



BY: Holly K. Soffer, Esquire, Counsel to AAPIA

Would your homeowner's insurance cover you for a loss in your home? Water claims are the most common claims, and many policies leave you far from being made whole after a loss due to water damage.

Consider this typical scenario: You, the homeowner, return home from a weekend away and take a shower, only to find that upon doing so, the living room ceiling under that shower gives in under the weight of water and there is now a pool of water on the hard wood floor and furniture underneath. Your college age son has been staying at the house while you were away. You immediately call your son, who says, "I think I saw a stain on the ceiling a few days ago, but it's a high ceiling, and I wasn't sure. In different light, I didn't see anything." You then call your homeowner's insurance carrier, assuming that the damage will all be covered, and you will be made whole so that your home looks like it did before the water damage.

Unfortunately, you learn that all of your damage may not be covered, and that what you thought was a simple matter is actually very complex. The extent to which you will be covered, if at all, for the ensuing damage from the loss will depend upon the specific wording of your insurance policy, a policy that you most likely have never read, and is difficult to understand, even by insurance professionals. *We call this gap between what you as a consumer reasonably believe is covered by your policy, and what is actually covered, a "coverage gap".* This article will discuss the coverage gaps that you would face from the water damage from that discharge of water from your shower by examining common policies from five popular carriers: All State, Farmers, State Farm, Travelers and USAA. ***The limitations in coverage that will be discussed are based on policy language and arguments that the insurance companies have made to deny coverage based upon those limitations. A few of these have been fought successfully by public adjusters and/or attorneys, based upon the individual circumstances.***

Coverage gaps under 5 common policies, all in the same general price range:

All State House and Home Policy:

In order for water discharge to be covered under most policies, the water damage must be based upon a specific occurrence and not an issue of undetermined length that is due to lack of maintenance by the homeowner. With regard to our shower discharge of water, All State would cover the "sudden and accidental escape of water" but does not cover "seepage", meaning continuous or repeated seepage or leakage over a period of weeks, months, or years, of water, steam or fuel: *from a*



plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a domestic appliance; or from, within or around any plumbing fixtures, including, but not limited to, shower stalls, shower baths, tub installations, sinks or other fixtures designed for the use of water or steam. You as the homeowner hope that your water discharge wasn't seeping slowly over weeks, albeit unbeknownst to you, or it may not be covered.

Further, if a pipe had become corroded over time, causing a slow leak, even it not noticeable at first, the damage may not be covered if it occurred over a period of weeks. An examination of the water stains on the ceiling as well as the pipes would help to determine that. Also, if the shower had been leaking into the pipes for a few weeks or months, *dry rot or wet rot* could have developed, causing the discharge of water, and those causes could be excluded as well.

Mold: If the water did sit on the ceiling for even as short a time as 2 days, mold could develop in humid climates. All State would not cover mold, even if the mold spores spread to items that were not wet from the leak. However, if the mold formed where there was water damage, then mold would not prevent those damaged areas from being covered.

After a loss, you have a duty to mitigate the damages to prevent against further loss or damage. All State, however, has a **\$5,000.00 limitation** on temporary repairs to protect your property from further loss.

In all of these policies, damage to any system or household appliance from which the water discharged, erupted, released or overflowed is not covered.

Bottom line: many coverage gaps could leave you facing large repair bills

Farmers Smart Plan Home Policy:

Farmers covers a sudden abrupt and accidental discharge of water, but:

“A sudden, abrupt and accidental discharge, eruption, overflow or release of water does not include a constant or repeating gradual or slow release of water, or the infiltration or presence of water over a period of time, regardless of the volume of water involved.

We do not cover any water, or the presence of water, **over a period of time** from any constant or repeating gradual or slow **seepage, leakage, trickle,**



collection, spray or mist, infiltration or overflow of water from any source, even if from the usage of those items described in subsection a.(4) above, whether known or unknown to any insured”.

Just as with All State, if the leak occurred over an undetermined period of time, even if you did not know about the leak, it would not be covered. Even worse, is that unlike All State’s policy, Farmers does not define “over a period of time”, so it is unclear what the time period is. Is one day a period of time—which would exclude all claims, or is it a certain number of days, or weeks? Most policies define this period of time, but a few carriers are starting to use this term—Farmers and State Farm, for example. In fact, this language is the subject of litigation, due to its lack of clarity. In our example, it would be tough to say that the water damage did not occur over a period of time, since it very may well have started as a leak for a day or two before it resulted in a large amount of water coming through the ceiling.

Further, Farmers will only pay the “**reasonable**”, **not actual**, cost of tearing out and replacing that part of the home that is actually necessary to gain repair to that specific system. If it is necessary to tunnel under, cut into or tear out and replace any part or portion of a foundation; slab; concrete floor, pad or patio, or the like; or foundation or retaining wall, the coverage is limited to \$2,000 per loss event.

Even if the claim is covered, then the damage to the floor below may not be recoverable due to the definition of “marring” which is an exclusion under the policy.

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. If your wood floor’s damage arguably fits into that marring exclusion, such as a bubble or fading, then your carrier may deny coverage.

Matching isn’t covered either. This means that if your current floors, or other items are not damaged, but do not match with the materials that are needed to replace the property because your old items have changed over time, due to wear and tear, corrosion or decay, then those older items may not be replaced even if they don’t match the new, replaced ones. The new items only have to be of *like kind and quality*, which may not be aesthetically pleasing to you or your family. Damage also does not include functional impairment or loss of value of property unless it has sustained demonstrable physical injury or destruction.



As with All State, mold is not covered, even if you bring someone in to make repairs and mold results either from their work, or despite their efforts to prevent it.

Under this policy, you could be left with an even larger coverage gap than All State, which means that you would have to pay for many repairs that you reasonably assumed would be covered when you purchased the policy.

State Farm HO-3

You would find it very hard to collect for all of your potential damage under the State Farm policy as well. State Farm, just as Farmers does, limits water damage so that it only covers water damage caused by the “sudden and accidental discharge or overflow of water...”. Specifically excluded is a loss “caused by or resulting from continuous or repeated seepage or leakage of water or steam which occurs **over a period of time** and results in deterioration, corrosion, rust, mold, or wet or dry rot.”

State Farm, as with Farmers, does not define “over a period of time” either. In our example, it would be tough to say that the water damage did not occur over a period of time, since it very may well have started as a leak for a day or two before it resulted in a large amount of water coming through the ceiling.

Mold is also an exclusion.

Even more concerning is the limitation for “access”. State Farm has such an limitation for a “tear out”. The policy says that if damage is caused by water or steam escaping , as in our case, that State Farm will pay the “reasonable” cost to tear out and replace only that portion of the building necessary to gain access to the **specific point of that system or appliance form which the water or steam escaped**. What that means for you, the homeowner in our example, is that the cost of repairs may not be covered. If the water discharge was caused by a broken pipe for example, then the only costs that State Farm will pay, according to the policy, is the cost to tear out the wall *at the spot where the pipe broke*. If the shower that discharged the water has a vertical “stacked” pipe, and especially if it is cast iron, as is in many older homes, then the whole wall, perhaps both upstairs and downstairs, would have to be torn out to access that pipe, since it is often too brittle to patch or repair. That cost can be in the thousands of dollars, and the policy language says that the only cost covered is to cut the wall at the specific part of the pipe that burst or cracked, creating a huge coverage gap. You as the homeowner are



left hanging to make those costly repairs that you did not anticipate when you purchased the insurance.

Also, if the loss is covered, State Farm will not pay “the cost to repair or replace obsolete, antique or custom construction with like kind and quality.” That limitation is very restrictive if you live in a unique home that was built with custom items, such as old woodwork or other such details in your home. Again, if you want the home to look as it did pre-loss, then you would be faced with paying for those costs on your own.

Travelers HO-3

The Traveler’s policy is more generous with its water damage coverage than All State, Farmers and State Farm. Travelers provides coverage for fungus, microbes and rot resulting from the discharge of water, and offers coverage for the “tear out” of *any part* of the building needed to gain access to such fungi.

Beyond the fungi, Travelers also covers the cost to tear out and replace any part of a building when necessary to repair the system or appliance, *and is not limited to just the part that is necessary to access the point of rupture*. With our cast iron pipe, that would include the extra cost to access the rest of the vertical pipe, wherever that may be, saving you the cost to do that on your own.

With regard to the actual discharge of water, the Traveler’s policy has limitations, just as the others. Travelers excludes “constant or repeated seepage or leakage of water or steam” that occurs for a *period of 14 days or more*. It doesn’t cover a slow leak for longer than the 14 days, but under our example, you should be covered for the discharge of water, even if it did occur over a period of a few days while you were away.

Like most policies, Travelers does not cover damage to the system or appliance from which the water or steam escaped.

USAA Homeowners 9R(02)Preferred Protection Plan

USAA, like the other policies covers the “sudden and accidental” discharge of water under limited circumstances, and the policy has an unusual definition of “sudden and accidental” defining it as “an abrupt, fortuitous event.”



With regard to fungus or wet or dry rot, USAA will cover the cost to test for such fungus or wet or dry rot, remove the fungus, and any tear out required to do so, but all of those costs **are limited to \$2,500.00**, which may leave much of the expense uncovered. You have the choice to upgrade the policy for a higher premium and obtain \$10,000.00 of coverage, but would have to know about this limitation and upgrade the coverage prior to any loss.

The water damage itself is covered similarly to the Traveler's policy in that constant or repeated seepage or leakage of water or steam is not covered if it occurred over a period of 14 days or more. Our homeowners would have to go through the same analyses as under the Traveler's policy.

One other limitation on the damage is that USAA will not pay for matching of undamaged property with regard to color differences or outdated, obsolete or discontinued products. If the damage to the floor requires a new floor, and it doesn't match with an abutting older one, the old one won't be replaced, and you would not likely be happy with the result. This limitation could cause you, the homeowner, to have to spend your own funds to bring your home back to the level it was prior to the loss.

The policy is arguably better than State Farm and Farmers with regard to a few issues, but is not as inclusive as Travelers.

This analysis of the coverage on water damage claims is just the tip of the iceberg with regard to delving into the many coverage gaps. To protect yourself, go over your coverage needs with a broker before purchasing insurance, and ask about these and other specifics in the policy.