

# Risk Monitor



## Homeowners Insurance: Its not just the A B C's

For many years, it was simple to purchase Homeowners Insurance in Texas. There were three basic and standard forms: HO-A, HO-B and HO-C with corresponding forms for Tenants and Condominium owners. All you had to do was get a couple of quotes for a standard HO-B, for example, and you could bet that the basic coverage would be the same from each Company unless you purchased certain enhancements. In other words, you could get the lowest price and feel comfortable that you had all the bases covered without giving much attention to the quality of the policy.

### Its not the same old Policy anymore

Unlike the past, Insurance companies are allowed to sell many different Homeowners insurance policies in Texas. Consequently, the process of deciding which coverage is right for you can be both confusing and more than a bit overwhelming. After the so called "mold crisis", many companies in Texas ceased writing the HO-B and began writing versions of the HO-A policy that have been modified by endorsement to avoid covering water damage losses which result in mold claims. These endorsed policies, what companies often call the HO-A "Plus", may add certain perils to the base HO-A and may add replacement cost for the dwelling or contents, but the coverage does not add up to what most Homeowners have traditionally understood to be in the HO-B policy.



To make matters even worse, if a Company has prior approval from the State of Texas, then they can use a customized Homeowner policy form. None of these policies are standardized and require very close comparisons to make sure that the coverage is suitable.

### Focus on Value

Before considering the cost, make sure that the coverage is right. Everyone likes to get a good deal and save money. Don't purchase a low cost policy and worry about expensive losses that are not covered.

When purchasing Homeowner's insurance, ask your Agent to compare a few of the major Carriers' policy forms to help you decide which one is best for you. A good start for this comparison should include at least these essentials: Replacement Cost coverage, "All Risk" type coverage, Water Damage, Mold Remediation, Flood, vehicle collision and Frozen water pipes.

After you understand the coverages that are important for your home and are satisfied with the quality and track record of the Insurance Company, then it is time to do some comparative price shopping.

This newsletter is designed to give you timely and important information regarding employee benefits, government regulations, new products, and other areas of interest to employers and their employees. We value you, your employees, and your business and continue to strive to provide you with the very best products and service available.

We hope you have seen our new sign in downtown Fort Worth!



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# Know Your Liabilities When Hiring Temporary Workers

The importance of the temporary worker has increased in the last ten years due to gaps in staffing caused by downsizing, mergers and acquisitions. A temporary worker can be hired to fill in for an employee on leave or they can be used to augment a company's permanent staff during seasonal fluctuations. Regardless of the reason for their employment, any business owner who hires temporaries should understand that they are entitled to certain considerations even though they will only be with you for a short time.

That entitlement rests on the answer to an important question of whether or not the temporary is an "employee" or an "independent contractor". This is especially relevant when it comes to the area of discrimination. The Equal Employment Opportunity Commission (EEOC) says that temporaries are covered employees under the federal and state anti-discrimination laws if the right to control the means and manner of their work performance rests with the hiring company, rather than with the temporaries themselves.

It's important to note that even though the staffing agency pays the temporary based on the number of hours reported by the business owner; it is the hiring company that oversees the temporary's work. Moreover, the temporary uses the hiring company's supplies and equipment and works on-site. In this instance, the liability for providing a discrimination free environment is not transferred to the staffing agency, as most companies would believe. The EEOC says the liability is shared by both the staffing agency and the hiring firm.

The issue of safety in the workplace is another area of vulnerability when it comes to hiring temporary workers. The Occupational Safety and Health Review Commission has taken the stance that companies employing temporary workers are primarily responsible for compliance with the Occupational Safety and Health Act with regard to those workers' safety. The

rationale for this position is again based on the fact that the hiring company controls the means and manner of their work.

Employing temporary workers also has ramifications for the hiring company when it comes to the Family and Medical Leave Act (FMLA). This law requires employers with 50 or more employees to allow any eligible employee to take up to 12 weeks of unpaid family and medical leave in any 12 month period, while still maintaining the employee's health insurance benefits and usually, to restore the employee to the same or equivalent position upon his/her return. While the hiring firm does not grant FMLA leave to temporaries, they do have to count temporary workers as part of their contingent when determining if they meet the 50 or more criterion. They must also allow a temporary employee returning from FMLA leave to continue working at their site, even if that means letting another temporary worker go who was hired to replace the worker on leave.

The National Labor Relations Board considers hiring companies and staffing agencies to be joint employers for purposes of the National Labor Relations Act (NLRA) when both make determinations that affect the terms and conditions of the temporary worker's employment. An important consequence of this joint employer determination for the hiring company is that it may be held liable for the staffing agency's unfair labor practices toward the temporary worker it has hired.

And finally, hiring companies must include most temporary employees in their employee headcounts to see if their benefit plans qualify for a favorable tax treatment under the Internal Revenue Code. However, several courts have ruled that there is no provision in either the Internal Revenue Code or the Employee Retirement Income Security Act that hinders hiring companies from excluding temporary workers from their benefit programs.

## continued from page 4...Factors To Consider Before You File a Claim

is important to get your side of the story on record with your insurer and, in many cases, the police as well.

Keep in mind that each claim scenario is different and has different implications for you as an insured. If your windshield cracks as a result of a stone hitting it on the highway, your insurer will consider it an "act of nature" and will not assign fault to you as the driver. On the other hand, if the damage is only slightly higher than the deductible and the claim comes close on the heels of another recent and more serious claim, you may do well to bite the bullet and pay the

difference out of your own pocket. We can help you assess the likely costs and benefits of filing a borderline claim.

It is important to note that policy language varies from company to company with respect to your responsibility to report a claim, i.e. information needed, timeliness of reporting, etc. Read the policy carefully and consult with your agent any time a significant property loss occurs and/or a threat of legal action or actual lawsuit develops. Do not let indecision or carelessness prejudice your ability to rely on the coverage you may one day desperately need.

# Should Terrorism Coverage Disappear If Terrorism Hasn't?



The memory of the devastation of 9/11 is never far from our minds. We only have to look at pictures of the slowly recovering World Trade Center site or see the Homeland Security color-coded alert system to remember that we are always vulnerable.

At the end of 2005, another reminder of the devastation of that fateful day may pass from our midst; but it's one reminder that we may want to consider hanging on to. Congress passed the Terrorism Risk Insurance Act (TRIA) in late 2002. TRIA is meant to address a void in the commercial insurance industry, which in the years previous to 2001, considered terrorism a pretty low risk and didn't underwrite it to any significant measure.

After 9/11, insurers and re-insurers alike became aware of the potentially huge exposure. As re-insurers' money became increasingly scarce, direct insurers, to the extent that they could by law, began to exclude all terrorism risk in commercial property policies and commercial liability policies. Some states forbade this type of exclusion; while other states had a standard exclusion they would accept, but it was limited. The market was in even more turmoil because no one was certain how to quantify terrorism risk and how to price it. Congress recognized the dilemma had real future implications for the economy because commercial property lenders were trying to force the issue of having terrorism coverage even when it wasn't available in a particular location. The result was a moratorium on a number of new commercial projects. Thus, to eliminate the bottleneck and get things flowing again, they enacted TRIA.

The original concept behind TRIA was to enact temporary legislation that would give the market time to build capacity for terrorism risk and learn how to underwrite it. Underwriting terrorism catastrophes wasn't as easy a job. With other catastrophic losses, historical data could be used to predict frequency and degree of loss. However, terrorism plays by a different set of rules, one of which is that there is no predicting because each attack is unique.

Now Congress is faced with the dilemma of TRIA being set to expire in December 2005 and the industry, while it may have developed some sophisticated models to quantify the risk, which permits more accurate pricing, still doesn't have an accurate way to forecast the frequency of that risk. If TRIA is allowed to expire, things will revert

back to the pre-TRIA conditions. According to Joe Holahan, an attorney in the Insurance Practice Group at Morris, Manning & Martin LLP, TRIA needs to be extended. Holahan notes, "The market isn't ready to underwrite catastrophic losses. The government will be involved in covering them whether we have TRIA or not. Terrorism as a societal risk is similar to a war risk, which we don't look to the private market to underwrite."

What's the holdup with the extension? According to Holahan, some members of Congress see TRIA as corporate welfare for insurers. In the House of Representatives, the Financial Services Committee approved an extension last year, but House leadership kept it from the floor. Likewise, there is a body of TRIA opponents in the Senate. Senator Richard Shelby (R) Alabama, Chairman of the Banking, Housing & Urban Affairs Committee has been a vocal opponent in the past. He may be changing his viewpoint on extension but he will probably not endorse renewing the act in its current form. However, despite the presence of prominent protestors, bills have been introduced in both the Senate and the House to keep TRIA alive.



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# Factors To Consider Before You File a Claim

Most of us have had insurable homeowner's or automobile losses at one time or another and wondered whether or not to file a claim. The two questions that run through one's mind during such trying times are fairly uniform - If I file a claim will my insurer raise my rates? Or - will they drop me like a hot potato?

Small claims under \$500, generally will not affect your individual premiums if they are few and far between. Insurers vary, however, in their underwriting of accounts with losses, particularly "at-fault" losses. Two or three claims a year on a given policy will signal to most insurers that you are a problem insured. To complicate matters, you need to consider the effect of even one claim on your ability to obtain insurance elsewhere. Some companies take a long hard look at any applicant who has had claims with their current or previous carriers in the past three years.

Consumer watchdog groups have been critical of one method used by most insurers in the underwriting process for personal lines applicants - the use of a shared database called CLUE (Comprehensive Loss Underwriting Exchange). This database is tapped by insurers not only to investigate the person or persons behind the application, but in the case of homeowner's insurance, the property as well. Participating insurers report all claims, large and small, even ones not resulting in a payout.

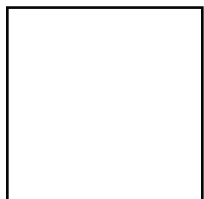
Realtors hate this system because it often signals problems with properties that they feel unnecessarily complicate a home sale. You need to know that your record is affected by the reporting of the claim much in the same way that your credit is affected by late payments or financial default.

So when should you file a claim with your auto or homeowner's insurance? Common sense says if the repairs cost less than the deductible, you're better off paying for the repairs on your own. With this in mind, you may even want to consider taking a higher deductible on your insurance to lower your rates. Take the money you save on the lower rates and deposit it into a savings account. In the event you are involved in an accident, you will have the money for the repairs even if the cost is slightly higher than your deductible.

If you have an automobile accident and there is another car involved, or there is someone else in the car with you, you definitely need to let your insurance company know about the accident - regardless of deductible or repair costs. Same with a third party slip and fall in your home. This protects you and your insurance company, as you can never be certain if the other driver, additional passenger or any other third party will decide to file a claim at a later date. When someone else is involved, it

*continued on page 2*

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