned by an insured;
 - (2) rented to an insured; or

(3) rented to others by an insured;

that is not an insured location.

This exclusion does not apply to bodily injury to a residence employee arising out of and in the course of the residence employee's employment by an insured.

f. bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of:

(1) motor or engine propelled vehicles or machines designed for movement on land, including attached machinery or equipment;

(2) trailers, semi-trailers or mobile homes;

which are owned or operated by or rented or loaned to an insured.

However, this exclusion does not apply to:

(1) motor vehicles which are not subject to motor vehicle registration and are:

(a) used for assisting the handicapped.

(b) used to service an insured location.

(c) golf carts while on the residence premises or used for golfing purposes.

(d) designed and used for recreational purposes; and are:

(i) not owned by an insured; or

(ii) owned by an insured while on the residence premises.

(e) in dead storage on the residence premises.

(f) used exclusively on the residence premises.

(2) trailers or semi-trailers while not being towed by or carried on a motor vehicle.

This exclusion does not apply to bodily injury to a residence employee arising out of and in the course of the residence employee's employment by an insured.

g. bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of watercraft:

(1) with inboard or inboard-outdrive motor power of more than 50 horsepower owned by or rented to an insured.

(2) powered by one or more outboard motors with more than 25 total horsepower if the outboard motor is owned by an insured. But, outboard motors of more than 25 total horsepower are covered for the policy period if:

(a) you acquire them prior to the policy period and:

(i) you declare them at policy inception; or

(ii) your intention to insure is reported to us in writing within 45 days after you acquire the outboard motors.

(b) you acquire them during the policy period.

(3) that is a sailing vessel, with or without auxiliary power, which is 26 feet or more in length owned by or rented to an insured.

This exclusion does not apply while the watercraft is on the residence premises.

This exclusion does not apply to bodily injury to a residence employee arising out of and in the course of the residence employee's employment by an insured.

h. bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of aircraft.

Aircraft means any device used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo.

This exclusion does not apply to bodily injury to a residence employee arising out of and in the course of the residence employee's employment by an insured.

i. bodily injury or property damage arising out of:

(1) the entrustment by an insured to any person; or

(2) the negligent supervision by an insured of any person;

with regard to the ownership, maintenance or use of any motor vehicle, watercraft or aircraft which is excluded in paragraph f., g. or h. above.

This exclusion does not apply to bodily injury to a residence employee arising out of and in the course of the residence employee's employment by an insured.

j. bodily injury or property damage caused directly or indirectly by war. This includes undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, destruction or seizure or use for a military purpose, and any consequence of these. Discharge of a nuclear weapon will be deemed a warlike act even if accidental.

k. bodily injury or property damage arising out of the transmission of sickness or disease by an insured through sexual contact.

l. bodily injury to any person eligible to receive any benefits voluntarily provided or required to be provided by an insured under any workers compensation law or occupational disease law.

2. Coverage C (Personal Liability) does not apply to:

a. liability under any contract or agreement.

However, this exclusion does not apply to written contracts:

(1) that directly relate to the ownership, maintenance or use of an insured location; or

(2) where the liability of others is assumed by an insured;

unless excluded elsewhere in this policy.

b. property damage to property owned by an insured.

c. property damage to property rented to, occupied or used by or in the care of an insured. This exclusion does not apply to property damage caused by fire, smoke or explosion.

d. bodily injury or property damage for which an insured under this policy is also an insured under a nuclear energy liability policy or would be an insured under that policy but for the exhaustion of its limit of liability.

A nuclear energy liability policy is one issued by American Nuclear Insurers, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Association of Canada.

e. bodily injury to you or an insured within the meaning of part a. or part b. of insured as defined.

3. Coverage D (Medical Payments to Others) does not apply to:

a. bodily injury to a residence employee if the bodily injury:

(1) occurs off the insured location; and

(2) does not arise out of or in the course of the residence employee's employment by an insured.

b. bodily injury to any person, other than a residence employee of an insured, regularly residing on any part of the insured location.

SECTION II - ADDITIONAL COVERAGES

We cover the following in addition to the limits of liability:

1. **Claim Expenses.** We pay:

a. expenses we incur and costs taxed against an insured in any suit we defend.

b. premiums on bonds required in a suit we defend but not for bond amounts more than the limit of liability for Coverage C (Personal Liability). We need not apply for or furnish any bond.

c. reasonable expenses incurred by an insured at our request, including actual loss of earnings (but not loss of other income) up to \$50 per day, for assisting us in the investigation or defense of a claim or suit.

d. interest on the entire judgment which accrues after entry of the judgment and before we pay or tender, or deposit in court that part of the judgment which does not exceed the limit of liability that applies.

2. **Imperative Medical Expenses to Others.** We pay expenses incurred by an insured for immediate medical and surgical relief to others if imperative at the time of the accident.

3. **Damage to Property of Others.** We pay replacement cost up to \$500 per occurrence for property damage to property of others caused by an insured.

We do not pay for property damage:

a. caused intentionally by an insured who is 13 years of age or older.

b. to property owned by an insured.

c. to property owned by or rented to a tenant of an insured or a resident in your household.

d. arising out of:

(1) a business engaged in by an insured.

(2) any act or omission in connection with a premises owned, rented or controlled by an insured, other than the insured location.

(3) the ownership, maintenance, use, loading or unloading of aircraft, watercraft or motor vehicles or all other motorized land conveyances.

This exclusion does not apply to any motorized land conveyance designed for recreational use off public roads, not subject to motor vehicle registration and not owned by an insured.

SECTION II - CONDITIONS

1. **Limit of Liability.** The limit of liability for Coverage C (Personal Liability) shown on the declarations page is our total liability under Coverage C (Personal Liability) for all damages resulting from any one occurrence. This limit is the same regardless of the number of insureds, claims made or persons injured.

The limit of liability for Coverage D (Medical Payments to Others) shown on the declarations page is our total liability under Coverage D (Medical Payments to Others) for all medical expense payable for bodily

injury to one person as the result of one accident. The total limit of our liability for all expenses payable to two or more persons injured in one accident is \$25,000.

2. **Severability of Insurance.** This insurance applies separately to each insured. This condition will not increase our limit of liability for any one occurrence.

3. **Duties After Loss.** In case of an accident or occurrence, the insured will perform the following

duties that apply or will help us by seeing that these duties are performed:

- a. Give written notice to us or our agent as soon as is practical, which sets forth:
 - (1) the identity of the policy and insured.
 - (2) reasonably available information on the time, place and circumstances of the accident or occurrence.
 - (3) names and addresses of any claimants and witnesses.
- b. Promptly forward to us every notice, demand, summons or other process relating to the accident or occurrence.
- c. At our request, help us:
 - (1) to make settlement.
 - (2) to enforce any right of contribution or indemnity against any person or organization who may be liable to an insured.
 - (3) with the conduct of suits, including attending hearings and trials.
 - (4) to secure evidence and obtain the attendance of witnesses.
- d. The insured will not, except at the insured's own cost, voluntarily make payment, assume obligation or incur expense other than for immediate medical and surgical relief to others at the time of the bodily injury.

4. **Duties of an Injured Person - Coverage D (Medical Payments to Others).**

The injured person or someone acting for the injured person will:

- a. give us written proof of claim, under oath if required, as soon as is practical.
- b. authorize us to obtain copies of medical reports and records.

The injured person will submit to a physical exam by a doctor of our choice when and as often as we reasonably require.

5. **Payment of Claim - Coverage D (Medical Payments to Others).** Payment under this coverage is not an admission of liability by an insured or us.

6. **Suit Against Us.** No action can be brought against us unless there has been compliance with the policy provisions.

No one will have the right to join us as a party to any action against an insured. Also, no action with respect to Coverage C (Personal Liability) can be brought against us until the obligation of the insured has been determined by final judgment or agreement.

Under Coverage D (Medical Payments to Others), no action can be brought until 30 days after the required proofs of claim have been filed with us.

7. **Bankruptcy of the Insured.** Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this policy.

8. **Other Insurance - Section II.** If the insured has other insurance under Coverage C (Personal Liability), we will not be liable for a greater proportion of a loss than the limit of liability shown on the declarations page bears to the total limit of all valid and collectible insurance against such loss.

However, with respect to loss arising out of the ownership, maintenance, operation, use, loading or unloading of:

- a. any motor vehicle or recreational motor vehicle at the residence premises; or
- b. watercraft,

this policy will not apply to the extent that any valid and collectible insurance is available to the insured.

9. **Notice of Settlement of Liability Claim.**

- a. We will notify the insured in writing of any initial offer to compromise or settle a claim against the insured under the liability section of this policy. We will give the insured notice within 10 days after the date the offer is made.
- b. We will notify the insured in writing of any settlement of a claim against the insured under the liability section of this policy. We will give the insured notice within 30 days after the date of the settlement.

SECTION I AND II - CONDITIONS

1. **Policy Period.** This policy applies only to loss in Section I or bodily injury or property damage in Section II which occurs during the policy period stated on the declarations page.

2. **Concealment or Fraud.** This policy is void as to you and any other insured, if you or any other insured under this policy has intentionally concealed or misrepresented any material fact or circumstance, made false statements or committed fraud relating to this insurance, whether before or after a loss.

3. **Liberalization Clause.** If the State Board of Insurance adopts a revision which would broaden or extend the coverage under this policy without additional premium within 45 days prior to or during the policy period, the broadened or extended coverage will immediately apply to this policy.

4. **Waiver or Change of Policy Provisions.** Changes in this policy may be made and perils added only by attaching a written endorsement properly executed by our authorized agent. No provision of this policy may be waived unless the terms of this policy allow the

provision to be waived. Our request for an appraisal or examination will not waive any of our rights.

5. **Cancellation.**

a. You may cancel this policy at any time by notifying us of the date cancellation is to take effect. We will send you any refund due when the policy is returned to us.

b. We may cancel this policy for the reasons stated in this condition by mailing you notice in writing of the date cancellation takes effect.

(1) If this policy has been in effect for less than 90 days and is not a renewal policy, we may cancel this policy for any reason.

The effective date of cancellation cannot be before:

(a) the 10th day after we mail notice if we cancel for non-payment of premium.

(b) the 30th day after we mail notice if we cancel for any other reason.

(2) If this policy has been in effect 90 days or more, we may not cancel this policy unless:

(a) you do not pay the premium or any portion of the premium when due.

(b) the State Board of Insurance determines that continuation of the policy would violate the Texas Insurance Code or any other laws governing the business of insurance in this state.

(c) you submit a fraudulent claim.

(d) there is an increase in hazard covered by this policy that is within your control and that would produce an increase in the premium/rate of this policy.

The effective date of cancellation cannot be before the 10th day after we mail the notice. Our notice of cancellation must state the reason for cancellation.

c. If we cancel, our notice to you will state that if the refund is not included with the notice, it will be returned on demand.

d. We may not cancel this policy solely because you are an elected official.

6. **Refusal to Renew.**

a. We may not refuse to renew this policy because of claims for losses resulting from natural causes.

b. We may not refuse to renew this policy solely because you are an elected official.

c. We may refuse to renew this policy if you have filed three or more claims under the policy in any three year period that do not result from natural causes.

If you have filed two claims in a period of less than three years, we may notify you in writing that if you file a third claim during the three year period, we may refuse to renew this policy by providing you proper notice of our refusal to renew as provided in d. below. If we do not notify you after the second claim, we may not refuse to renew this policy because of losses.

A claim does not include a claim that is filed but is not paid or payable under the policy.

d. If we refuse to renew this policy, we must deliver to you, or mail to you at your mailing address shown on the declarations page and any mortgagee named in the declarations page, written notice of our refusal to renew not later than the 30th day before the date in which this policy expires. Proof of mailing will be sufficient proof of notice. If we fail to give you proper notice of our decision not to renew, you may require us to renew the policy.

7. **Assignment.** Assignment of this policy will not be valid unless we give our written consent.

8. **Subrogation.** An insured may waive in writing before a loss all rights of recovery against any person. If not waived, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.

If an assignment is sought, an insured must sign and deliver all related papers and cooperate with us.

Subrogation does not apply under Section II to Medical Payments to Others or Damage to Property of Others.

9. **Death.** If the named insured dies, we insure:

a. the named insured's spouse, if a resident of the same household at the time of death.

b. the legal representative of the deceased. However, if this legal representative was not an insured at the time of death of the named insured, this policy will apply to such legal representative only with respect to the premises of the original named insured.

c. any person who is an insured at the time of such death, while a resident of said premises.