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Technical Advisory

TA 232

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SUBJECT: Homeowners and Additional Insureds

BACKGROUND: There are infrequent occasions when certain persons or organizations need to be named as Additional Insureds on a Homeowners Policy. Endorsement HO 04 41 Additional Insured is available for that purpose. However, the endorsement is designed for a very limited set of situations, and some requests to name additional insureds to a Homeowners Policy fall outside the parameters of the endorsement.

MAIN POINTS: Before analyzing issues related to additional insureds, it is important to review the entire scope of who are insureds in a Homeowners Policy: named insureds, omnibus insureds, death provision insureds, additional insureds added with endorsement HO 04 41, and additional interests named with endorsement HO 04 10.

Named Insured. The named insured is shown in the Declarations. The named insured could include one or more individuals, depending on circumstances.

Naming husband and wife is of course customary, but named insureds could alternatively include two or more individuals, whether related or not, who have some joint financial interest in the home.

Naming two unrelated persons living together as named insureds in an HO-3, where there is an ownership interest by only one party, is acceptable to some insurers, but not others. The alternative is to name the owner as the named insured, and write an HO-4 for the other party.

Naming as named insureds in an HO-4 two unrelated persons living together is occasionally done by some insurers. The alternative is to write each person an HO-4.

Omnibus insureds - spouse. Spouses who are not named on the Declarations as named insureds are provided limited insured status. (Most E&O experts

recommend naming both husband and wife as named insureds, regardless of whose name is on the deed, note, and mortgage.)

The definition of “insured” includes “you,” which is further defined as the named insured and resident spouse. The obvious gap for the *unnamed* spouse is that should they no longer be a resident, or no longer be a spouse, of the named insured, they have no coverage in the Homeowners Policy. Unnamed spouses must meet both conditions to have coverage: resident and spouse.

Omnibus insureds – others. The definition of “insured” also includes several other categories. These include:

- a) Resident relatives;
- b) Non-relatives under 21 who are in the care of an insured (e.g., foster kids);
- c) For Section II, certain persons or organizations who have custody of an insured’s animals or watercraft;
- d) Also under Section II, there is limited insured status for certain persons (e.g., residence employees, or permissive users) of covered vehicles.

Death provision insureds. Upon the death of the named insured or resident spouse, insured status is granted for:

- a) their legal representatives;
- b) other members of the household;
- c) temporary custodians of the property.

Additional Insureds – HO 04 41 Endorsement. Although various entities described above have “insured” status by virtue of standard policy provisions, there are still circumstances under which other persons or organizations might seek coverage as additional insureds.

How the endorsement works. The HO 04 41 provides the person or organization named in the endorsement with limited “insured” status under Section I and Section II.

For Section I, the additional insured is provided coverage only for Coverages A and B (i.e., the dwelling and other structures). For Section II, coverage is granted to the additional insured only for the “residence premises.”

Described below are situations in which the HO 04 41 Additional Insured Endorsement can be properly used, and some situations that are not a proper use of the endorsement.

Situation #1: Co-signers/Co-owners. Where people co-sign with each other on the purchase of a home (usually parents and kids), both have a financial interest in the home, as well as a premises liability exposure. Although both co-signing parties could be named as named insureds, the more common

alternative is to name the party who will reside in the home as the named insured, and add the non-resident co-signer as an additional insured using the HO 04 41.

While the non-resident co-signer receives Section II coverage only for the residence premises, their other personal liability exposures should be addressed under their own Homeowners Policy covering their own residence.

Situation #2: Purchaser-occupant under a long-term contract.

Occasionally, a homeowner will sell his or her home under a long-term contract in which they retain title and ownership, but allow the purchaser to occupy the home. ISO rules permit the purchaser-occupant to be eligible for a Homeowners Policy in their own name. The interests of the seller are provided through the attachment of the HO 04 41 to the purchaser-occupant's Homeowners Policy, showing the seller as an additional insured.

Situation #3: Life estate. A homeowner can grant another person a life estate arrangement, in which the person has unrestricted rights to occupy the home as long as they live. The homeowner retains legal title and ownership. This is most commonly done with family members.

Under ISO rules, the person with a life estate arrangement is eligible for a Homeowners Policy in their name. The interests of the owner are provided through attachment of the HO 04 41 endorsement to the life estate occupant's Homeowners Policy, naming the owner as an additional insured.

Situation #4: Multi-family dwelling occupied by co-owners. Where two or more parties jointly own a duplex, triplex or quadruplex, and each party occupies a separate unit (making each an owner-occupant), ISO rules permit a Homeowners Policy to be issued with only one party as the Named Insured. The other owner-occupants must each be issued an HO-4. However, their interests as owners of the dwelling are provided for by adding each as an additional insured under endorsement HO 04 41 attached to the Homeowners Policy covering the dwelling.

Situation #5: Third party on-premises exposures. Where third parties are involved in work or activities on the homeowner's residence premises, the third parties may seek "additional insured" status under the Homeowners Policy. Such a request is often contained in the work contract, which is probably utilized for both commercial and residential customers. Adding additional insureds under commercial liability policies is fairly routine, with a number of endorsements specifically designed for that purpose. However, the Homeowners Program does not seem to contemplate that exposure for activities on the residence premises.

While the HO 04 41 does provide the additional insured entity with "insured" status for Section II on the residence premises, the endorsement does not modify

or delete any exclusions in the Homeowners Policy. Thus, a business entity that is added as an “insured” under HO 04 41 would probably not have any coverage, due to the Section II business exclusion, which excludes “a business engaged in by an insured.”

Interestingly, if the entity were not named as an additional insured under the HO 0441, but relied on the work contract to have the homeowner hold them harmless, there would likely be coverage for any BI or PD, given the broad nature of the contractual coverage under the Homeowners Policy. Making the entity an insured actually provides less coverage for the entity than if they simply had a hold harmless agreement with the homeowner.

Situation #6: Third party off-premises exposures. When social or family functions are held at a rental facility such as a banquet hall, restaurant, hotel, garden club, etc., the rental facility often utilizes a written contract, which frequently requires that the host hold the facility harmless. In addition, some require that the facility be added to the host’s Homeowners Policy as an additional insured.

While endorsement HO 04 41 can name a person or organization as an additional insured, it would provide no coverage for such entity for BI or PD that occurs at the rental facility. The HO 04 41 provides coverage for the additional insured for the residence premises only.

Situations #5 and #6: Certificates of Insurance for a Homeowners Policy. Commercial entities with whom the homeowner might do business (as described in Situation #5 and #6 above) might require that the homeowner furnish a Certificate of Insurance to the commercial entity.

While this request is somewhat unusual in Homeowners, there is no rule prohibiting it. However, such requests for a Certificate often are accompanied by a request to name the entity as an additional insured in the Homeowners Policy. As discussed above, this request is virtually impossible to adequately meet under the standard Homeowners Program. If an agency added a commercial entity as an additional insured under the HO 04 41 endorsement, and the entity receives little if any coverage, the agency might face an E&O allegation from the commercial entity.

Situations #5 and #6 – Special Event Policy: Given how inflexible the Homeowners Program is for naming commercial entities as additional insureds, one of the best solutions is to offer the homeowner a Special Event Policy. Designed around a commercial liability insurance program, these policies are much better suited to meeting the requirements a homeowner encounters with a commercial entity involved in special activities or events on and off the residence premises.

Situation #7: Live-ins. According to the 2000 U.S. Census, there are approximately 5.5 million unmarried couples residing together. It is not unusual for some to jointly purchase a home together, or lease an apartment together.

When live-ins jointly purchase a home in which they both will reside, ISO rules permit both to be Named Insureds on the Homeowners Policy.

If live-ins jointly lease an apartment (or house), some insurers will name both as Named Insureds on the HO-4. However, if only one is the Named Insured, the other should get an HO-4 also. In such case, there is no need for the HO 04 41 endorsement to be added to either policy.

In situations where a home is owned by only one of the live-ins, the other should get an HO-4. Adding such resident non-owner to the HO-3 with the HO 04 41 endorsement would not provide the same broad coverage as would be found in the HO-4 (recalling that the HO 04 41 only provides Coverage A & B in Section I – which would have no applicability to a resident non-owner – and only premises liability under Section II).

Similarly, for tenant live-ins where the lease is in the name of only one, both should get their own HO-4. Adding the HO 04 41 would not be recommended.

Additional Interests – HO 04 10 Endorsement. There are a few incidental situations where a person or organization has some legal or financial interest in the home, but their interest is not sufficient to warrant being added as a mortgagee, or added with endorsement HO 04 41. Endorsement HO 04 10 is available for many such situations.

How the endorsement works. The endorsement HO 04 10 provides that the person or organization shown in the endorsement has “an interest in the residence premises.” (Rule 211 in the ISO Manual describes this as “insurable interest,” whereas the endorsement only says “an interest.”) The endorsement also gives the person or organization a cancellation/non-renewal notification.

It is important to note that the endorsement does not make the listed person or organization an “insured” in the Homeowners Policy.

One common use of the endorsement is when a homeowner pledges the house as collateral on a loan, but the lending party does not become a mortgagee.

Another use of the endorsement is illustrated in a recently reported case where a parent bailed his teenage son out of jail, and the house was pledged as collateral towards the bail requirement. The sheriff’s office initially requested to be added as an additional insured under the parents’ Homeowners Policy. Not surprisingly, the insurer refused to add them under the HO 04 41. However, the insurer was willing to add the sheriff’s office with the HO 04 10 endorsement,

through which the sheriff's office is shown to have "an interest" in the insured property, and will receive a notice of cancellation or non-renewal.

NECESSARY ACTION: Circulate this Technical Advisory to all appropriate Personal Lines staff.

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