

October 3, 2018

TREND IN POLICIES & WHY **YOU** SHOULD CARE

Presented By:
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MERLIN
LAW GROUP

What has changed?

1. Duties After Loss
2. Appraisal
3. Cosmetic Roof Exclusions/Endorsements
4. Proof of Loss
5. Suit Against Us

Pro-Carrier or Pro-
Policyholder?

Comparison of Language
(Underlining indicates differences)

CURRENT LANGUAGE FP-7955 TX, FP-7954 TX, FP-7956 TX	PROPOSED
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CURRENT LANGUAGE FP-7955 TX, FP-7954 TX, FP-7956 TX	PROPOSED ENDORSEMENT FE-5626 <u>(2) the party requesting the selection</u> must provide the
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SECTION I – CON

Appraisal. If amount of loss amount of the makes a written select a company. Each shall not identity within demand. The competent, if appraisers are within 15 days court of record premises is in appraisers shall If the appraisal agreement to be the amount agree within a their difference agreement signed set the amount be paid by the Other expenses compensation by you and us.

CURRENT LANGUAGE FP-7955 TX, FP-7954 TX, FP-7956 TX	PROPOSED ENDORSEMENT FE-5626
	<p><u>demanding or submitting to an appraisal, and retain all contractual rights to determine if coverage applies to each item in dispute.</u></p> <p><u>h. Appraisal is only available to determine the amount of the loss of each item in dispute. The appraisers and the umpire have no authority to decide:</u></p> <p><u>(1) any other questions of fact;</u></p> <p><u>(2) questions of law;</u></p> <p><u>(3) questions of coverage;</u></p> <p><u>(4) other contractual issues; or</u></p> <p><u>(5) to conduct appraisal on a class-wide basis.</u></p> <p><u>i. Appraisal is a non-judicial proceeding and does not provide for or require arbitration. Neither party will be awarded attorney fees. The appraisal award may not be entered as a judgment in a court.</u></p> <p><u>j. A party may not demand appraisal after that party brings suit or action against the other party relating to the amount of loss.</u></p> <p><u>All other policy provisions apply.</u></p>

the intent to file, specific location and at least 10 days of the written application; and agreement, as required by two (appraisers (umpire) will set the amount of the loss of each item in dispute you and us. In all event of agreement shall separately the settlement cost, and market value of each or umpire for a person must be licensed or certified jurisdiction; with experience construction, repair, of the type of date; adjuster with in estimating the in dispute; or experience and training or, and estimating damage in dispute. an appraiser or employee of that employer, or any for either party in at issue in the the outcome of appraisal. responsible for the selected appraiser. the appraisal and on of the umpire

premises	will be paid equally by you and us.	g. You and we do not waive any rights by
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which a reasonable person may consider affect independence, neutrality or impartiality of the appraiser, including without limitation:

- i. any financial or personal interest in the outcome of the appraisal; and
- ii. any current or previous relationship with you or us, or your or our counsel, or representative(s) or experts, or with other appraiser.

d. You and we may provide the appraisers estimates, expert opinions, appraisal forms or information you or we believe to be relevant to appraisal. Any such documents and information must also be provided to the other party. However, no civil discovery shall be conducted by either appraisers, any umpire or you or us during or the preparation of the appraisal, and no court reporter shall be used. The rules of civil procedure and the rules of evidence shall not apply to appraisal process, and no hearing shall be conducted by the appraisers at which either or we provide any evidence pertaining to a claimed loss.

e. (1) The appraisers shall determine the incurred property damage, if any, to each of the component parts of that property for which you have claimed loss, and the actual cash value of the incurred property damage, as of the date of the loss. In determining the actual cash value of the incurred property damage, the appraisers shall only use materials of like kind and quality unless the policy expressly provides otherwise.

(2) The appraisal shall separately state and itemize the following for each individual component part of the incurred property damage:

- i. a description of each component part of the property;
- ii. a description of the distinct, demonstrable physical injury to, or destruction of each component part, any, without reference to what caused the damage;
- iii. a description of the reasonably necessary repairs or replacements for each component part of property;
- iv. the estimated costs of the reasonably necessary repairs or replacement(s) for each component part of property;
- v. the estimated amount of depreciation and/or obsolescence to each component part of property; and
- vi. the actual cash value of the incurred property damage.

law of a justice court, a municipal court, a probate court, or of a commissioner's court.

(3) In order for a person to be qualified to act as an umpire under this appraisal clause, such person must be qualified and meet the conditions as required at part c.(2).

(4) Upon the appointment of an umpire by AAA, or a district judge, the umpire shall within 5 days disclose in writing to you and to us the information required at part c.(3).

(5) Within 20 days of a qualified umpire being appointed, each of the appraisers shall then submit to the umpire, and to both you and us, their appraisals. Their appraisals shall contain all of the information required in part e. above, and shall identify each specific matter upon which they disagree and explain in detail why they disagree. Both appraisers and the umpire shall then together meet and confer. The umpire shall then prepare an appraisal. A written appraisal in conformance with and setting forth all the information required in part e. above, agreed upon and signed by the umpire and either one of the two appraisers, will determine the incurred property damage and the actual cash value of the incurred property damage of your claimed loss.

(6) If a vacancy should occur regarding the umpire, the vacancy shall be filled in accord with the foregoing process by which the vacating umpire was appointed. Any appointed umpire is subject to (3) and (4) of this part f.

g. Each party will pay the costs of the appraiser it chooses. The costs of the umpire and all other expenses of the appraisal will be shared and paid equally by you and us. If AAA appoints the umpire, we will pay AAA's costs.

h. The appraisal shall not:

- (1) determine whether your claimed loss or any incurred property damage, or any part thereof, is covered under this insurance policy;
- (2) determine the cause or causes of the claimed loss or any incurred property damage;
- (3) make any factual finding which directly or indirectly determines whether your claimed loss or incurred property damage, or any part thereof, is covered under this insurance policy;
- (4) interpret this insurance policy;
- (5) award or determine any interest or penalties;
- (6) award any amount for matching property which has not sustained incurred property damage with property that has sustained incurred property damage;

(7) determine loss settlement under a loss settlement provision of this policy; or

(8) be considered to be adjustment of your claimed loss.

i. Any demand for appraisal must be made within the contractual suit limitations period stated in this policy. After that time neither you nor we may demand an appraisal.

j. If you or we timely demand an appraisal, then upon request made by either you or us for abatement of any suit for or involving the claimed loss, the suit shall be abated until after an appraisal award is made in accord with this appraisal clause.

k. Even after an appraisal award, we retain the right to deny any claimed loss or incurred property damage, or any part thereof.

The following condition is added:

Your Duties to Maintain Policy Limits of Liability. It is your responsibility to maintain adequate Limits of Liability on your dwelling, other structures and personal property. But to help you do that we may, but are not obligated to, adjust your policy Limits of Liability. If an adjustment is made, it will become effective on the renewal date of your policy and will be based upon data supplied to us by recognized agencies or organizations.

You will be notified in advance of the new Limits of Liability. Payment of your renewal is all that is necessary to indicate your acceptance of the new Limits of Liability.

If you want to change the new Limits of Liability you may do so by contacting your insurance representative.

Service of Process

The address under Service of Process is changed to 15700 Long Vista Drive, Austin, Texas 78728.

The following provision is changed to read:

In witness whereof, the attorney-in-fact has executed this policy in Austin, Texas, binding the underwriters at Foremost Lloyds of Texas.



S. J. BOSHOVEN
President



MARTIN R. BROWN
Secretary

Underlined = added

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The following endorsement changes the terms of the policy. Please read this document carefully before you use your policy.

Texas Amendatory End Replacement Cost Coverage A (Dwelling) (For Use With Form HO-0000)

CONDITIONS

In the condition Duties After Loss, item 3. is replaced by the following:

3. Duties After Loss.

a. Your Duties After Loss. In the event of a loss to property caused by a Peril of the Policy:

- a. promptly give us or your agent notice of the loss to the police as soon as possible and file a claim with the police.
- b. protect the property from further damage and make reasonable repairs necessary to prevent further damage. Keep an accurate record of all repairs and the cost.
- c. separate damaged property from undamaged property. Give us a detailed list of destroyed or stolen property, including quantity, cost, actual cash value, and other information.
- d. give us all accounting records, receipts, invoices, other vouchers, or certificates, and make a reasonable request to others to do so.
- e. produce receipts for any repairs or replacement of property and records supporting the cost of repairs.
- f. as often as we reasonably require, show us the damaged property and give us the right to reasonable access to view and inspect the property, including, but not limited to, necessary unimpeded access to the property, governmental or military personnel, or to prevent us from viewing the property. We may require you to take reasonable steps to protect the property when we conduct

coverage is sought, under a coverage to which Section I Conditions applies, unless:

- a. there has been full compliance with all policy terms; and
- b. the action is commenced within two years and one day from the date the cause of action first accrues; and
- c. in the event that you and we fail to agree on the amount of loss claimed by you, unless you have previously provided to us a signed sworn proof of loss, it is a condition under this Suit Against Us provision that no later than 91 days prior to commencing any action against us that we receive from you a signed sworn proof of loss, which contains, to the best of your knowledge and belief, the following information:

- (1) the date, time, location and cause of loss;
- (2) the interest insured persons and others have in the property, including any encumbrances;
- (3) any other insurance that may cover the loss;
- (4) any changes in title, use, occupancy or possession of the property that have occurred during the policy period;
- (5) at our request, the specifications of any damaged building structure or other structure;
- (6) the estimated or actual cost to repair or replace the property stolen or damaged by the loss with materials of like kind and quality;
- (7) the amount you have actually spent to repair or replace the property stolen or damaged by the loss; and
- (8) in the event that you give us a signed proof of loss, and after submitting that to us, you determine that you want to include a claim for additional damage or loss, you must submit to us a supplemental proof of loss which identifies the amount of the additional loss for each item damaged or stolen.

d. If after we receive your proof of loss as described in paragraph c. above, you and we are still not able to agree on the amount of loss, then either party may make a written demand for an appraisal, as described in Section I Conditions, Appraisal. If this demand for appraisal is made before an action is filed against us in a court of competent jurisdiction, then the appraisal must occur before a suit can be filed against us. If the demand for appraisal is made after an action has been filed against us in a court of competent jurisdiction, then the parties agree to ask the court to abate the further proceeding of that

action until the appraisal is completed and a determination of the amount of loss is made as described in Section I Conditions, Appraisal.

To initiate the appraisal process either party must provide written notice of the dispute to the other party and make a written demand for appraisal of the amount of loss.

The time limit stated in item 11. b) shall be suspended from the date of the first written demand for appraisal until the date of the appraisal award.

In the condition Mortgage Clause (without contribution), item d. is replaced by the following:

d. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the mortgagee has the right to receive loss payment if the mortgagee:

- (1) at our request, pays any premium due under this policy, if you have failed to do so.
- (2) furnishes proof of loss, upon our request, within 91 days after notice of the loss, if you fail to do so.
- (3) has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgagee.

All of the terms of this policy will then apply directly to the mortgagee. Failure of the mortgagee to comply with d. (1), d. (2), or d. (3) above shall void this policy as to the interest of the mortgagee.

All other policy provisions apply.

The Appraisal

7. Appraisal

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Smell a Rat?

PRIOR to 2003:

- 3 form policies:
 - HOA- “named peril”
 - HOB- “All peril”
 - HOC- “Commercial”

POST 2003 & Beyond:

- File & Use applies
- 300 Plus forms of policies
- Hidden agendas, endorsements, exclusions
- Rates increased. Never decrease
- Increased Premiums
- Higher Deductibles

How did we get here?

- Some would say.....
 - Increase of number of claims filed by insureds over the years.
 - Increase of number of public adjusters filing claims.
 - Increase of policyholder attorneys filing lawsuits.
 - Increase of “fraudulent” claims.
 - Increase in exposure & risk of storms



THE TRUTH





"AT TESMER HOLDINGS, WE DON'T BREAK THE RULES!
WE CHANGE THEM!"

- The **TRUTH** is:
 - Increase in storm severity according to NOAA and other credible weather resources
 - Less tenured & experienced carrier adjusters over the last several years
 - Carrier mentality of Profit over quality adjusting
 - Increase of use of “building consultants” & “non-licensed adjusters by carriers
 - Drinking the Purple Kool-aid..

Duties After Loss

Changes:

1. Increase of Insured's duties
2. Decrease of Insurer's duties
3. Proof of Loss requirements Automatic in some policies
4. No requirement or duty for Insurer to inspect the property
5. No requirement of duty of "thorough or reasonable" investigation
6. All access to the property and provide information on request (with no limitations)

“New” Insured’s Duties:

C. Duties After Loss

In case of a loss to covered property, we have no duty to provide coverage under this policy if the failure to comply with the following duties is prejudicial to us. These duties must be performed either by you, an "insured" seeking coverage, or a representative of either:

1. Give prompt notice of the loss to the police;
2. Notify the police in writing of the loss;
3. Notify the credit card issuer of the loss of the credit card or access device as provided for in the policy, and provide a copy of the Fund Transfer Card Or Access Device, Forgery And Counterfeit Money under Section I – Property Coverages;
4. Protect the property and make repairs to the property:
 - a. Make reasonable and necessary repairs to protect the property; and
 - b. Keep an accurate record of repair expenses;
5. Cooperate with us in the investigation of a claim;
6. Prepare an inventory of damaged personal property showing the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;

- g. Receipts for additional living expenses incurred and records that support the fair rental value loss; and
- h. Evidence or affidavit that supports a claim under E.6. Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money under Section I – Property Coverages, stating the amount and cause of loss.

7. As often as we reasonably require:

- a. Show the damaged property;
- b. Provide us with records and documents we request and permit us to make copies; and

Submit to a deposition or examination under oath, while in the presence of another "insured", if requested, and

within 60 days after our request, furnish proof of loss which sets forth the cause of loss;

of all "insureds" and all others involved and all liens on the

policy which may cover the loss;

- d. Changes in title or occupancy of the property during the term of the policy;
- e. Specifications of damaged buildings and detailed repair estimates;
- f. The inventory of damaged personal property described in 6. above;

“New” Insured’s Duties:

a. You must see that the following are done in the event of loss or damage to Covered Property:

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when, and where the loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage and keep a record of your expenses necessary to protect the Covered Property for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values, and amount of loss claimed.

- (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- (8) Cooperate with us in the investigation or settlement of the claim.

- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

“New” Carrier’s Duties:

4. Our Duties After Loss

- a) Within 15 days after **we** receive **your** written notice of claim, **we** must:
 - 1) acknowledge receipt of the claim. If **our** acknowledgement of the claim is not in writing, **we** will keep a record of the date, method and content of **our** acknowledgment;
 - 2) begin any investigation of the claim; and
 - 3) specify the information **you** must provide in accordance with **Section I, Conditions** item 3 “What You Must Do After A Loss.”

We may request more information, if during the investigation of the claim such additional information is necessary.

- b) After **we** receive the information **we** request, **we** must notify **you** in writing whether the claim will be paid or has been denied or whether more information is needed:
 - 1) within 15 **business days**; or
 - 2) within 30 days if **we** have reason to believe the loss resulted from arson.

- c) If **we** do not approve payment of **your** claim or require more time for processing **your** claim, **we** must:
 - 1) give the reasons for denying **your** claim; or
 - 2) give the reasons **we** require more time to process **your** claim. But, **we** must either approve or deny **your** claim within 45 days after requesting more time.

Appraisal

Changes:

PRIOR to 2009:

- Appraisal rarely invoked
- Limited to disputes in the “value” or “amount” of the loss
- Scope was agreed
- Causation was not appraised
- Court appoints Umpire
- 1 to 2 paragraph max in policy

POST 2009 & Beyond:

- Increase of appraisal demands after *State Farm v. Johnson* case in June 2009.
- Post 2015: Exponential increase in Appraisal demands.
- Complex Appraisal provisions
- AAA appoints Umpires in some forms

Old Appraisal Provision:

2. Appraisal.

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding.

Each party will:

- a. Pay its chosen appraiser, and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

Old Appraisal Provision:

F. Appraisal

If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the "residence premises" is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Each party will:

1. Pay its own appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

Modified Appraisal Provision:

B. Appraisal

1. Except as provided in B.2. below, the **Appraisal Loss Condition** in the:

PROPERTY CONDITIONS
EXTRA EXPENSE COVERAGE FORM
BUILDERS' RISK COVERAGE FORM

is replaced by the following:

Appraisal

If we and you disagree on the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser and notify the other of the appraiser selected within twenty (20) days of such demand. The two appraisers will select an umpire. If they cannot agree within fifteen (15) days upon such umpire, either may request that selection be made by a judge of a court having jurisdiction. Each appraiser will state the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding as to the amount of loss. Each party will:

- a. Pay its chosen appraiser, and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal:

- a. You will still retain your right to bring a legal action against us, subject to the provisions of the Legal Action Against Us Property Condition; and
- b. We will still retain our right to deny the claim.

NEW APPRAISAL PROVISIONS

There are numerous kinds of appraisal provisions in policies across states now days. Here are some examples:

Appraisal. If you and we fail to agree on the amount of loss from an occurrence claimed by you in accordance with the loss settlement provisions of your policy, either may demand an appraisal of the loss.

In the event of a demand for an appraisal of loss, each party shall choose a competent and disinterested appraiser within 20 days after receiving a written request from the other. During this same time period, the parties shall provide each other in writing with the name and contact information for their selected appraiser. The two appraisers shall attempt to select a competent and disinterested umpire.

If they cannot agree upon an umpire within 15 days after the selection of the second appraiser, you or we may request that the choice of a competent and disinterested umpire be made by a judge of a court of record in the state where the residence premises is located. You and we may also agree to delay selection of an umpire until the appraisers have first attempted to reach an agreement on the amount of the loss. Each party must provide immediate notice to the other party of any request or motion to a court for appointment of an umpire and any hearing on that issue.

A judge's selection of an umpire at the request of one party without notice to the other party as described above shall invalidate that

selection and require selection of a new umpire either by agreement of the appraisers or by another judicial selection as required herein.

Stating separately the items and amounts of loss for each item, and in accordance with your policy's loss settlement provisions, the appraisers shall determine the amount of loss from the occurrence claimed by you. Both you and we and each of our representatives shall cooperate with the appraisal process, allow the appraisers and umpire reasonable and timely access to inspect the damaged property, and make reasonable efforts to allow completion of the appraisal process in a timely manner.

If the appraisers fail to reach an agreement on the amounts, the appraisers shall submit their differences, only, to the umpire. An appraisal decision in writing, so itemized, of any two of these three, when received by us shall set the amount of loss.

Each party will pay its own appraiser and bear the other expenses of the appraisal and umpire equally.

This appraisal shall be binding on you and us concerning only the amount of loss. You will retain your right to bring suit against us following the appraisal award, subject to Texas law and compliance with the Suit Against Us provisions of the policy as modified by this Endorsement. We will retain our right to deny all or part of your claim and to dispute liability for any portion of the appraisal award based on lack of coverage or violation of the terms or conditions of the policy.

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NEW APPRAISAL PROVISIONS

Other Appraisal Provisions require AAA to appoint Umpire:

The **Appraisal** Condition is replaced by the following:

7. **Appraisal.** If you and we fail to agree on the amount of loss, either party may make written demand for an appraisal. Upon such demand, each party shall select a competent and impartial appraiser and notify the other of the appraiser's identity within 20 days after the demand is received. The appraisers will select a competent and impartial umpire. If the appraisers are unable to agree upon an umpire then an umpire will be appointed in the following manner:
- a. You or we will request the American Arbitration Association (AAA) to select an umpire at:
American Arbitration Association
Case Filing Services
Attn: Allstate Texas Appraisal
1101 Laurel Oak Road Ste 100
Voorhees, New Jersey 08043
Email: casefiling@adr.org
(with subject matter as "Allstate Texas Appraisal")
 - b. Only if AAA advises you and us in writing that it cannot appoint an umpire may we then jointly request a judge of a district court in the judicial district where the **residence premises** is located to select an umpire. A judge of a district court does not include a commissioner or a judge of a county court at law, or a justice court, a municipal court, a probate court, or of a commissioner's court.

The appraisers shall then determine the amount of the loss, stating separately the actual cash value and the amount of loss to each item. If the appraisers submit a written report of an agreement to you and us, the amount agreed upon shall be the amount of the loss. If

they cannot agree, they will submit their differences to the umpire. A written award agreed upon by any two will determine the amount of the loss. Each party will pay the appraiser it chooses, and equally bear expense for the umpire and all other appraisal expenses.

If the appraisal process is initiated, the appraisal award shall be binding on you and us concerning the amount of the loss. We reserve the right to deny the appraisal award in part or in its entirety based upon the lack of coverage under the policy or failure to satisfy policy terms.

NEW APPRAISAL PROVISIONS

Other Appraisal Provisions require an “Appraisal Report:”

F. Appraisal

If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and impartial appraiser within 20 days after receiving a written demand from the other and notify the other of the appraiser's name and contact information. If the appraisers cannot agree on the amount of loss or the actual cash value in accord with this Condition, the two appraisers will choose a competent and impartial umpire. If the appraisers cannot agree upon an umpire within 15 days, you and we shall jointly ask a judge of a court of record in the judicial district where the “residence premises” is located to choose an umpire. Neither you nor we may assign the right to demand appraisal to anyone.

The appraisers will separately set the amount of loss and provide a written appraisal report specifically describing:

- a. Each item of property being appraised;
- b. The types or kinds of damage to each item of property;
- c. The extent of the damage to each item of property;

- d. The estimated costs of repair or replacement of each item of property;
- e. The estimated amount of depreciation and/or obsolescence of each item of property; and
- f. The actual cash value of each item of property.

If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If the appraisers cannot agree, they will each submit their differences to the umpire, specifically describing the differences and the amount attributable to each difference. A decision agreed to by any two will set the amount of loss.

Each party will:

1. Pay its own appraiser;
2. Pay the costs of experts or any other expenses not mutually agreed in advance to share; and
3. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal:

- a. You and we agree that any suit for or involving a disagreement in the amount of loss claimed under this policy shall be abated on the demand for appraisal by either you or us until after an appraisal award is issued in accord with this Condition; and
- b. We retain the right to apply the policy coverages, terms and conditions under this policy to any appraisal award.

NEW APPRAISAL PROVISIONS

Other Appraisal Provisions say “if you file a lawsuit, you cannot

FE-5626C
Page 1 of 2

IMPORTANT NOTICE

Effective with this policy term, **FE-5626 AMENDATORY APPRAISAL ENDORSEMENT** is added to your policy.

This notice summarizes the changes being made to your policy. Please read the new endorsement carefully and note the following changes:

POTENTIAL REDUCTIONS IN COVERAGE

Although not intended to change coverage, these changes could potentially reduce or eliminate coverage depending on how they are interpreted and, in that regard, should be viewed as either actual or potential reductions in or eliminations of coverage.

The **Appraisal** condition has been revised in its entirety and contains details regarding the appraisal process, including, but not limited to:

- When appraisal can be used to determine the amount of loss and how the process works.
- The written documentation required to demand appraisal.
- How the appraisers and umpire are selected and the qualifications they must meet.
- How the appraisers and umpire are compensated.

Endorsement **FE-5626** follows this notice. Please read it thoroughly and place it with your policy. If you have any questions about the information in this notice, please contact your State Farm® agent.

This notice is a general description of coverage and/or coverage changes and is not a statement of contract. This message does not change, modify, or invalidate any of the provisions, terms, or conditions of your policy, or any other applicable endorsements.

FE-5626 AMENDATORY APPRAISAL ENDORSEMENT

SECTION I – CONDITIONS. Appraisal is replaced with the following:

Appraisal. If you and we fail to agree on the amount of loss, either party can demand that the amount of the loss be set by appraisal. Only you or we may demand appraisal. A demand for appraisal must be in writing. You must comply with **SECTION I – CONDITIONS, Your Duties After Loss** before making a demand for appraisal. At least 10 days before demanding appraisal, the party seeking appraisal must provide the other party with written, itemized documentation of a specific dispute as to the amount of the loss, identifying separately each item being disputed.

- Each party will select a competent, disinterested appraiser and notify the other party of the appraiser's identity within 20 days of receipt of the written demand for appraisal.
- The appraisers will then attempt to set the amount of the loss of each item in dispute as specified by each party, and jointly submit to each party a written report of agreement signed by them. In all instances the written report of agreement will be itemized and state separately the actual cash value, replacement

cost, and if applicable, the market value of each item in dispute.

The written report of agreement will set the amount of the loss of each item in dispute and will be binding upon you and us.

- If the two appraisers fail to agree upon the amount of the loss within 30 days, unless the period of time is extended by mutual agreement, they will select a competent, disinterested umpire and will submit their differences to the umpire. If the appraisers are unable to agree upon an umpire within 15 days:

- you or we may make a written application for a judge of a court of record in the same state and county (or city if the city is not within a county) where the residence premises is located to select an umpire;
- the party requesting the selection described in item c.(1) must provide the other party:
 - written notice of the intent to file, identifying the specific location and identity of the court, at least 10 days prior to submission of the written application; and
 - a copy of the written application; and

FE-5626C
Page 2 of 2

- a written report of agreement, as required in item b., signed by any two (appraisers or appraiser and umpire) will set the amount of the loss of each item in dispute and will be binding upon you and us. In all instances the written report of agreement will be itemized and state separately the actual cash value, replacement cost, and if applicable, the market value of each item in dispute.
 - To qualify as an appraiser or umpire for a loss to building property, a person must be one of the following and be licensed or certified as required by the applicable jurisdiction:
 - an engineer or architect with experience and training in building construction, repair, estimating, or investigation of the type of property damage in dispute;
 - an adjuster or public adjuster with experience and training in estimating the type of property damage in dispute; or
 - a contractor with experience and training in the construction, repair, and estimating of the type of property damage in dispute.
 - A person may not serve as an appraiser or umpire if that person, any employee of that person, that person's employer, or any employee of their employer:
 - has performed services for either party with respect to the claim at issue in the appraisal; or
 - has a financial interest in the outcome of the claim at issue in the appraisal.
 - Each party will be responsible for the compensation of their selected appraiser. Reasonable expenses of the appraisal and the reasonable compensation of the umpire will be paid equally by you and us.
 - You and we do not waive any rights by demanding or submitting to an appraisal, and retain all contractual rights to determine if coverage applies to each item in dispute.
 - Appraisal is only available to determine the amount of the loss of each item in dispute. The appraisers and the umpire have no authority to decide:
 - any other questions of fact;
 - questions of law;
 - questions of coverage;
 - other contractual issues; or
 - to conduct appraisal on a class-wide basis.
 - Appraisal is a non-judicial proceeding and does not provide for or require arbitration. Neither party will be awarded attorney fees. The appraisal award may not be entered as a judgment in a court.
 - A party may not demand appraisal after that party brings suit or action against the other party relating to the amount of loss.
- All other policy provisions apply.

FE-5626

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Appraisal

Good Thing or
Bad Thing?

Unfortunately.....Appraisal Today is:

- Shield & a Sword mentality
- Lowball settlement tactic
- A way for carriers to attempt to avoid extracontractual claims like “Bad Faith”
- Prevent access to Courts & Jury trial
- No Court supervision
- No rules of procedure or ethical guidelines
- Emerging

Is Appraisal being
misused?

YES!!

Ethical Issues Arising in Appraisals

- **BEFORE** you invoke appraisal, you should consult an attorney you trust & qualify any conversation you have with insured.
- It is **BEST** to inform the insured that they should seek advice of counsel before consenting to appraisal.
- Taking a claim with the intent to **ONLY** invoke appraisal = **BAD ADJUSTING**.
- Buyer beware, if you invoke appraisal, you are likely throwing your clients' Bad Faith claims away & right to trial by jury.
- If appraisal goes south, your client will likely have little to no recourse under the law. They might come after **YOU**.

Endorsements
&
Amendments

Read the Policy:

Laundry List of Endorsements, Amendments, & Exclusions in Texas post 2003.

ITEM 5. THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS:

FORMS AND ENDORSEMENTS WHICH APPLY TO THIS ENTIRE POLICY:

A 051(06-87)	CALCULATION OF PREMIUM
A 053(09-00)	TEXAS MUTUAL AND COMMON POLICY CONDITIONS
A 9009(01-15)	CONDITIONAL EXCLUSION OF TERRORISM
A 938.2(01-04)	TEXAS CHANGES - CANCELLATION AND NONRENEWAL
UN 720(01-15)	NOTICE - DISCLOSURE OF TERRORISM PREMIUM

PROPERTY COVERAGE PART AND ITS FORMS AND ENDORSEMENTS:

A 100(01-01)	PROPERTY CONDITIONS
A 1001(01-08)	IDENTITY RECOVERY COVERAGE FORM
A 1008(11-08)	WATER EXCLUSION ENDORSEMENT
A 101(04-06)	BUILDING AND PERSONAL PROPERTY COVERAGE - RELIGIOUS
A 125(04-06)	CAUSES OF LOSS - BASIC FORM
A 135(06-87)	ADDITIONAL COVERED CAUSE OF LOSS - THEFT
A 154(10-99)	SYSTEMS/EQUIPMENT BREAKDOWN COVERAGE FORM
A 176(05-13)	TEXAS CHANGES - CANCELLATION AND NONRENEWAL
A 176.1(05-13)	TEXAS CHANGES
A 176.6(04-00)	TEXAS CHANGES
A 945.2(01-15)	CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM

GENERAL LIABILITY COVERAGE PART AND ITS FORMS AND ENDORSEMENTS:

A 052(06-87)	NUCLEAR ENERGY LIABILITY EXCLUSION - BROAD FORM
A 200(01-04)	GENERAL LIABILITY COVERAGE PART - OCCURRENCE BASIS

Read the Policy:

Laundry List of “Uninsured Loss of Damage” post 2003:

Section I - Uninsured Loss or Damage and Excluded Causes of Loss or Damage	21
A. Uninsured Types of Loss or Damage	21
1. Water Damage	22
2. Nuclear Damage	22
3. Construction Defect	22
4. Inherent Vice or Latent Defect.....	22
5. Contamination	22
6. Breakage, Impairment, Corruption or Failure of Personal Property.....	22
7. Wear and Tear, Deterioration or Mechanical Breakdown	22
8. Marring	22
9. Corrosion, Deterioration, Decay or Rust	22
10. Fungi.....	22
11. Pathogen	22
12. Movement, Settling, Cracking, Bulging, Shrinking, Heaving, Bending or Expanding.....	23
13. Building Ordinance or Law	23
14. Exceptions to Uninsured Types of Loss or Damage.....	23

Read the Policy:

Laundry List of Exclusions post 2003:

B. Excluded Causes of Loss or Damage	23
1. Earth Movement	24
2. Water	24
3. Nuclear Hazard	24
4. Neglect or Lack of Maintenance or Failure to Make Repairs	24
5. Faulty, Inadequate, Defective or Incomplete Planning, Zoning, Maintenance, Repairs, Renovation, Manufacture or Construction	24
6. Inherent Vice or Latent Defect	25
7. Contamination	25
8. Wear and Tear, Deterioration or Mechanical Breakdown	25
9. Corrosion, Deterioration, Decay or Rust	25

10. Fungi	25
11. Noxious Substance	25
12. Pathogen	25
13. Building Ordinance or Law	25
14. Governmental Action	25
15. Power Interruption	26
16. Artificially Generated Electrical Current	26
17. Extremes of Temperature	26
18. Destructive Acts	26
19. Theft	26
20. Mysterious Disappearance	27
21. Vandalism or Malicious Mischief or Arson if the Dwelling is Vacant	27
22. Pests or Animals	27
23. Smog, Smudging or Smoke	27
24. Pressure by Trees, Shrubs, Plants or Lawns	27
25. Soil Conditions	27
26. Windstorm, Tropical Cyclone or Hailstorm	28
27. Aircraft or Vehicles	28
28. Falling Objects	28
29. Collapse	28
30. Sales or Transfers of Property	28
31. Pollution	28
32. Refinishing, Renovating, Repairing, Servicing, Restoring, Reconditioning, Retrofitting or Retouching of Personal Property	28
33. Weather Conditions	28
34. Movement, Settling, Cracking, Bulging, Shrinking, Heaving, Bending or Expanding of any part of any Structure	28
35. Malfunction or Failure of Software or a Computer System	28
36. Illegal Substances	29



Search ID: rhan1222
I'VE HAD A CHANCE TO LOOK OVER YOUR
POLICY AND I'M AFRAID YOU'RE NOT COVERED.

Cosmetic Roof Exclusions

POLICY NUMBER: 019260582-00

COMMERCIAL PROPERTY
CP 10 36 10 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATIONS ON COVERAGE FOR ROOF SURFACING

This endorsement modifies insurance provided under the following:

BUILDERS RISK COVERAGE FOR
BUILDING AND PERSONAL PRO
CONDOMINIUM ASSOCIATION C
CONDOMINIUM COMMERCIAL U
STANDARD PROPERTY POLICY

Premises Number	
001 -008	

Information required to complete this

- A. The following applies with respect to damage by a **Covered Cause of Loss (wind and hail if covered)** to structure identified in the Schedule subject to this Paragraph A.:

Replacement Cost coverage (applicable to such property) does not apply to roof surfacing. Instead, we will determine the actual cash value of loss or damage.

- B. The following applies with respect to damage by **wind and/or hail** to structure identified in the Schedule subject to this Paragraph B.:

We will not pay for cosmetic damage to roof surfacing caused by wind and/or hail. For the purpose of this endorsement, cosmetic damage means that the wind and/or hail caused marring, pitting or other superficial damage that altered the appearance of the roof surfacing, but such damage does not prevent the roof from continuing to function as a barrier to entrance of the elements to the same extent as it did before the cosmetic damage occurred.

Subject to this Paragraph B.:

We will not pay for cosmetic damage to roof surfacing caused by wind and/or hail. For the purpose of this endorsement, cosmetic damage means that the wind and/or hail caused marring, pitting or other superficial damage that altered the appearance of the roof surfacing, but such damage does not prevent the roof from continuing to function as a barrier to entrance of the elements to the same extent as it did before the cosmetic damage occurred.

Cosmetic Roof Exclusions

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NON-STRUCTURAL HAIL LOSS LIMITATION ENDORSEMENT

For a reduction in the premium charged, your policy is changed as follows:

SECTION I – CONDITIONS

D. Loss Settlement

The following paragraph is added:

3. When damage from Hail consists of dents, scratches, or nicks on the exterior surface of the home or other structures that do not compromise the structural integrity of your home or other structures we will pay the lowest of the following amounts:

- (1) The cost of repairing or replacing the damaged portion of the property; or
- (2) 2% of the amount of insurance provided under Coverage A (Dwelling).

Explanation: (provided for clarification)

Hail often causes damage to exterior surfaces that is cosmetic in nature, but does not result in structural damage or diminish the ability to use the structure for the purpose intended. Materials usually affected by this type of damage include but are not limited to aluminum siding or metal roofing materials. This Endorsement limits the amount the insurance company will pay for these cosmetic losses in return for a reduction in the premium you pay for this policy.

All other provisions of this policy apply.

“Marring” is Uninsured?

Section I - Uninsured Loss or Damage and Excluded Causes of Loss or Damage	21
A. Uninsured Types of Loss or Damage	21
1. Water Damage	22
2. Nuclear Damage	22
3. Construction Defect	22
4. Inherent Vice or Latent Defect.....	22
5. Contamination	22
6. Breakage, Impairment, Corruption or Failure of Personal Property.....	22
7. Wear and Tear, Deterioration or Mechanical Breakdown	22
8. Marring	22
9. Corrosion, Deterioration, Decay or Rust	22
10. Fungi.....	22
11. Pathogen	22
12. Movement, Settling, Cracking, Bulging, Shrinking, Heaving, Bending or Expanding.....	23
13. Building Ordinance or Law	23
14. Exceptions to Uninsured Types of Loss or Damage.....	23

Marring

23. **Marring** - means any disfigurement, blemish, discoloration, weathering or stretching, or the like, of or to covered property, including, but not limited to, scratching, chipping, cracking, scorching, denting, creasing, gouging, fading, staining, tearing, oxidizing, blistering, or thinning, whether occurring at once or over time.

Marring only covered if:

14. Exceptions to Uninsured Types of Loss or Damage.

We do insure:

6. Breakage, Impairment, Corruption or Failure of Covered Personal Property;

8. **Marring**; and

12. Movement, Settling, Cracking, Bulging, Shrinking, Heaving, Bending or Expanding;

which is directly caused by the following causes of loss, subject to the terms, conditions and limitations set forth in subsection B. Excluded Causes of Loss or Damage for any such cause of loss:

a. fire or lightning;

b. windstorm or hail, except **marring** of:

- (1) all metal materials that are part of a **separate structure**; or
- (2) any of the following that are part of the **dwelling**:
metal guttering or downspouts or metal **roof materials**.

Windstorm or hail which causes a distinct and demonstrable actual hole or opening in any of the metal materials or items in (1) or (2) is covered;

Cosmetic or Physical Damage?



- Does it have to be damage to the structure or “functional”?

No!!!

- Does ‘Physical Damage’ includes alterations to the physical appearance?

Yes!!















Suit *Against* Us

Changes:

PRIOR to 2015:

- Simple 1 to 2 lines
- Discussed SOL on claim

POST to 2015:

- Complex
- **Requires POL in some cases**
- Requires compliance with conditions and terms of the policy

Pre-2015: Suit Against Us

H. Suit Against Us

No action can be brought against us unless there has been full compliance with all of the terms under Section I of this policy and the action is started within two years after the date of loss.

I. Our Option

Suit Against Us

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TEXAS CHANGES

PROPERTY COVERAGE PART

A. Legal Action Against Us

1. The **Legal Action Against Us** Property Condition is replaced by the following, except as provided in **A.2.** below:

Legal Action Against Us

- a. Except as provided in Paragraph **b.**, no one may bring a legal action against us under this Coverage Part unless:
 - (1) There has been full compliance with all of the terms of this Coverage Part; and
 - (2) The action is brought within two years and one day from the date the cause of action first accrues. A cause of action accrues on the date of the initial breach of our contractual duties as alleged in the action.

the f

- b. With respect to loss or damage in the State of Texas caused by windstorm or hail in the catastrophe area as defined by the Texas Insurance Code, no one may bring a legal action against us under this Coverage Part unless:

- (1) There has been full compliance with all the terms of this Coverage Part; and
- (2) The action is brought within the earlier of the following:
 - (a) Two years and one day from the date we accept or reject the claim; or
 - (b) Three years and one day from the date of the loss or damage that is the subject of the claim.

E

“New” Action Against Us

C. Item 13, **Action Against Us**, is replaced by the following:

13. **Action Against Us**

No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under a coverage to which **Section I Conditions** applies, unless:

- a) there has been full compliance with all policy terms; and

- b) the action is commenced within two years and one day from the date the cause of action first accrues; and
- c) in the event that **you** and **we** fail to agree on the amount of loss claimed by **you**, unless **you** have previously provided to **us** a signed sworn proof of loss, it is a condition under this **Action Against Us** provision that no later than 91 days prior to commencing any action against **us** that **we** receive from **you** a signed sworn proof of loss, which contains, to the best of **your** knowledge and belief, the following information:
 - 1) the date, time, location and cause of loss;
 - 2) the interest **insured persons** and others have in the property, including any encumbrances;
 - 3) any other insurance that may cover the loss;
 - 4) any changes in title, use, occupancy or possession of the property that have occurred during the policy period;
 - 5) at **our** request, the specifications of any damaged **building structure** or other structure;
 - 6) the estimated or actual cost to repair or replace the property stolen or damaged by the loss with materials of like kind and quality;
 - 7) the amount you have actually spent to repair or replace the property stolen or damaged by the loss; and
 - 8) in the event that **you** give **us** a signed proof of loss, and after submitting that to **us**, **you** determine that **you** want to include a claim for additional damage or loss, **you** must submit to **us** a supplemental proof of loss which identifies the amount of the additional loss for each item damaged or stolen.

MORE burdens on the
Insured &
Representatives of
Insured

Arbitration instead of Suit:

Ranchers and Farmers Mutual Insurance Company
A Farm Mutual Company

[Managed by American Bankers General Agency, Inc.]
[Administrative Offices: 11222 Quail Roost Drive, Miami, FL 33157]

SPECIALTY HOMEOWNERS PROGRAM
COMPULSORY DISPUTE RESOLUTION ENDORSEMENT

It is understood and agreed that the APPRAISALS and LEGAL ACTION AGAINST US conditions have been deleted and replaced by the following:

COMPULSORY DISPUTE RESOLUTION

Should any dispute arise between YOU and US; from, through or by this policy, including any statutory law or common law right YOU have against US (excepting an alleged material misrepresentation contained in the application), then such dispute shall be arbitrated in accordance with the rules and procedures under the Federal Arbitration Act and the Texas General Arbitration Act subject to the following:

1. YOU and WE shall waive OUR respective rights to litigate those issues in dispute in a court of law, including the right to jury trial, stay any arbitration proceeding or contest any award.
2. Arbitrators shall be chosen from a list provided by the American Arbitration Association. One arbitrator to be chosen by YOU and the other to be chosen by US, and an umpire to be chosen by the two arbitrators before they enter upon arbitration.
3. The site of the proceedings shall be the nearest city, over one hundred thousand people if YOU initiate the demand for arbitration; otherwise the proceedings shall take place in Beaumont, Jefferson County, Texas.
4. The arbitrators are relieved from all judicial formalities and are not bound by the Texas Rules of Civil Procedure or the Texas Rules of Civil Evidence. YOU and WE shall be bound by the decision of the arbitration panel rendered at the conclusion of the proceedings. Judgment upon the final decision of the arbitrators may be entered in any court of competent jurisdiction.
5. All costs, charges and expenses resulting from arbitration shall be apportioned equally between YOU and US. Such costs, charges and expenses shall not be considered as claim expense and shall not apply towards satisfaction of the deductible.
6. Any demand for arbitration must be initiated no later than twelve (12) months immediately subsequent to the accrual of either party's respective cause of action.

What's the future
forecast?

Some in the industry would like the below as a compromise:

Cosmetic Damage - Roof Endorsement

This Endorsement Changes the Policy, Please Read it Carefully.

EXCLUSION OF COSMETIC LOSS OR DAMAGE TO METAL ROOF

We do cover hail and wind damage to “metal roof covering” that allows the immediate penetration of water or moisture through the “metal roof covering” or that results in the failure of the “metal roof covering” to perform its intended function to keep out water and moisture for the remainder of its anticipated useful service life.

This exclusion does not apply to “metal roof covering” that is intended to be primarily decorative, prominent, and visible from the ground.

“Metal roof covering” means the metal roof, roof covering or roofing system material, flashing, vent caps, trim, drip edging and other similar materials covering the roof whose function is to keep out water or moisture for the anticipated useful service life of the roof.

We do cover hail and wind damage to “metal roof covering” that allows the immediate penetration of water or moisture through the “metal roof covering” or that results in the failure of the “metal roof covering” to perform its intended function to keep out water and moisture for the remainder of its anticipated useful service life.

This exclusion does not apply to “metal roof covering” that is intended to be primarily decorative, prominent, and visible from the ground.

Some in the industry would like the below as a compromise:

APPRAISAL PROTOCOL

The following Appraisal Protocol (“Protocol”) will govern the appraisal proceedings involving a dispute between _____ (“Insured”) and _____ Insurance Company (“Insurer”).

I. SCOPE OF APPRAISAL

- A. The appraisers and, failing agreement of the appraisers, then any one appraiser and the umpire who agree, shall determine the following:
1. [EXAMPLES] Whether the Location sustained physical loss or damage resulting from hail and a statement of such hail damage at the Location;
 2. Whether any such hail damage resulted from the Hail Storm;
 3. The Replacement Cost of any such hail damage that resulted from the Hail Storm; and
 4. The Actual Cash Value of any such hail damage that resulted from the Hail Storm.

Forecast:

- More Legislative Reform
- Increase of changes in Policies
- More attacks on Lawyers, PAs, & Contractors
- More battles in & out of the Courtroom



Thank you!



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