2 – Determining Whether Coverage Applies

**1 – Determining Coverage for a Property Claim**

**Objective**: Summarize the considerations involved in determining whether a property insurance policy covers a claim for direct physical loss to tangible property.

A claim rep rarely, if ever, receives a new claim that can be paid immediately. Instead, claims require the rep to review the loss facts against the relevant policy coverages to determine whether coverage applies.

Because determining the applicable coverage should precede calculating the amount of the insured loss, we’ll focus on figuring out whether coverage applies rather than the amount of loss payable under the policy.

You can apply a systematic coverage review process to any claim for direct physical loss to property:

**Is the Clamant Covered?**

**Step one is to consider whether the claimant is covered under the policy. The named insured is the party listed on the policy**. Some policies also cover claimants not listed as named insureds by defining who is an insured and who is entitled to recovery rights within the policy.

Example, Coverage C under a typical homeowners policy covers personal property owned or used by an “insured” while anywhere in the world. The policy defines “insured” to include the named insured as well as any relative of the named insured who resides in the household and other persons under the age of 21 who are in the care of the named insured.

Most commercial policies, in contrast, cover only the persons or organizations listed as insureds. When an organization is the named insured, the claim rep will establish the claimant’s status within the organization to determine whether that claimant qualifies for coverage.

**Does the Claimant Have an Insurable Interest?**

**Step two, to recover under a property policy, a claimant must also have an insurable interest in the damaged property at the time of loss. Insurable interest requires the claimant to derive a monetary benefit or advantage from preservation and continued existence of the property or to conversely, suffer a monetary loss from its destruction**.

**Insurable Interest:** An interest in the **subject of an Ins Policy** that is not unduly remote and that would cause **the interested party to suffer financial loss** if **an insured event occurred**.

There are many forms of insurable interest. The most common is property ownership. A tenant or lessee has occupancy insurable interest. Mortgageholders, lienholders, and loss payees also possess insurable interests in property through their security interests in it.

**Did the Loss Occur Within the Policy Period and at a Covered Location?**

**Damage to covered property must usually occur during the policy period for the loss to be covered. So the claim rep must confirm that the date of the property loss stated in the insured’s loss notice is accurate and falls within the policy period**.  **The timeline is important to determine.**

Property policies can cover buildings, personal property, or both. They generally required covered buildings and property to be at the premises described in the policy – on the declarations page or in an endorsement.

Commercial policies can also extend coverage to newly acquired buildings and under certain conditions for limited periods. Such buildings do not need to be at the described premises, but must be located somewhere within the coverage territory defined in the policy. A Common coverage territory for property policies written in the United States is the United States of America, including its territories and possessions; Puerto Rico; and Canada.

Personal property tends to be movable, so it may not always be at the location listed on the policy. Property policies acknowledge this by extending coverage accordingly, to varying degrees. Example, personal property while located in or on a building or structure described in the declarations or in the open (or in a vehicle) within a specified distance (such as 100 or 1000 feet) of the described location or building. Additional coverages or coverage extensions may provide limited amounts of coverage for personal property located at unspecified premises (or even in transit between locations) anywhere within the coverage territory.

In contrast with the approach used under most commercial property policies, commercial inland marine policies often insure the covered property while anywhere within the coverage territory defined in the policy, up to the applicable limit of insurance. As mentioned previously, howmeowners policies ordinarily cover personal property owned by the insured anywhere in the world.

**Is the Damaged Property Covered?**

To determine whether the damaged property is covered, the claim re reviews the policy language. **Buildings and personal property are usually covered under separate section in both commercial property and homeowners policies**. Often buildings and personal property are involved in the same claim.

The claim rep reviews each insuring agreement to determine the property covered by each and compares it with the property claimed. **Then the rep reviews the Property Not Covered section, which may reveal that coverage is not actually applicable.**

Example, a commercial building suffers an extensive fire loss, including damage to the foundation. Both the building and business personal property are damaged. The building insuring agreement provided coverage for the building. However, the Property Not Covered section lists various types of real property, including foundations below the lowest basement floor, as well as underground pipes, flues, or drains. And the business personal property agreement includes all business personal property owned by the named insured, but the Property Not Covered section lists various types of personal property, such as accounts, bills, and currency.

**Did the Property Sustain Direct Physical Loss by a Covered Cause of Loss?**

**Property policies commonly limit coverage to direct physical loss of or damage to covered property caused by or resulting from a covered cause of loss**. Because “direct physical loss” is not defined in insurance policy forms, a definition must be found elsewhere (such as, for example, a standard dictionary).

An example of a direct loss is a store burning down. A related indirect loss is nonexistent revenue for 6 months while the store is being rebuild. Indirect loss, if covered by insurance, are separate from direct loss. The most important type of indirect loss is loss of use of property when damaged or lost.

**A loss is “physical” if it involves tangible property’s damage, destruction, or disappearance.** Nonphysical losses, if covered by insurance, include all kinds of financial losses, such as loss of value to an inventory caused by changes in fashion or obsolescence, from an interruption of a business’s operation, or to a business customers’ goodwill.

The direct physical loss to the property must be caused by a covered cause of loss. Specified perils and open perils are the two approaches to designating covered causes of loss.

* **Specified perils coverage lists each cause of loss covered under, and directly listed in, the policy.**  Some specified perils include wording that defines the peril or restricts its application. Example, the “falling objects” peril applicable to Coverage C – Personal Property in many HO policies states that damage to property inside the building is not included unless the building’s roof or an outside wall is first damaged by a falling object.
* **The open perils approach covers causes of direct physical loss that are not specifically excluded.** When handling a property claim under an open perils policy, the claim rep must pay particular attention to the policy’s exclusions. An exclusion may eliminate coverage for a particular cause of loss and then make one or more exception for certain situations. Example, flood exclusions commonly contain an exception stating that if flooding results in fire or explosion, the insurer will pay for the resulting fire or explosion damage. When determining whether the cause of a loss is covered, make sure to check for any endorsements that may delete or amend exclusions that would otherwise apply to the loss being investigated.

An important consequence of the distinction between specified perils and open perils is its effect on the burden of proof in establishing whether the cause of loss is covered. **When a claimant has a specified perils policy, the claimant has the obligation to determine which peril apples to the damaged property**. Under an **open perils policy, causes of loss to the property are covered unless they are specifically excluded**. Therefore, if the insurer wishes to deny coverage for a claim, it must prove that the policy excludes the loss.

**Which Financial Consequences Are Covered?**

The claim rep must determine whether the applicable insurance policy covers the type(s) of financial consequences for which the insure dis seeking payment. Property policies can cover various financial consequences of direct physical loss.

**The financial consequence most commonly covered is reduction in the covered property’s value.** Property policies specify different valuation methods for determining the amount recoverable for a covered loss. Actual cash value and replacement cost are the two most common methods. For practical reasons, some types of property are valued using other methods, such as agreed value for items that are either irreplaceable or difficult to value and invoice value for property in transit between a seller and buyer.

A property policy may also contain insuring agreements covering other financial consequences of direct physical loss, such as additional living expenses or loss of business income. When a home is damaged to the point that it is unusable, the insured loses more than just the cost to repair or replace. Coverage D – Loss of Use in standard in HO policies covers, up to the applicable limit, additional living expenses necessary for the insured to maintain a normal standard of living. If the insured rents the covered building, loss of rental income can also be covered.

Commercial property policies often include coverage for loss of business income while the insured’s operations are suspended because of covered direct physical loss to property at. Commercial property policies can also include extra expense insurance, which covers additional expense incurred to continue the insured’s operations or reduce the amount of time required to restore the covered property to use.

**Do Any Additional Coverages or Coverage Extensions Apply?**

**Property policies can provide various additional coverages and/or coverage extensions. These are essentially supplemental insuring agreements that provide limited amounts of coverage for various loss exposures that would not otherwise be covered under the policy**. The property section of a widely used homeowners policy form provides 12 additional coverages, including these:

* The cost to remove debris of covered property following a loss
* The cost of reasonable repairs required to protect covered property from further loss after it has been damaged by a peril insured against
* Damage to trees, shrubs, and other plants but a subset of perils insured against
* Increased construction costs resulting from the enforcement of an ordinance or law that requires an insured structure to be rebuilt with upgrades

**Commercial policies contain even more** additional coverages than homeowners policies. For example, **the property section of a widely used business owners coverage form contain 18 additional coverages and 7 coverage extensions**. Business income coverage and extra expense coverage, which in commercial package policies are ordinarily provided by attaching a separate business income and extra expense coverage form, are commonly provided more compactly as additional coverage in business owners policies.

The key point is that very important coverages may be provided as additional coverages or coverage extensions, so claim reps must carefully read each of the additional coverages and coverage extensions against the facts of the particular claim to determine which ones apply.

**Have All Policy Conditions Been Met?**

Insureds and insurers must perform certain obligations before or after a loss that are expressed as conditions in the applicable insurance policy. Conditions that must be met before a loss occurs are called conditions precedent; those that must be met after a loss occurs are called conditions subsequent.

An example of a condition precedent is that the insurer must properly cancel the policy before terminating an insured’s coverage, such as when the insured has failed to pay the premium. If the insurer does not properly cancel the policy and a loss occurs, the insurer may be required to pay the loss. An the condition precedent that would apply to the insured is paying the policy premium on time.

Conditions subsequent to a loss can also affect coverage. An insured must promptly report losses an cooperate with the insurer during the investigation. Failure to meet these obligations may lead to coverage denial.

**Do Any Laws or Regulations Affect Coverage?**

Although a policy may include provisions with seemingly clear intent, courts may render decisions, or insurance departments may enact regulations, that affect how the policy is interpreted. When a court makes a decision that affect how the policy is interpreted, it will usually be applied to all other similar claims within the courts jurisdiction. The interpretation that the court makes may differ greatly from what was intended by the insurer’s underwriters.

Insurance Department regulations can also affect coverage. Example, while a policy or law may specify a time period in which the insurer must notify the insured of policy cancellation, an Insurance Department regulation may specify the font size that must be used in the notification. Failure to comply with the Insurance Department regulation could lead to fines and result in an insurer paying a claim that might not have been covered.

**2 – Types of Property**

**Objective:** Distinguish between real property, personal property, fixtures, trade fixtures, and improvement and betterments.

Property loss claim reps must determine now only who, but also what, is covered under property insurance policies. Because part of the claim handling process concerns the different types of property insured under the policy, claim reps must know property characteristics and property related insurance principles.

Real property is distinguished from personal property under both the law and insurance contracts. Although land is excluded in most property insurance policies, buildings, other structures, and to some extent, trees and other plants growing on the land are covered property under many property insurance policies.

**Real Property (realty) tangible property consisting of land, all structures permanently attached to the land, and whatever is growing on the land**.

**Personal Property All tangible and intangible property that is not real property.**

In some property claims, the distinction between real property and personal property might not be as obvious as it usually is. Certain types of property, such as fixtures, trade fixtures, and improvements and betterments, are not clearly real property or personal property.

**Distinction Between Real and Personal Property**

**Claim reps must often distinguish between real and personal property when they apply limits, coinsurance, and valuation provisions to determine the amounts payable under property insurance policies**. For example, in many property insurance policies, separate limits of insurance apply to buildings and personal property.

A typical homeowners policy, for one, has separate limits for the dwelling, other structures, and personal property. A commercial property policy covering buildings and personal property typically has separate limits for each building, fore personal property owned by the insured, and if purchased for personal property of others in their insured’s care, custody, or control. In some instances, however, a commercial policy may be subject to a blanket limit that applies to all covered property.

If coinsurance or a similar insurance-to-value provision applies to a property insurance policy that has separate limits for real and personal property, the calculations must be performed separately for each of the two categories of property. As when applying limits of insurance, **the claim rep must know which items of property to classify as real property and which to classify as personal property**.

The distinction between real property and personal property is also important in applying valuation provisions to property losses. Example, many homeowners policies value real property (the dwelling and other structures) at replacement cost and personal property at actual cash value.

**The Law of Fixtures**

**Fixture – Any personal property affixed to real property in such a way as to become part of the real property**.

Personal property can become real property by becoming so attached or adapted to real property that it becomes a part of it. In such a case, the property is known as a building fixture. By definition, building fixtures (or just fixtures) are part of the real property. All construction materials are considered personal property until they are incorporated into a building.

**Despite its definition, the term “fixture” is normally applied to a type of property that seems to retain its separate identity**. A brick that has been incorporated into a building might be considered a fixture legally and technically, but is not normally called by that name. For insurance purposes, the term “fixture” is applied to something that has been added to a building after its original construction, such as a utility sink added by a tenant. A sign on a building might also be considered a fixture.

Some property can be considered as either personal property or fixtures (real property). Drapes, drapery hardware, carpets shelves, lights, large appliances and machinery, and building ornamentation can be either personal property or fixtures, **depending on the circumstances of installation, construction, ownership, and any applicable state law**.

**No single factor determines whether an object is personal property or a fixture, but the three important considerations in making such a determination are attachment, adaptation, and intent**.

**Attachment**

Any property’s physical attachment to a structure strongly indicates that the property is a fixture and has become part of the real property. However, the attachment would have to be more permanent and secure than, for example, a plug connecting an electrical appliance to an outlet. That said, more secure types of attachment do not necessarily qualify the object as a fixture – a picnic table bolted to the ground to prevent it from being stolen or blown over, for example, will probably still be considered personal property.

**Adaptation**

Whether an item is especially adapted to the use of the real property is important in distinguishing between real and personal property. If property is incorporated into the building or structure and defines the building or structure, it becomes part of the building for insurance purposes. The relationship between a tennis court (which is clearly real property) and its net exemplifies this concept.

Without the net, the tennis court cannot be used appropriately. The net is incorporated into the court and helps to define the structure as a tennis court. It is specifically adapted to the real property’s use. As such, it is considered a fixture and thus part of the real property.

Although it is possible to argue that the net is personal property because it can be removed easily, the net would more likely be considered part of the real property. This is because the net’s function is an integral part of the court is probably more important that its ability to be removed.

**Intent**

Although subjective, the owner’s intent might determine whether certain property is a building or fixture. For example, a restaurant owner might select carpets, drapes, and ornamentation to suit her operation. When she moves to a new location, she might intend to move this property. In this type of case, the intent might be sufficient to deem theses objects personal property. The intent to move property from one location to another might qualify an item as personal property even thought it is bolted to the structure.

**Trade Fixtures**

Property installed in a structure and used in a business is often referred to as trade fixtures. Trade fixtures can include items such as cabinets, cases, counters, and so forth.

**Trade Fixtures – fixtures and equipment that may be attached to a building during a tenant’s occupancy, with the intention that they be removed when the tenant leaves. (pizza oven).**

This property may or may not be a fixture in the legal sense. The term “trade fixtures” is firmly entrenched in the industry usage and is generally synonymous with “personal property” in insurance policies. As long as the claim rep knows the legal difference between legal fixtures and trade fixtures and knows how a policy applies to all types of property, referring to personal property as a “trade fixture” is appropriate.

**Improvements and Betterments**

**Improvements and betterments – alterations or additions made to the building at the expense of an insured who does not own the building and who cannot legally remove them.**

Improvements and betterments are changes made by a tenant to a structure to suit the tenant’s purposes. In commercial leases, tenants commonly rent bare space in which all interior walls, finishes, and furnishings must be added. All improvements and betterments are fixtures because they are added to the structure after it was construction. The term “improvements and betterments” exists because in a lease and insurance agreements, treating these types of fixtures separately is important.

**Leases that allow tenants to install improvements and betterments usually provide that (1) that the items can or must be removed at the end of the lease or (2) that ownership of the items will transfer to the landlord at the time of installation or at the end of the lease.** These lease provisions determine the extent of the tenant’s “use” interest in improvements and betterments. The lease specifies how many years of use the tenant has and whether the tenant can renew the lease.

Because the tenant has a use interest in improvements and betterments, insurance policies have specific provisions for covering such property. Coverage might exist under the landlord’s policy or the tenant’s policy, or both. In any case, the claim rep must understand the nature and extent of the different interest in improvements and betterments.

**3 – Determining Insurable Interest**

**Objective**: Given a case, evaluate one or more entities’ insurable interests

After determining that the person or organization submitting a claim under a property insurance policy is an insured or named as a mortgageholder or loss payee under the policy, you must determine whether the claimant has an insurable interest in the property that was damaged or destroyed. A claimant under a property policy must have an insurable interest in property that is damaged or destroyed in order to have a legitimate claim.

**When and Why Insurable Interest Is Required**

An insurable interest arises as the result of a relationship with a person or a right with respect to property. Whether an insurable interest exists depends on the relationship between the claiming party, and the property, person, or event that is subject of the insurance policy. For example, to make a claim under a property insurance policy, the claimant must stand to suffer a financial loss if the insured property is damaged.

The requirement for an insurable interest is a matter of law and exists even in the absence of policy provisions specifically addressing insurable interest. However, policies often include provisions that limit insured’s rights of recovery to more than their interest in the covered property at the time of the loss.

The requirement for insurable interest is different in property-casualty insurance than in life insurance. In life insurance, the beneficiary must have an insurable interest in the life of the insured when the policy is purchased, but not necessarily at the time of the insured’s death.

In contrast, insurable interest in property insurance must be present at the time of the loss. For example, if Jacob sold his home but did not cancel his homeowners insurance, he could not present a valid claim under that policy. If the property were subsequently damaged because he would have no insurable interest in the home at the time of the loss.

The insurable interest requirement supports the principle of indemnity by ensuring that only those parties who suffer financial loss are indemnified, and then only to the extent of their loss. **Requiring an insurable interest also prevents individuals or organizations from wagering (gambling) by insuring an event from which they would not suffer a loss and then profiting when that event occurs. In addition, because the insurable interest requirement limits insured’s ability to profit from insurance, the incentive to cause losses intentionally (moral hazard incentive) is reduced**.

**Legal Bases for Insurable interest**

Insurable interest can arise from a legal relationship between the party filing the claim and the subject of insurance.

**Ownership Interest in Property**

**Ownership of property creates an insurable interest in the property, and ownership rights are legally protected**. For example, property owners have a legal right to sell, give away, and use their property. The extent of legal ownership determines the extent of insurable interest in the property.

**Contractual Obligations**

Insurable interest can arise out of some contractual obligations. Generally contractual rights and related insurable interest fall into 2 major categories:

* Contractual rights regarding **people** – a contract may give one party the right to bring a claim against a second party without entitling the first party to any specific property that belongs to the second party. For example, if you do not pay your credit card debt, the credit card company can bring a claim against you for the outstanding balance on the card. The credit card company cannot repossess the property, they become an **unsecured c**reditor.
* **Contractual rights regarding property** – Some contacts allow one party to bring a claim against specific property held by a second party. For Example, **if you obtain a mortgage loan in order to buy a house, the mortgagehoder can repossess the house if you fail to make mortgage payments.** This type of contract typically creates an insurable interest in the secured property equal to the debts’ remaining balance. **The mortgageholder becomes a Secured creditor**.

**Exposure to Legal Liability**

Sometimes one party can have legal responsibility for property owned by others. Having this type of legal responsibility creates an insurable interest in that property because the responsible party can suffer a financial loss if the owner’s property is damaged. Examples:

* Hotelier has an insurable interest in guests’ property
* A tenant has an insurable interest in the portion of the premises that the tenant occupies
* **A contractor typically has an insurable interest in a building under construction**

**In these cases, the responsible party has an insurable interest based on potential legal liability for damage to the owner’s property**. The extent of that insurable interest is the property’s full value, including the owner’s use value.

**Factual Expectancy**

A majority of states have accepted factual expectancy as a valid basis for an insurable interest. In these states, a party does not have to establish a specific property right, contractual right, or potential legal liability to prove insurable interest. The party need only to demonstrate potential financial ham resulting from the event to be insured. The focus is on the insured’s financial position rather than on a legal interest.

Factual expectancy is a situation in which a party experiences an economic advantage if an insured event does not occur or, conversely, economic harm if the event does occur.

For example, Tina’s fiance’ gives her a diamond engagement ring that he had stolen from a relative. When Tina’s apartment is subsequently burglarized, the ring is one of the items stolen. During the investigation of the claim, it was determined that Tina’s finace’ stole the ring from a relative. Because a person cannot legally own property that rightfully belongs to another, Tina was never the legal owner of the ring. Nonetheless, courts would probably find that she would be entitled to recover for the ring under her tenant’s policy based on her factual expectancy of loss.

**Representation of Another Party**

Insurable interest can be based on one party’s acting as representative of another party. In this case, the representative can obtain insurance on property for the benefit of the property’s owner. These are examples of insurable interest based on representation of another party:

* **Agents – an agent may insure property in the agent’s name for the principal’s benefit. Although the insurance proceeds are ultimately payable to the principal the agent has an insurable interest**.
* Trustees – a trustee may insure property in the trustee’s name for the trust’s benefit. The trustee has an insurable interest but must give the proceeds to the trust
* Bailees – a bailee may insure property in the bailee’s name for the bailor’s benefit. The bailee has an insurable inters, but if the bailors property becomes damaged or destroyed, the bailee pays an insurance proceeds to the bailor.

**Multiple parties with insurable Interest**

Under some circumstances, more than one party has an insurable interest in the same property and, as a result, the sum of all insurable interests exceeds the property’s value. Example, a property owner and a lender holding a mortgage on the property both have an insurable interest in that property. The mortgageholder’s interest is the same as the unpaid loan, and the owner’s interest is the property’s full value. Combined the amount of these two interests could greatly exceed the property’s value.

When more than one person owns the same property, the nature of the ownership affects the extent of each party’s insurable interest. Property may be jointly owned according to these interests:

**Joint Tenancy**

In joint tenancy, each owner, referred to as a “tenant”, owns the entire property and has a right of survivorship. This is an automatic right of one tenant to the share of the other tenant when that other tenant dies**. Two or more parties hold title in equal shares to the real property and when one tenant dies, the estate or title to the real property passes to the remaining joint tenant or tenants**. **Also, with two joint tenants, each must hold a one-half share. One of the joint tenants cannot be subject to a condition that does not apply to the others. The same deed must name them all as owners**.

Because any one joint tenant could become the property’s sole owner, each tenant has an insurable interest in the property’s full value. If the restaurant were insured for its full value $1M, the two owners would each have a $1M interest. Therefore, their combined interest would be $2M , or twice the value of the property. Nonetheless, if the restaurant were destroyed, their insurance would pay no more than the property’s value, subject to the $1M policy limit and other policy provisions. That payment would probably be made to the first named insured in the declarations.

**Tenancy by the Entirety**

**Tenancy by the entirety is a joint tenancy between a husband and wife. As with joint tenancy, if spouses jointly own a property, each of them owns the entire property**. If one of them dies, the other becomes the sole owner; consequently, each spouse has an insurable interest equal to the full value of the property. As a result, the combined interests of both spouses would be twice the property value. However as with a joint tenancy, in the event of a loss, an insurance policy would pay no more than the property’s value. usually a deed that says “to husband and wife as tenants by entirety”. It is similar to joint tenancy in that the title to the real property will pass to the surviving spouse. **A tenancy by the entirety involves a husband and wife and differs from a joint tenancy because sale or contract to sell does not sever the tenancy, and individual creditors of either the husband or the wife cannot subject the property to a claim.** Also, unless both spouses are found liable for the same tort, judgment creditors cannot execute the marital property. Finally, neither party individually owns a portion that can be mortgaged.

**Tenancies in common**

**Tenancy in Common is a concurrent ownership of property. It does not involve survivorship, it allows parties to own unequal shares, and do not require parties to derive their interest in the same deed from the same grantor**. Example, Andrew, Colin, and Rita are tenants in common of a factory, each holding 1/3 interest. If Andrew died, Colin and Rita would still each own only 1/3 of the factory. Andrew’s 1/3 would pass to his heirs.

With tenant in common, each party’s insurable interest is limited to that owner’s share of the property.

**Tenancy in Partnership**

Tenancy in partnership is a concurrent ownership by a partnership and its individual partners of personal property used in the partnership. **This type of tenancy is similar to a joint tenancy in that the partnership and all partners have rights of survivorship. Therefore, with a tenancy in partnership, both the partnership entity and the individual owners have an insurable interest**.

Depending on the size of the partnership, the combined interests could be many time the actual property value because each partner, and the partnership, would have **an interest worth the entire insurable amount.** If a loss occurred the claim settlement would be paid to the first named insured, which could be the partnership entity or one of the partners.

**4 – Identifying and Protecting Insurable Interests**

**Objective**: Explain how parties with insurable interest are identified and protected in insurance policies

For every claim, a property claim rep identifies all parties that have an insurable interest in the covered property and then protects their interest when payments are made.

Parties that have an insurable interest are responsible for ensuring that they are appropriately named or qualified for coverage under the proper policies. **Property insurance policies normally identify parties with insurable interests by listing them as named insured, mortgageholders, loss payee, or additional insured**. Property policies may also contain provisions that give special rights to mortgageholders, and endorsements can be added to define the coverage provided to loss payees and additional insureds.

**Named Insureds**

Property owners who purchase an insurance policy on their property should be listed on the policy as the name insureds. Their interest is primary and provable by the title or deed when real property (such as a building) is covered. To avoid uncertainty should a claim arise, the owners or their insurance agent or broker should make sure that the owner’s names are listed on the policy exactly the same way as they appear on any title or deed pertaining to the property.

Occupants can insure their interests in several ways. Example, tenants often carry coverage on their personal property, while the owner insures the building. A common alternative occurs when a lease requires the tenant to insured the building and to list the owners as an additional insured. This practice prevents duplicate coverage for the building while protecting the owner’s and tenant’s interest.

**Bailee liability policies are written for bailees and other custodians of property to protect them against legal liability for damage to the property in their care, custody, or control**. The property owner is not an insured under the policy, and the insurer will not make any payment to the owner on behalf of the insured unless the bailee is legally liable for the loss.

In contrast, bailees’ customers policies, issued in the bailee’s name, cover the interest of both the owner and the bailee without regard to the bailee’s legal liability. Common carriers have their own types of policies to cover their cargo liability exposures.

Trustees who have a long-term responsibility for the care of property are usually named on the policy as named or additional insureds.

**Policy Provisions Addressing Lenders’ Rights**

Lenders often require that their borrowers to pledge property as collateral for their loans. The lender is then said to have a security interest in the property, also referred to as a lien. If the borrower defaults in repaying the loan, the lender can take possession of the pledged property to offset its credit loss. Under a mortgage loan, the borrower (referred to as the mortgagor) pledges real property as security to the lender (referred to as the mortgagee, or mortgageholder). Under other secured loans, the borrower pledges personal property – such as inventory, automobiles, or mobile equipment – as collateral.

A lender with a security interest in property generally relies on the borrower’s insurance as its first source of protection in the event of damage to the pledged property. A lender identified as a mortgagee, or mortgageholder, in an insurance policy benefits from special rights provided to the lender under the standard mortgage clause contained in the policy.

**Lenders with a security interest in covered personal property – as well as owners of personal property leased to the insured – are often insured as loss payees under the borrower’s (or lessee’s) property insurance. Insurers use loss payable endorsements to extend rights to parties that have a security interest in personal property in the insured’s possession**.

**Mortgageholders**

A common example of a standard mortgagee clause is the Mortageholders condition in the Insurance Service Office, Inc (ISO) Building and Personal Property Coverage form (CP 00 10) also referred to as the BPP.

The Mortgageholders condition applies to covered loss to buildings or structures only. The insurer agrees to pay mortgageholders to the extent of their financial interests in the property and “in their order of precedence, as interest may appear”. Therefore, if a property has a first mortgage and a second mortgage, the insurer will pay the holder of the first mortgage first and the holder of the second mortgage second.

The condition states that the insurer will pay covered claims to the mortgageholder even though the insurer has denied the insured’s claim because of the insured’s acts (such as arson) or because the insured has failed to comply with policy conditions. **To obtain coverage in those situations, the mortgageholder must meet these requirements:**

* **The mortgageholder must pay any premiums due to the insurer**
* **The mortgageholder must submit a proof of loss within 60 days of the insurer’s request**
* **The insurer must be notified of any change in ownership or occupancy or any substantial change in risk known to the mortgageholder.**

If the insurer cancels the policy for nonpayment of premium, it must give written notice of cancellation to the mortgageholder at least ten days before the effective date of cancellation. If the insurer cancels the policy for any other reason, the mortgageholder must receive 30 days-notice. If the insurer elects not to renew the policy, it must give the mortgageholder 10 days-notice. These time limits are often amended to comply with state law.

**Loss Payees and Additional Insureds**

Loss payees other than mortgageholders, such as the owners of the equipment leased to the insured or the insured’s landlord, can be named on the policy declarations page. However, these payees do not automatically receive the added protection granted to mortgagees under the Mortgageholders condition.

The rights that loss payees receive are often described in an endorsement attached to the policy. An example is the ISO Loss Payable Provisions endorsement (CP 12 18). Although an insurer may not require the use of the endorsement, attaching it to the policy clarifies the loss payee’s rights. The endorsement includes space to describe the property in which the loss payee has an interest and indicates which one of these for provisions applies:

* The Loss Payable Clause does not provide any right to the loss payee other than the right to have payment of any loss made jointly to the loss payee and the insured
* The Lender’s Payable Clause provides that a loss payee whose interest in the insured property is established by written agreements, such as bills of lading or financial statements, receives protection similar to that provided by the Mortgageholders condition.
* The Contract of Sale Clause provides that a purchaser or seller has the right to have payment of any loss made jointly to the loss payee and the named insured as their interests may appear.
* The Building Owners Loss Payable Clause provides that the owner of a building in which the insured is a tenant can be covered as a loss payee. The insurer further agrees to adjust losses to the described building with the building owner who is show as loss payee. Any loss payment made to the loss payee will satisfy the insured’s claim against the insurer for the owner’s property. The insurer also agrees to adjust losses to tenant’s improvements directly with the insured unless the lease provides otherwise.

An alternative to using the Building Owners Loss Payable Clause is designating the building owner as an additional named insured under the building insurance purchased by the tenant, suing the appropriate additional insured endorsement. Example, the ISO Additional Insured – Building Owner Endorsement (CP 12 19) makes the building owner named in the endorsement a named insured, but only with respect to the coverage that the policy provides for direct physical loss or damage to the building(s) described in the declarations or the schedule in the endorsement.

**5 – Insured’s Duties After Loss**

**Objective**: Explain why the insured’s duties after loss in a property insurance policy are important in the investigation of a claim made by the insured

All property insurance policies include a condition specifying the duties that the insured must perform after covered property has been lost or damaged. **These duties are important to understand because their completion is vital to the effective investigation, evaluation, and settlement of claims**.

Failure of the insured to comply with any of the applicable duties could impede the investigation, allow additional damage, and prevent the disclosure of key information, any or all which could undermine both parties’ ability to arrive at a proper settlement. In fact**, the insured’s failure to comply results in “prejudice” – defined as damage or detriment to the insurer’s legal rights – the insurer may be released from its duty to provide coverage for the loss claimed**.

**Give Prompt Notice to Insurer**

Following a loss, the insured must promptly notify the insurer, although not necessarily in writing. Also, notice to the agent is notice to the insurer.

The condition does not define what it means by “prompt”, though the insured is held to a standard of **whatever constitutes reasonable notice under the circumstances**. Notice includes a description of the property along with how, when, and where the loss occurred. While the insured may not have complete information when giving notice, the insured is required to advise the insurer of the information as soon as possible.

**Prompt notice of property damage and related information allows the insured to evaluate the damage and cause of loss at the time of the occurrence**. This is critical because the extent to which the property is damaged often increase over time is not addressed early.

**Notify the Policy or Other Parties**

The insured must notify the policy for certain types of losses or “when a law has been broken”. Example, Theft losses, homeowners policies generally require notification of police for theft losses only. This requirement makes sense because the police might be able to trace and recover the stolen property an arrest the thief. This policy requirement might also deter fraudulent claims, because in most states, submitting a false police report is a felony. **This condition also benefits the insurer, which can notify the police of its interest in any recovered property that the company might have already paid for in the form of settlement with the insured.**

The insured must also notify the credit card company, the fund transfer card company, or the access device company if the loss involves credit, fund transfer, or access device coverage. the purpose of this provision is to restrict the insured’s liability for charges or withdrawals made with the insured’s credit card, fund transfer card, or access device by an unauthorized person.

**Protect Property from Further Damage**

**The insured must take reasonable steps to protect the property from further damage.** For example, after a fire, boarding up the property, obtaining temporary electrical service, or renting portable heaters to prevent freezing of plumbing might be necessary. Or, if a falling tree limb makes a hole in the insured’s building roof, the insured might hire a contractor to make temporary repairs or cover the roof with a waterproof tarp to prevent rain or snow from entering. Should further loss occur because the insured fails to take reasonable measures to protect the property, the insurer might (depending on the applicable law) be able to avoid paying for the additional loss that could have been prevented had the insured done so. However, the provision does not give the insured permission to make final repairs to the property before the insurer inspects the damage.

The insurer normally reimburses the insured for reasonable and necessary measures taken to prevent further damage, as long as the insured keeps an accurate record of the expenses incurred. Without such records, the insured will have no basis for a claim for reimbursement.

**Cooperate with the Insurer**

The insured who has made a property claim has a duty to cooperate with the insurer in the investigation and settlement of the claim. For various reasons, some insured who have made claims do not cooperate with the insurer. They may be intentionally uncooperative, or they may simply be too busy to cooperate Whatever the reason, a failure to cooperate can be grounds for claim denial. However, any decision to deny coverage because of the insured’s lack of cooperation must be carefully reviewed by management and counsel before being finalized.

**Prepare and Inventory, Allow Inspections, Provide Records**

The insured must prepare an inventory of damaged or destroyed personal property. Along with the inventory, the insured must provide records to substantiate the amount claimed and must present bills, receipts, and related documents of sale. If the insured does not have bills or receipts, then photos, video, warranty cards, or instruction manuals usually suffice. The insured must be able to prove the loss, the insurer does not have a duty to prove that an item was not damaged or lost.

As often as the insurer reasonably requires, the insured must allow the insurer to inspect the damaged property to verify the circumstances and amount of loss. The insurer is entitled to more than one inspection if several inspections are reasonably required to complete its investigation. Example, in the case of a damaged building, the insurer may need one inspection to scope the damage, a second inspection with a contractor, a third inspection with the insured’s contractor to resolve differences, and a fourth inspection to review additional damage claimed. In addition, commercial policies often require the insured to allow the insurer to take samples of damaged or undamaged property for inspection, testing, or analysis.

As often as the insurer may reasonably require, the insured must also permit the insurer to examine and copy the insured’s books and records. This provision allows the insurer to obtain any of the insured’s records that substantiate the claim. These can include documents such as financial records, employment records, receipts, and structural blueprints. This provision can also help the insurer prepare for taking an examination under oath.

**Submit to Examination Under Oath**

Any insured seeking coverage must, if requested, submit to examination under oath (EUO) by the insurer. EUO can be valuable to the insurer when arson or fraud is suspected or when the adjuster has been unable to obtain sufficient information about the claim. Normally an attorney conducts the EUO, in which the insured must answer questions and present documents while under oath and in the presence of a court reporter. Typically, no other insured is allowed to be present at an EUO. If the insurer wishes to examine multiple insureds under the same policy, a separate EUO is held for each one. When an EUO is completed, the court reported transcribes the statement for the insured to review and sign.

**Send a Signed, Sworn Proof of Loss**

The insured has a duty to provide a proof of loss to the insurer, typically within 60 days after the insurer’s request. The insured must swear to the truthfulness of his or her statements and sign the proof of loss.

A proof of loss is a document describing the details of the loss, property values, and interests in the property for which the insured is making a claim under the policy. The insurer usually provides the insured with the proof of loss form. In some states, insurers are required to provide the form, while in others, no particular form is required, as long as all the necessary information is included.

**The proof of loss is a powerful adjusting tool that commits the insured under oath toa specific set of facts. It assists the insurer in evaluating the claim and determining the rights and responsibilities for itself and the insured, and is also useful in detecting fraud**.

Many insurers disregard the proof of loss requirement on most losses and require a proof of loss only for exceptional claims. Other insurers require a proof of loss for only certain types of claims, such as total losses, questionable losses, or losses over a certain monetary value.

**The insured cannot simply make statements about the loss in the proof of loss but must also include documents that support those statements**. Examples, repair estimates, personal property inventories, receipts for additional living expense incurred, and records that support the property’s fair rental value.

The insurer is not required to send the proof of loss to the insured within a particular time frame; it is the insurer’s discretion. However, once the insurer sends the proof of loss, most policies state that the insured has 60 days to complete and return it. When the insurer receives the form, it must make a decision within a designated period of time stated in the policy or specified by an applicable statute or case law. The insurer can choose one of these actions.

* Accept the proof of loss as submitted
* Reject the proof of loss, giving specific reasons for the rejection, and give the insured an opportunity to refile a corrected proof of loss
* Reject the proof of loss, giving specific reasons for the rejection, and allow the insured to make the next move without further direction
* If the proof of loss is rejected, it must be for specific reasons and with the consent of the insurer’s management. Typical reasons for rejecting a proof of loss are that it does not contain sufficient documentation to support the amount claimed or was not filed within the time required by the policy
* If the proof of loss was rejected for any reason, the rejection must be timely. Promptly rejecting a proof of loss protects the insurer in policies stating that payment will be made within a certain time after receiving proof of loss. After an insurer receives the proof of loss, state insurance laws typically allow a time period to either pay or reject the claim. In any case the claim representative must check the state statute or state-mandated insurance policy provisions or forms before rejecting the proof of loss.

**6 – Using Examinations Under Oath**

**Objective**: Explain when to use an examination under oath, how it should be demanded and conducted, and how to resolve problems that can arise.

When claim reps know when and how to conduct an examination under oath (EUO) and deal with the issues that come with it, the EUO becomes an extremely valuable tool that can benefit both insurers an insureds.

**An EUO is a formal proceeding in which an insured is questioned under oath about a claim by an insurer’s representative in front of a court reporter. The goal is for the insurer to gain the information it needs to fairly determine coverage**.

The EUO can provide clarity to a claim rep and resolve serious questions about a claim. It can also reinforce a claim reps suspicions that a claim may be fraudulent or confirm that further investigation into a claim is needed.

Insureds can benefit from EUO’s as well, as they allow insureds to provide supporting details for their claims.

Three key things claim reps need to know about EUO’s include: When to use them, how to demand and conduct them, and how to resolve problems that can arise with them.

**When to Use an EUO**

**The claim representative should conduct an EUO as early as possible in the investigation if the claim’s validity or value is in question, or if the facts are unclear. The insurer can use the EUO to resolve serious questions about a claim, doubts about whether a loss actually occurred, or questions about who is covered under a policy.**

Although the EUO should occur as early as possible in the investigation, the claim rep should collect enough information about a claim to make the examination useful. The claim rep should obtain statements from the parties involved and receive, verify, and fully review bills, receipts, records, and any other documentation before conducting the EUO. The insurer’s right to an EUO is not waived if the claim rep takes informal statements from the insured as long as the claim rep has issued a reservation of rights letter. Statements by the insured to fire marshals or other public officials also do not eliminate the insurer’s right to an EUO.

An effective examination begins only after the necessary questions are determined. Before the EUO, the claim representative and the insurer’s attorney must review the entire claim file and agree on the areas of questioning and the EUO’s objectives.

**Opinions vary about when an EUO should be conducted. Example, although an EUO does not waive an insurer’s right to a signed sworn proof of loss, most claim reps prefer that one be submitted before the EUO is scheduled because filing a proof of loss is a policy condition. The claim is considered submitted when the insurer receives the proof of loss, and the insured is then committed to the facts sworn to within it**.

**Demanding and Conducting an EUO**

**Most property insurance policies allow the insurer to require insureds seeking coverage for a loss to submit to an EUO and sign off on their answers**.

Because policies can differ when it comes to who is subject to an EUO, claim reps should always examine the particular policy covering the person and property before demanding a EUO.

In addition to requiring an EUO of an insured, the insurer can request (but not require) an EUO of others who may have specialized knowledge related to a claim.

**Requirements for a Demand Letter**

**To be legally binding, a demand letter (a written notice that an insured must complete an EUO) has to contain these elements:**

* **A clear statement of the insurer’s intention to conduct an EUO – and with whom it intends to conduct it**
* **A definite date, time, and place for the examination, as well as the name of the person who will be conducting it for the insurer**
* **The records or documents the examinee must produce and bring to the examination**
* **The name, telephone, number, and address of the person to contact if the examination cannot, with good reason, be present for the examination**

If the demand letter is missing key elements, or if the date, time, or place is unreasonable for the examinee, the demand might not be enforceable. If this occurs, and if a second chance at the EUO is not possible, the EUO may not be able to take place.

**EUO Procedures**

EUO procedures vary by jurisdiction and insurer. Generally, the examination takes place in an attorney’s office. Although a claim rep can conduct it, insurers usually ask a qualified attorney to do so.

An insured (or examinee) who is required to give an EUO must appear in person and give oral testimony. Providing written answers to written questions is not sufficient. The examinee is sworn in by a court reporter, who records every word said during the examination. The examinee does not have to submit to a polygraph (lie detector) test and may or may not be represented by an attorney.

The insurer’s attorney or the claim rep (the examiner) questions the examinee and can ask anything relating to the loss. If an attorney represents the examinee, he or she can raise objections, but only regarding the relevancy of questions. **Relevant questions are those that lead to information about the cause or amount of the loss, any possible contractual defense, or the examinee’s motives**.

Questions about the examinee’s financial condition at the time of loss, the examinee’s whereabouts at the time of loss, the source of funds to buy the damaged property, or previous losses are all relevant. The examinee must answer any question relevant to the loss and cannot invoke the fifth amendment right against self-incrimination for relevant questions.

Every effort should be made to complete the examination in one sitting. An EUO’s results can change dramatically if the examination is continued at another time. If a continuation is necessary, however, the record should state that the examination is incomplete and note the time and date for its continuance.

Although plausible reasons for continuances exist, continuances should be avoided whenever possible. A plausible reason, is that the insured’s story was much more complicated than the initial evidence indicated. The examiner should not neglect any relevant evidence just because the evidence is extensive or complex.

**After the EUO is completed, the court reporter transcribes the statement. Next the examiner reviews the documents and send sit to the examiner to review and sign. Only then is the exam completed. Typically , the policy requires the examinee to sign his or her statement under oath**.

**Resolving Problems Arising From an EUO**

To resolve problems that can be triggered by an EUO, it helps to have a thorough understanding of the options available. These options can be affected by policy language, applicable laws, or the insurer’s particular procedures.

**If an examinee does not appear at the EUO’s appointed date and time, the insurer has 3 options:**

* **Do nothing further. In states in which a claim rap must respond to a proof of loss within a prescribed period, rescheduling may not be an option if the insured has filed a proof of loss**
* **Send a letter requesting that the examinee contact the claim rep to reschedule the examination**
* **Send a reservation of rights letter stating that because the examinee failed to appear, coverage for the loss may be denied**

Each insurer has different procedures for handling this situation. No further investigation with the insured should be conducted until the insurer’s management has been informed of the situation and decides on a course of action.

If an examinee appears for examination but does not have the demanded documents, the insurer has 2 options:

* Proceed with the examination and then continue at a late date when the examinee has the documents
* Record that the person appeared but did not bring the documents, and reschedule the EUO for another date and time

In either case, exactly what occurred and which required documents weren’t provided must be recorded. The record must also state the exact date, time and place of the rescheduled examination.

When more than one insured is to be examined and the claim rep wants to examine each insured without any of the other present, the insured’s attorney might reject the demand and insist on the presence of all insureds. Before demanding individual examinations, the claim rep must check the particular insurance policy and law of the applicable state. **ISO property provisions allow the claim rep to exclude any other insured from the examination. If the insureds refuse to be examined separately, which occurs sometimes when the law is unsettled, the insurer may file an action with the court for a declaration of the right of the parties**.

A claim rep can demand an EUO from an insured who is being prosecuted or who is suspected of arson or fraud. But an insured may refuse to participate in the EUO until after the fraud or arson charges have been decided. **When this happens, the insurer could be held liable for bad faith if it refuses to wait and denies the claim because the insured violated the EUO condition. So unless the claim rep’s investigation will be prejudiced by the delay, the claim investigation should be suspended until the insured can cooperate**.

Although criminal charges against an insured do not eliminate the insured’s contractual obligations to appear for an EUO, it’s typically better for the insurer to wait, if possible. Either way, the insurer’s management must be involved in any decision to give an EUO under these circumstances.