

Insurers Continually Confuse the Term “Vacancy” With the Term “Unoccupancy.” What Is the Difference?

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Courts are often confronted with the question of what constitutes a “vacant” or “unoccupied” building within the meaning of an exclusionary provision in an insurance policy. To answer this question, courts compare the term “vacant” with the terms “occupied” or “unoccupied” as they are used in the exclusionary provision.

“Vacant” and “unoccupied” are not synonymous. “Vacant” means entirely empty (i.e., lack of animate or inanimate objects), while “unoccupied” means the lack of habitual presence of human beings (i.e., lack of animate objects). This construction has been followed by courts throughout the country.

An Alabama appellate court distinguished the terms in [National Sec. Fire & Cas. Co. v. James, 358 So.2d 737 \(Ala. Civ. App. 1978\)](#). The Court held “[u]noccupied” meant without occupants, that is animate objects; a dwelling is unoccupied when it has ceased to be used as a place of abode or residence by people.” The Court defined “vacant” as empty, without inanimate objects, containing nothing.

The distinction between the words was also addressed by the Kentucky Supreme Court in [Thomas v. Hartford Fire Ins. Co., 53 SW 297 \(Ky. 1899\)](#). In this case, a family left their home but left a portion of their household goods in the building. The Court explained that the house was not vacant, but that occupation ended when the house was no longer the place of abode of any living person.

The difference between the definitions of the terms is critical if a policy contains a “vacancy” exclusion, but not an “unoccupancy” exclusion. It is important for policyholders to know the difference because many insurance claims adjusters do not. This results in regular wrongful denials of insurance benefits.

Perhaps the best example of an unoccupied, but not vacant structure, would be a fully furnished Tampa Bay home owned by a New York resident who resides in Tampa Bay for only three months during the winter. Such a home would be unoccupied for the remainder of the year, but since the house is filled with all the inanimate objects customarily found in a home, it probably would not be classified as “vacant.”

Why the confusion?

Certain policies include a “vacancy” exclusion and others include a “vacant, unoccupied, or uninhabited” exclusion. The latter is much more common and constitutes a much broader exclusion. In fact, some courts allow these terms to be used interchangeably if this specific exclusion is within the policy. Unfortunately, some claims handlers apply the “vacant, unoccupied, or uninhabited” exclusion to the much more narrow “vacancy” exclusion. The results are disastrous, requiring policyholders to fight for the benefits owed under their policies.

The bottom line for all policyholders is to be aware of which exclusion is in their policy. If they choose to leave their building for an extended period of time, it is important to contact the insurer and determine whether the building will remain covered by the current policy or whether they will need to purchase different coverage.