Ask Mike
#08-10

Subject: Residence Held in a Trust – Unusual Situation

Q. We have a question about how to handle an unusual situation with a residence that is in a personal trust. Our insureds are a husband and wife who we have insured for many years. Last year, they put their personal residence into a personal trust, as a part of the financial planning they developed with their attorney and CPA.

Both have been in declining health for several years, and earlier this year, the wife had to go into a nursing home. A couple of months ago, the husband moved into an Assisted Living Facility (ALF).

Now, we’re not quite sure what to do with the insurance on the residence. Any thoughts or suggestions?

A. There are a few missing pieces to the puzzle, so the proper solution would vary. For example, before you can propose a solution, it is important to know the more information about the four entities in your insured’s residential trust: (1) the Grantor; (2) the Trust; (3) the Trustee; (4) the Beneficiary. In addition, if the Trustee and/or Beneficiary are family members, it must be determined whether or not they reside in the residence that is held in the Trust.

Here is a scenario that I use in seminars which I hope will give you a framework to use to obtain the information you need to develop a coverage solution for you insureds.

Situation:
Jack & Jill Smith are husband and wife. They deed over their house (primary residence) to their trust – J&J Trust, and name their adult daughter Jillette as Trustee, and son Jack, Jr. as beneficiary. Jack and Jill are considered the Grantors.

Later, Jack has to go to an ALF, and Jill ends up in a nursing home.

When the house went into the J&J Trust, under ISO rules the named insured in the HO-3 was changed from "Jack and Jill" to "J&J Trust, and Jillette Smith, as Trustee" with the Trust Endorsement HO 05 43 attached to the HO-3. Jack and Jill are added via the trust endorsement.

However, in your insured’s situation, with Jack & Jill no longer residing in the house, how should coverage be changed, if at all?

I think the home no longer qualifies for a HO policy, unless Jillette or Jack, Jr. reside in the home, per ISO rule 526.A.3. - as follows:

A. Trust And Trustee – Named Insured

A Homeowners policy may be issued in the name of both the trust and trustee when:

1. The residence held in trust is a 1, 2, 3, or 4 family dwelling or a condominium unit used exclusively for residential purposes, except as provided in Rule 104.F.
2. **Legal title to the dwelling or condominium unit is held solely by the trust**;

3. **The resident of the residence held in trust include at least one of the following: the trustee, the grantor of the trust, or the beneficiary of the trust;** and

4. **The trust and trustee are both shown as the named insured on the policy declarations, regardless of who resides in the residence held in trust.**

Otherwise, a DP-3/DWG-3 (with DL endorsement) would be written - in the name of J&J Trust. To protect the Trustee and Beneficiary, I think you could attach the DL 24 10 Additional Insured to the DP-3. An alternative would be to name the Trust, Trustee and Beneficiary all as Named Insureds.

Also, to provide property and liability coverage for Jack and Jill, they would each need an HO-4, if they qualified. If either did not qualify, you could attach the HO 04 59 Assisted Living endorsement to the HO of Jillette or Jack, Jr., which gives Jack and Jill some limited property and liability coverage. If Jillette or Jack, Jr. live in the house held in the J&J Trust, the HO 04 59 could be attached to that HO-3.