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SUBJECT: Living Together Might Simplify Life But It Complicates Insurance

BACKGROUND: Statistics from the 2000 U. S. Census reported that there was a 72% increase in the number of unmarried couples living together in the United States, totaling around 5.5 million couples (11 million people). Newspapers, magazines, and the Internet carried countless articles on the subject.

For all the opining on the social, economic, moral, and demographic implications of cohabitation, virtually no article addressed the insurance issues. That's too bad, because there are serious insurance gaps created by the arrangement.

Insurance professionals should be alert to this societal trend, understand what coverage gaps exist, and what recommendations to make to their insureds.

MAIN POINTS: *"Marriage is an institution. I'm not ready for an institution." Mae West.*

While it is a common belief that people live together rather than get married, research shows that around 60% of live-ins get married within five years. Ironically, some studies also show that couples who live together before marriage have a higher divorce rate than those couples who do not.

Actually, people live together for a variety of reasons. While romantic couples most often come to mind when the subject of "live-ins" is raised, many other people cohabit for purely economic reasons ("roommates"). In addition, there are a significant number of households in which extended family members live.

In 15 states, live-ins can create a "common law marriage." (Alabama, Colorado, Georgia – if created before 1/1/97, Idaho – if created before 1/1/96, Iowa, Kansas, Montana, New Hampshire – for inheritance purposes only, Ohio – if created before 10/10/91, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, and the District of Columbia.)

Each of the states that permits common law marriages has specific requirements and affirmative steps which must be taken in order for the relationship to be recognized as a bona fide marriage. (It is a common myth that by simply living together for a certain

numbers of years that a common law marriage is created.) Interestingly, since all states recognize legal marriages from all other states, a couple which establishes a legal common law marriage in one state is considered a married couple in all states, according to legal authorities.

The 2000 Census reports that approximately 2.3 million grandparents are raising their grandkids. Even more dramatic is another statistic from the 2000 Census that shows an estimated 22.4 million households – approximately one in four – are providing care for a family member or friend over age 50. In fact, this trend is so significant that the Federal Trade Commission launched a joint project with AARP called “A/PACT” – “Aging Parents and Adult Children Together.” On the FTC website (www.ftc.gov) are ten publications on specific issues related to A/PACT.

Each of these types of living arrangements – unmarried couples, roommates, extended family members young or old – presents unique insurance exposures.

Since the standard Homeowners Policy and Personal Auto Policy provides different coverage status for *resident family members* (also called *resident relatives*) and *others*, the analysis which follows uses that same distinction. “Heidi” and “Bob” are nonrelatives living together, while “Jack” and “Jill” are a married couple with extended family members living with them.

PERSONAL AUTO

Nonrelatives living together – Situation #1: Heidi and Bob each have a Personal Auto Policy. There is primarily only one gap in this situation, but it is huge. The PAP on Heidi’s Honda does not follow her while she is operating Bob’s Beetle. While the insuring agreement in her PAP covers her for the “*ownership, maintenance or use of any auto or trailer*” for Liability, her policy contains an exclusion for autos which are “*furnished or available for her regular use.*” (The same exclusion also appears in Medical Payments and Physical Damage, but not UM.)

However, Heidi would be covered under Bob’s PAP for Liability, as a permissive user. His Medical Payments and UM would also cover her as an occupant.

Heidi’s potential gap exists if she has high limits of Liability, and Bob has low limits. Her high limits protect her while operating any auto but Bob’s.

Some mistakenly believe that “naming Heidi as a driver” under Bob’s PAP will help, but it will not. First of all, when Heidi is operating Bob’s Beetle, she is automatically an insured under his PAP, as a “permissive user.” Secondly, under standard ISO policy language, there is no coverage benefit to naming anyone as a driver. Such a procedure is for underwriting purposes only, and has no effect on coverage in an ISO-type PAP.

There is no standard endorsement to fix the problem. While the Extended Non-Owned endorsement (PP 03 06) deletes the “furnished or available” exclusion in Heidi’s PAP, it

will not help in a live-in situation, as it contains an exclusion for any auto owned by a “member of the same household.” (While it might be argued whether or not Heidi and Bob have created a “household” by living together, the conservative approach is to assume no coverage.)

Whether or not Bob’s Beetle is “furnished or available” to Heidi is also subject to interpretation and litigation. However, a dominant trend in the jurisprudence on the issue seems to hinge on one or more of five factors to determine if an auto is “furnished or available for regular use.” The five factors are: (1) blanket permission for use; (2) availability of a set of keys; (3) continuous, steady or methodical use; (4) nature of the use – all purposes vs. limited use; (5) that the insured would reasonably have expected to pay an extra premium for use of the auto.

Interestingly, in one Louisiana case, a roommate’s auto was found to be “furnished or available” to the insured simply because of the auto’s presence in the insured’s garage, and the auto owner’s constant presence in the insured’s house, even though the insured did not have a set of keys to the roommate’s auto. [*Chon v. Allstate Ins. Co.*, 522 So.2d 690 (La. App. 5th Cir. 1988)].

Nonrelatives living together – Situation #2: Heidi has a Personal Auto Policy and Bob does not own an auto. Bob has a huge exposure. The only insurance Bob has is when he is operating or occupying Heidi’s Honda. He has no “drive other car” coverage in his own name that would follow him into autos owned by friends, or a rental car, etc.

Under Heidi’s PAP, Liability coverage for the use of autos other than the Honda is granted to “you” (Named Insured and resident spouse) and “family members” (related by blood, marriage or adoption who reside with Heidi).

As stated above, adding Bob as a “driver” under Heidi’s PAP will not provide Bob any additional coverage under a standard ISO-type PAP.

One option might be to name Bob as a Named Insured under Heidi’s PAP, but this seems unlikely.

Bob needs a Named Non-Owner Policy (PP 03 22), which would provide him with Liability, Medical Payments, and UM coverage while operating other autos. Unlike Situation #1 above, the Named Non-Owner Policy does not contain an exclusion for “furnished or available” autos.

Nonrelatives living together – Situation #3: Heidi and Bob jointly own an auto. While resisting the “commitment” required of marriage, many unmarried couples plunge head-long into all sorts of financial commitments, including buying a car together. The Joint Ownership Coverage (PP 03 34) was created for just such a situation.

Actually, there are two situations for which the endorsement was introduced. The Joint Ownership Coverage can be used for autos that are jointly owned by: (1) individuals,

other than husband and wife, who reside together; or (2) non-resident relatives (two or more persons related by blood, marriage or adoption who reside in separate households).

Relatives living together – Situation #1: Jack and Jill’s 17-year-old granddaughter Megan moves in with them. If Megan is truly considered a “resident” of Jack and Jill’s household, she is a “family member” and is covered for Liability both as a permissive user of Jack and Jill’s autos, and also for operating any other auto or trailer. She also receives the same Medical Payments, UM, and Physical Damage coverage as Jack and Jill.

The issue of residency has been widely litigated. Many courts distinguish between “residence” and “domicile.” A person can have several residences, but only one domicile (*Black’s Law Dictionary*). One interesting opinion was made in a case in which the court said that the word “resident” was “flexible, elastic, slippery, somewhat ambiguous, obscure, and nebulous in meaning, has many definitions and is difficult of exact or satisfactory interpretation.” (*Vinet v. Hano*, 281 So.2d 183 (La. App 4th Cir. 1973.)

It is also quite possible that Megan would still be considered a “resident” of her parents’ home, and thus still an “insured” under their PAP. Numerous cases have so held [e.g., *Menard v. Zeno*, 558 So.2d 744 (La. App. 3d Cir. 1990).

One potential troublesome wrinkle would exist if Megan has a Mustang titled to her, which she brings when she moves in with Jack and Jill. Under Jack and Jill’s PAP, Megan would not be covered for Liability, Medical Payments or Physical Damage while operating her Mustang, due to the exclusion in Jack and Jill’s policy which excludes an auto other than “your covered auto” which is owned by a “family member.” Under Jack and Jill’s UM, Megan is likewise not covered while driving her Mustang, due to the exclusion for “*an insured while occupying any vehicle owned by that insured which is not insured for this coverage under this policy.*”

However, Jack and Jill’s PAP would cover them while operating Megan’s Mustang, as provided in the exception to the exclusion in their policy (“... *this exclusion does not apply to you while you are maintaining or occupying*” Megan’s Mustang). On the other hand, no one else in the household would be covered under Jack and Jill’s PAP while driving Megan’s Mustang. So if Uncle Charlie also lives with Jack and Jill, Jack and Jill’s PAP would not cover Uncle Charlie driving Megan’s Mustang. But if Uncle Charlie has his own PAP, it would cover him driving Megan’s Mustang, in the same way as Jack and Jill’s PAP covers them driving the Mustang, due to the exception to the exclusion for *your use*.

Note also that Jack, Jill and Uncle Charlie would be insureds under Megan’s PAP, as either family members or permissive users.

If Megan's Mustang is titled to her parents, and not to her, the coverage gap still exists in Jack and Jill's PAP. The exclusion cited above in Jack and Jill's PAP applies to an auto other than "your covered auto" which is *owned* by a "family member," or *furnished or available for the regular use* of a "family member."

One solution would be to add Megan's Mustang to Jack and Jill's PAP as a "covered auto," if Megan's residency with Jack and Jill appears to be long term (permanent), and the Mustang is titled to Megan. However, if it is titled to her parents, some insurers will still add the Mustang to Jack and Jill's PAP, but this could create an insurable interest problem for Megan's parents in the event of a physical damage claim under Jack and Jill's PAP.

An alternative might be to write a separate PAP with Megan as the Named Insured. However, the gaps cited above in Jack and Jill's PAP would still apply to other drivers in the household (who do not have their own PAP). To minimize this gap, Megan's limits and coverages should be the same as Jack and Jill's.

Relatives living together – Situation #2: Jack's 80-year-old grandfather Bill moves in with them. Same analysis as Situation #1 above.

HOMEOWNERS

Nonrelatives living together – Situation #1: Heidi rents an apartment or owns a home. Heidi has an HO-4 or an HO-3, and is the only Named Insured. Bob has extremely limited coverage under Heidi's policy. He is not an "insured," since he is not a "resident spouse" or "resident relative." One exception is that if Bob were to be legally responsible for Heidi's animals, watercraft, or certain vehicles, he is an "insured" under her Homeowners Policy. Otherwise, he has no coverage status as an "insured" for Section I – Property or Section II – Liability.

However, Heidi's Coverage C covers not only personal property she owns or uses, it also covers personal property of certain other persons who are not "insureds" in her policy. Her Coverage C thus applies to personal property: (1) "*owned by others, while the property is on the part of the residence premises occupied by an insured*" (Heidi); and (2) "*personal property owned by a guest or residence employee while the property is in any residence occupied by an insured*" (Heidi).

On the other hand, most authorities believe that Heidi's Coverage C still will not cover Bob's personal property. In her policy, under Property Not Covered, there is an exclusion for "*property of roomers, boarders and other tenants.*"

Heidi's Section II Medical Payments coverage will not apply to injuries Bob might have on the premises, due to the exclusion in Coverage F for persons who "*regularly reside*" at the residence.

Likewise, her Section II Damage to Property of Others will not apply to damage Heidi might cause to Bob's property, due to the exclusion for damage to "*property owned by or rented to a tenant of an insured, or a resident in your household.*"

Bob should obtain an HO-4 in his own name. As an alternative, Heidi's HO-4 insurer might be willing to add Bob as a Named Insured to her policy.

One tempting (but incorrect) solution would be to add Bob as an Additional Insured to Heidi's Homeowners Policy, using endorsement HO 04 41. It should first be noted that the endorsement cannot be used with an HO-4. The purpose of attaching the endorsement to an HO-3 is to add a person or organization that has some financial or legal interest in the residence. The endorsement provides the person or organization named in the endorsement with Coverages A and B for property, and Coverages E and F for liability and medical payments.

For example, if Heidi's dad, Mike, co-signed with her on her home (deed, note and mortgage), he has an exposure for the dwelling and other structures, as well as for liability of the premises. It would be appropriate to add Mike to Heidi's HO-3 with the Additional Insured endorsement.

As to Bob, since he has no financial or legal interest in the home, there is no compelling reason to add him using the Additional Insured endorsement. But if for some reason he were to be added, note that the endorsement provides no Coverage C for the additional insured, and provides the additional insured with liability and medical payments for the residence premises only.

Under Heidi's HO-3, it would be unlikely that her insurer would add Bob as a Named Insured, since he has no financial or legal interest in her residence.

Nonrelatives living together – Situation #2: Heidi and Bob jointly own the home.

Where two unrelated persons have a joint financial and legal interest in the home, it would be logical to issue one policy with both Heidi and Bob as Named Insureds.

However, if for some reason the policy was issued with only Heidi as the Named Insured, Bob should be added using the Additional Insured endorsement (HO 04 41). As noted above, Bob would have coverage only for Coverages A and B for property, and Coverages E and F for liability and medical payments. He would have no Coverage C, and Coverages E and F would be for the residence premises only. Bob would thus also need an HO-4.

Relatives living together – Situation #1: Jack and Jill's 17-year-old granddaughter Megan moves in with them. In cases where Megan is a bona fide resident of Jack

and Jill's household, she becomes an "insured" (resident relative) for all coverages under their Homeowners Policy. Should Megan bring a substantial amount of personal property, Jack and Jill's Coverage C limit should be increased. In addition, if Megan has any items which require scheduling ((jewelry, computer, etc.), or need any other type of additional insurance (jet ski, ATV, home business, etc.), these should be carefully reviewed.

As noted in the discussion under Personal Auto, it is quite possible that Megan is also an "insured" under her parent's Homeowners Policy.

Relatives living together – Situation #2: Jack's 80-year-old grandfather Bill moves in. Same analysis as Situation #1 above.

Relatives living together – Situation #3: Jack and Jill's 30-year-old daughter Jillette moves in. Same analysis as Situation #1 above, with the following notes.

If Jillette has moved home with Jack and Jill due to a job loss, divorce, or similar circumstances, it is perhaps likely that she will move out when her situation stabilizes. If so, while she is probably a resident of Jack and Jill's household while she is there (and thus an "insured"), an HO-4 might be a good recommendation, if her stay appears to be relatively short term.

If her residency appears to be more long term, due to her illness, or to care full time for another family member, an HO-4 is perhaps not as needed. However, it might be helpful to send Jillette a letter advising her to contact her agent if and when her circumstances change.

If Jillette puts a lot of her personal property in storage while living with Jack and Jill, the value of that property should be recognized in increasing Jack and Jill's Coverage C, or in writing Jillette's HO-4 Coverage C limit. Note that in either policy, the 10% limitation for Coverage C would not apply. The 10% Coverage C limitation applies only to personal property "*usually located at an insured's residence other than the residence premises.*" A mini-warehouse storage facility is not a residence, thus the property stored there is fully eligible for Coverage C. However, there is no theft coverage for watercraft (including their furnishings, equipment and outboard engines), or trailers and campers, which are away from the residence premises.

As with Megan, Jillette's unique insurance exposures need to be fully analyzed for potential gaps and additional coverages (including an umbrella).

OTHER ISSUES FOR LIVE-INS

Beyond the insurance exposures for Personal Auto and Homeowners insurance discussed above, there are many other issues which couples in long term relationships should address.

Research for this article turned up many web sites that have excellent advice for people who live together on a long term or permanent basis. To reflect their level of commitment, many couples use terms such as “domestic partner,” “life partner,” etc. However, they face a number of legal and financial hurdles which are more difficult and complex than for legal spouses.

These issues include health insurance and medical benefits, workers compensation survivor benefits, property ownership and inheritance, taxes, end of life decisions, and many more. While the agency should not give legal advice, it would be advantageous for the agency to recommend that any insureds who have such a living arrangement consult an attorney familiar with these complex issues.

NECESSARY ACTION: Circulate this Technical Advisory to all appropriate Personal Lines staff. As needed, this Technical Advisory can also be provided to insureds.