

# Module 2

## Property Insurance Basics

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### Module 2 Chapter 2

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### Learning Objectives

- ☐ Obj I – Determining Coverage for a Claim
- ☐ Obj II – Types of Property
- ☐ Obj III – Insurable Interest
- ☐ Obj IV – Protecting Insurable Interests
- ☐ Obj V – Insured's Duties After Loss
- ☐ Obj VI – Examinations Under Oath

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## Determining Coverage for a Claim

### Objective I

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Coverage Review Process

- ❑ A claims representative rarely receives a claim that can be paid immediately.
  - ❑ Rep must review the loss facts and policy.
  - ❑ Determining the applicable coverage should precede the calculation of the insured loss.
- ❑ A systematic coverage review process can be applied to direct property loss claims.

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Coverage Review Process

- ❑ Questions to ask during the process:
  - ❑ Is the claimant covered?
  - ❑ Does the claimant have an insurable interest?
  - ❑ Did loss occur within policy period/location?
  - ❑ Is the property covered?
  - ❑ Is the cause of loss covered?
  - ❑ Which financial consequences are covered?
  - ❑ Do any additional coverages apply?
  - ❑ Have policy conditions been met?
  - ❑ Do laws affect coverage?

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Is Claimant Covered

- ❑ The named insured is the party listed in the policy.
  - ❑ Some policies cover additional parties, such as relatives.
- ❑ Most commercial policies cover only persons or organizations listed as insureds.

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**Insurable Interest**

- ❑ A claimant must have an insurable interest.
  - ❑ A condition that would cause the individual to suffer a loss if an insured event occurred.
- ❑ Types of insurable interest:
  - ❑ Property ownership.
  - ❑ Tenant or lessee.
  - ❑ Mortgageholders and lienholders.

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**Policy Period and Location**

- ❑ Damage must generally occur during policy period to be covered.
- ❑ Property must also be at a covered location.
  - ❑ Commercial policies can extend coverage to newly acquired buildings.
  - ❑ Homeowners policies typically cover personal property located anywhere in the world.

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**Covered Property**

- ❑ Buildings and personal property are often damaged in the same claim.
  - ❑ Some policies have different insuring agreements for buildings and personal prop.
- ❑ Policies have a Property Not Covered section.
  - ❑ Must be reviewed by claims representative.

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**Covered Cause**

- ❑ Property policies often limit coverage to direct physical loss.
  - ❑ Must be caused by a covered cause of loss.
- ❑ Approaches to coverage:
  - ❑ Specified perils – each covered peril is listed in the policy.
    - ❑ Claimant has burden of proof.
  - ❑ Open perils – all perils are covered unless specifically excluded.
    - ❑ Insurer has burden of proof.

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**Additional Coverages**

- ❑ Property policies can contain additional coverages and coverage extensions.
  - ❑ Provide coverage for various loss exposures.
- ❑ Commercial policies contain more additional coverages than homeowners policies.

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**Additional Concerns**

- ❑ Insurers and insureds must perform certain obligations before or after a loss.
  - ❑ Conditions precedent – met before a loss.
    - ❑ Insured must pay policy premiums.
  - ❑ Conditions subsequent – met after a loss.
    - ❑ Insured must promptly report losses.
- ❑ Courts or the insurance commissioner may render decisions that affect policy interpretation.

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**Practice**

- ❑ Which one of the following is considered a direct physical loss at a factory?
  - ❑ A. Loss of income following a flood in the factory.
  - ❑ B. Loss of production time due to an electrical outage.
  - ❑ C. Loss of merchandise due to a fire in a storage room.
  - ❑ D. Overtime labor costs incurred following a tornado.

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**Types of Property**

**Objective II**

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**Real and Personal Property**

- ❑ Types of property:
  - ❑ Real property – land and structures that are permanently attached.
  - ❑ Personal property – anything that isn't real property.
    - ❑ Tangible or intangible.
- ❑ Fixtures and improvements are not always clearly defined.

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### Real and Personal Property

- ❑ Reasons it is important to distinguish between real and personal property:
  - ❑ Overlapping coverages – more than one policy might cover a loss.
  - ❑ Valuation – valuation methods often differ for real and personal property.
  - ❑ Coinsurance requirement – insured must purchase adequate insurance.
    - ❑ Coinsurance requirement is often based on value of real property only.

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### Fixtures

- ❑ Personal property can become real property by becoming attached to real property.
  - ❑ Building fixtures are part of the real property.
  - ❑ For insurance purposes, fixtures are property added to a building after its construction.
- ❑ Considerations in determining if property is a fixture:
  - ❑ Attachment.
  - ❑ Adaptation.
  - ❑ Intent.

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### Trade Fixtures

- ❑ Property installed in a structure and used in a business is often referred to as trade fixtures.
  - ❑ Intent is for property to be moved when tenant leaves.
- ❑ Trade fixtures include:
  - ❑ Cabinets and counters.
  - ❑ Display windows.
  - ❑ Racks and shelves.
- ❑ Trade fixtures are usually considered personal property for insurance purposes.

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**Improvements and Betterments**

- ❑ Improvements and betterments are changes made by a tenant.
  - ❑ Improvements and betterments are fixtures.
- ❑ Insurance coverage might exist under the landlord's policy or the tenant's policy.
  - ❑ Lease typically details whether improvements will be removed or retained by the landlord at the end of the lease term.

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**Practice**

- ❑ Lisa owns a specialty food store in Kansas. Which one of the following would be classified as trade fixtures under her property insurance policy?
  - ❑ A. Her desk in the manager's office.
  - ❑ B. The light fixtures.
  - ❑ C. The shelves used to display her inventory.
  - ❑ D. The reusable water bottles sold in the store.

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**Insurable Interest****Objective III**

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**Insurable Interest Requirement**

- Insurable interest exists when someone would suffer monetary loss from property destruction.
- Purposes of insurable interest requirement:
  - Indemnification – insurance policy is designed to restore insured to the same financial condition as before a loss.
  - Wagering – requirement prevents wagering by removing the possibility for gain.
  - Fraud – requirement discourages insureds from intentionally causing a loss.

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**Types of Insurable Interests**

- An insurable interest is not limited to property owners.
- Types of insurable interests:
  - Ownership interests.
  - Contractual obligations.
  - Exposure to legal liability.
  - Factual expectancy.
  - Representation of another party.

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**Ownership Interests**

- Personal ownership means one or more individuals control property.
  - Joint tenants – two or more persons each having a full interest in the property.
  - Tenancy by the entirety – type of joint tenancy between spouses.
  - Tenancy in common – each owner has a distinct percentage interest.
  - Partnership – exists when two or more people voluntarily join in business.

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**Contractual Obligations**

- An insurable interest can arise out of some contractual obligations.
  - Rights regarding people – contract may give one party the right to bring a claim against another party.
  - Rights regarding property – contract may allow one party to bring a claim against specific property.
    - Mortgageholder can repossess the home.
    - Typically creates an insurable interest.

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**Exposure to Legal Liability**

- A party may have legal responsibility for property owned by others.
  - Hotel owner has insurable interest in the property of guests.
  - Tenant has insurable interest in the portion of the premises they occupy.
  - Contractor has insurable interest in building under construction.

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**Factual Expectancy**

- Factual expectancy is a situation in which a party experiences economic:
  - Advantage if an event does not occur.
  - Harm if an event occurs.
- Majority of states have accepted factual expectancy as a basis for insurable interest.
  - A party only needs to demonstrate potential financial harm resulting from an event.

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**Representation of Another Party**

- Representatives may have an insurable interest.
  - Bailee – may insure property in their own name for bailor’s benefit.
  - Trustee or guardian – may insure property in their own name on behalf of the trust.
  - Agent – may insure property in their own name for the principal’s benefit.

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**Practice**

- When real property is owned by two joint tenants, and one of the tenants dies, the surviving tenant will:
  - A. Not have any ownership interest in the property.
  - B. Have unrestricted ownership and control of the entire property.
  - C. Own a fractional share of the property.
  - D. Have full use of the property only for the remainder of his or her life.

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**Protecting Insurable Interests**

**Objective IV**

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**Protection**

- ❑ Policies typically list individuals with an insurable interest directly, or as loss payees or mortgagees.
  - ❑ Mortgagees have rights separate than those of the named insured.
  - ❑ Loss payees, lienholders, and assignees do not have the same protection as mortgagees.
- ❑ Those with an insurable interest are responsible for ensuring they are named under the policy.

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**Named Insureds**

- ❑ Property owners should be listed on the policy as named insureds.
  - ❑ Name should be listed exactly the same way as on the title.
  - ❑ Occupants have several ways to protect their property interests.
- ❑ Bailees can be protected for legal liability or cover the interest of the owner as well.
- ❑ Trustees are usually named on the policy as named or additional insureds.

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**Occupancy Interests**

- ❑ An occupant of property may have an insurable interest, even if they don't own the property.
  - ❑ Someone who pays to occupy property belonging to another is a tenant, or lessee.
  - ❑ Insurable interest arises out of the property's use value for the time remaining on the lease.
- ❑ Some tenants make improvements.
  - ❑ Improvements usually stay with the property when tenant moves.

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### Mortgage Clause

- ❑ Mortgage clause gives a mortgagee rights and duties independent of the named insured.
  - ❑ Clause is included in all property policies written for buildings.
- ❑ A mortgagee is entitled to make a claim even if the insured's claim can be denied.
  - ❑ Mortgagee must comply with provisions of the mortgage clause to collect.
- ❑ Mortgagee will be notified at least 10 days before cancellation or non-renewal of policy.

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### Loss Payees

- ❑ A loss payee is a person or entity who will be paid if a property loss occurs.
  - ❑ Can be named in the declarations or by endorsement.
  - ❑ Usually owners of equipment rented by the insured.
- ❑ Rights of loss payees are often described in an endorsement attached to the policy.

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### Loss Payees

- ❑ Endorsements include:
  - ❑ Loss Payable Clause – right to have payment made jointly to insured and loss payee.
  - ❑ Lenders' Payable Clause – provides protection similar to mortgageholder.
  - ❑ Contract of Sale Clause – purchaser or seller has right to have payment made jointly to insured and loss payee.
  - ❑ Building Owner Loss Payable Clause – owner of building can be covered if insured is tenant.

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**Practice**

- ❑ Which one of the following statements is correct regarding the mortgage clause contained in an insurance policy?
  - ❑ A. The insurer will notify the mortgagee at least 30 days before a non-renewal of the policy.
  - ❑ B. The rights and duties of the mortgagee are the same as those of the named insured.
  - ❑ C. The mortgagee is entitled to make a claim even if the insured's claim can be denied.
  - ❑ D. This clause is only included in policies covering buildings used for business purposes.

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**Insured's Duties After Loss**

**Objective V**

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**Insured's Duties**

- ❑ The insured's duties are stated in the policy.
  - ❑ Failure to comply could release the insurer from its duty to provide coverage.
- ❑ Duties of the insured:
  - ❑ Give prompt notice to the insurer – includes description of property & how loss occurred.
    - ❑ Need not be in writing.
  - ❑ Notify the police or other parties – required when a law is broken, such as a theft.

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**Insured's Duties**

- ❑ Duties of the insured:
  - ❑ Protect the property from further damage – insured must take reasonable steps.
    - ❑ Insurer usually reimburses insured for necessary expenses to protect property.
  - ❑ Cooperate with the insurer – failure to cooperate can be grounds for claim denial.
  - ❑ Prepare an inventory and allow inspections.
    - ❑ Insured must also provide records.

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**Examination Under Oath**

- ❑ Examination Under Oath (EUO) gives the insurer a means to determine if it will provide or deny coverage on a claim.
  - ❑ EUO is a statement given by someone who is sworn to tell the truth.
  - ❑ Valuable to insurer when arson or fraud is suspected.
- ❑ EUOs enable the insurer to obtain sufficient documentation from the insured either to support or refute the claim.

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**Proof of Loss**

- ❑ The insured must submit a proof of loss to the insurer after a loss has occurred.
  - ❑ Describes details of loss, property values, and interests in the property.
  - ❑ Commits the insured under oath to a specific set of facts.
- ❑ Some insurers require a proof of loss at the end of the adjustment process.
  - ❑ For small claims, insurer may waive the proof of loss requirement.

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**Proof of Loss**

- ❑ Insurer must, within a designated time, make a decision with the proof of loss.
  - ❑ Accept proof of loss as submitted.
  - ❑ Reject the proof of loss and give insured an opportunity to refile a corrected proof of loss.
  - ❑ Reject the proof of loss and allow insured to make the next move without any further guidance.
- ❑ If the proof of loss is rejected, it must be rejected for specific reasons.

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**Practice**

- ❑ Which one of the following statements is correct regarding a proof of loss?
  - ❑ A. The insurer can reject the proof of loss without giving a reason for the rejection.
  - ❑ B. The insurer can reject the proof of loss at any point during the claims process.
  - ❑ C. The insurer can waive the necessity for a proof of loss if it makes the adjusting process more efficient.
  - ❑ D. The insured can decline to provide a requested proof of loss without jeopardizing their loss recovery.

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**Examinations Under Oath**

**Objective VI**

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**When to Use**

- ❑ An examination under oath (EUO) can be a valuable tool for an insurer when a fraudulent claim is suspected.
  - ❑ Clarifies issues sufficiently for the adjuster to recommend acceptance of a claim.
- ❑ Insurer can use the EUO to resolve:
  - ❑ Serious questions about a claim.
  - ❑ Doubts about whether a loss actually occurred.
  - ❑ Questions about who is covered.

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**Adequate Prior Investigation**

- ❑ Prior to obtaining an EUO, the adjuster should:
  - ❑ Obtain statements of the parties involved.
  - ❑ Receive, verify, and fully review bills, receipts, records, and other documentation.
- ❑ Whoever is conducting the examination must thoroughly establish the questions that must be asked.
- ❑ Most adjusters prefer a signed, sworn proof of loss be submitted before the EUO is scheduled.

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**Those Subject to EUO**

- ❑ The examination is a condition of the policy.
  - ❑ Can be demanded at any time by the insurer.
  - ❑ Attorney usually conducts EUO.
- ❑ Anyone claiming benefits under the policy is subject to a demand for such an examination.
  - ❑ Insurer can demand an EUO of anyone it chooses.

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**Date, Time, and Place**

- ❑ The insurer demanding the EUO must include a specific date, time, and place in a demand letter.
  - ❑ Must be reasonable for the person being examined.
- ❑ An insurer cannot set a date and time that would make it impossible for the person to comply.
  - ❑ Cannot select a place that is an unreasonable distance from the examinee.

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**Demand Letter**

- ❑ Demand letter must contain:
  - ❑ A demand stating the insurer is intent on conducting the EUO.
  - ❑ A definite time and place for the examination as well as the name of the conductor.
  - ❑ The records or documents the examinee must bring to the examination.
  - ❑ The name, telephone number, and address of the person to contact if the examinee cannot be present for the examination.

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**Procedures for EUOs**

- ❑ Procedures for EUO vary by area and company.
  - ❑ Formalities – insured must appear in person and give oral testimony.
    - ❑ Need not submit to a polygraph test.
  - ❑ Types of questions – examiner can ask anything relating to the loss.
    - ❑ Questions about the insured's financial condition are acceptable.
    - ❑ Examinee cannot invoke Fifth Amendment right against self-incrimination.

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### Procedures for EUOs

- Procedures for EUO.
  - Continuances – every effort should be made to allow enough time to complete the examination in one sitting.
    - If EUO is not completed in one sitting, the record should state that the examination is incomplete and will be continued.
  - Signing and swearing to transcript – attorney or adjuster sends the document to the examinee to review and sign.

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### Failure to Appear

- Insurer options when an examinee does not appear and does not request a reschedule:
  - Do nothing further.
  - Send a letter requesting the person contact the adjuster to reschedule the examination.
  - Send a reservation of rights letter stating coverage for the loss may be denied.
    - Insured has violated his or her duties after the loss.

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### Failure to Bring Documents

- Options when an examinee does not have the demanded documentation:
  - Proceed with the EUO without documentation.
    - EUO continues later when the examinee must return with the documents.
  - Reschedule the EUO for another date and time.

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**Separate Examinations**

- ❑ When more than one person is to be examined, adjuster may want separate examinations.
  - ❑ Examinees' attorney might reject the demand and insist on the presence of all parties.
  - ❑ The law of the applicable state must be checked.
  - ❑ Current ISO policies allow the adjuster to exclude any other "insured" from the examination.

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**Insured Facing Criminal Charges**

- ❑ An adjuster can demand an EUO from an insured who is being prosecuted or who is suspected of arson or fraud.
- ❑ Criminal charges do not eliminate the insured's contractual obligation to appear for an EUO.
  - ❑ However, it is better for the insurer to wait, if possible.
  - ❑ Unless adjuster's investigation will be prejudiced by delay, the investigation should be suspended until insured can cooperate.

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**Practice**

- ❑ Which one of the following statements is correct regarding an examination under oath (EUO)?
  - ❑ A. An EUO must be completed in a single sitting.
  - ❑ B. The demand letter should include a definite time and place for the examination as well as the documents the examinee must bring.
  - ❑ C. An insured can submit written responses to the questions given by the insurer.
  - ❑ D. The insured can invoke the Fifth Amendment right against self-incrimination and refuse to answer any question in the EUO.

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**Practice**

- Susan sustained damage to her home following a fire. She filed a claim with her insurer and submitted a proof of loss but then refused to sign a nonwaiver agreement. She also stopped responding to the adjuster's phone calls. The insurer scheduled an examination under oath (EUO) and sent Susan a demand letter, but Susan did not appear to the EUO. What would be the insurer's best course of action in this situation?
- A. Deny the claim.
  - B. Do nothing further.
  - C. File a civil suit against Susan for breach of contract.
  - D. Send a reservation of rights letter to Susan indicating coverage may be denied.

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