

TEN SECRETS Surprises About Homeowners' Insurance

written by **andrew m. lieb, esq.**



For homes in the Hamptons or on the North Fork, few aspects of ownership are as important as homeowner's insurance. Whether the issue is related to rentals or repairs, deductibles or damage, in New York an insurance broker is generally not liable for its failure to advise you on what coverage you should obtain. Here is your resource guide to understanding homeowners' insurance in order for you to advocate for your own best interest in obtaining coverage.

Categories of Insurance

Homeowners' Insurance is a broad insurance product that includes many subcategories of coverage, called divided coverage. Subcategories include Dwelling Coverage (i.e., house structure), Other Structures Coverage (i.e., sheds, pool houses, and garages that are detached from the house), Personal Property Coverage (i.e., contents of home), Loss Of Use Coverage (i.e., cost of substitute living when home is uninhabitable), Personal Liability Coverage (i.e., wrongs committed by homeowner or by way of structural defects that cause injuries to others), and Medical Payments Coverage (i.e., relevant to

injuries). Each subtopic offers its own specific limit of coverage per occurrence, which is detailed on a Declaration Page to the Homeowners' Policy, and represents the total amount of money that the insurance carrier will pay per occurrence during the policy period for each subcategory of accident, including continuous or repeated exposure to substantially the same general harmful conditions. The determination of whether multiple injuries are from just one occurrence or, instead, from separate occurrences is a litigated topic because separate occurrences multiplies the coverage provided.

Deductibles

Prior to an insurer paying for a loss resulting from a covered peril (i.e., cause of loss), the homeowner will first be required to pay for a portion of that loss themselves. While a deductible is generally set forth as a fixed amount of money (e.g., \$1,000) on a Declaration Page in the Homeowners' Policy, there may also be other deductibles set forth for specific peril categories (e.g., hurricane deductible) and that specific deductible may be payable as a percentage (e.g., 5%) rather than a fixed amount of money. Therefore, the determination of whether a peril constitutes a hurricane or is, instead, labeled

as a "superstorm" can mean the difference of a substantial amount of money to the homeowner (e.g., Governor Cuomo characterizing Superstorm Sandy to not constitute a hurricane).

Property Damage Coverage

Homeowners' Policies have a section titled "Special Limits of Liability" wherein subcategories of personal property each receive their own item-specific policy limits (e.g., \$1,500 for loss by theft, misplacing or losing of jewelry, watches, furs, precious and semiprecious stones). Additionally, the determination of damages is dependent on whether a given Homeowners' Policy offers Actual Cash Value Coverage or Replacement Cost Coverage. Actual Cash Coverage provides coverage for an item's as-is value (i.e., accounting for depreciation) whereas Replacement Cost Coverage represents what you would pay for the item today new (i.e., without depreciation).

Off-Premises Coverage

Homeowners' Insurance is not restricted to damage to the home, its contents or injuries that occur thereon. Instead, coverage is afforded for

CONTINUED ON PAGE 20



CONTINUED FROM PAGE 20

off-premises occurrences. An insured may receive coverage for personal property that is damaged when the item is not on the premises (e.g., \$500 on property, away from the “residence premises”, used primarily for “business” purposes). Coverage also exists for bodily injury to persons off-premises if such injury is caused by activities of the insured, a residence employee (e.g., housekeeper), or an animal of the insured (e.g., dog). Therefore, if a person is ever injured they should always consider pursuing the assailant’s Homeowners’ Insurance to cover the loss. Even non-owners may be covered for their wrongs so long as they are a member of the homeowner’s family and permanently reside in the home.

Household Workers’ Coverage

In New York, insurers are required by statute to provide a Homeowners Workers’ Compensation Insurance Rider to a Homeowners’ Insurance Policy. At a quick glance, the Rider implies that you do not need to purchase a separate Workers’ Compensation Insurance Policy for your nanny, housekeeper, butler, etc. That would be a misunderstanding of the law according to the New York State Workers’ Compensation Board, which states, on its website, that this Rider “does not cover any domestic employees for workers’ compensation benefits nor does it cover people working for home-based businesses”. Instead, this Rider is designed only for “[c]ontractors that are deemed employees under the WCL and working a total of less than 40 hours a week in or around a one, two, three or four family owner occupied residence.”

Rental Issues

Standard Homeowners’ Insurance Policies will disclaim coverage if the home is rented absent a specific endorsement (i.e., addition to coverage). It is imperative that those intending to rent their homes obtain the requisite endorsement prior to effectuating such a rental. If the entire home will always be rented and you live in another home, you should request the endorsement titled “Additional Residence Rented To Others” for the home that you reside in as well as getting a landlord’s policy

for the home that you rent; if the entire home will instead only be sporadically rented, you should request the endorsement titled “Residence Rental Theft;” if another structure on the property will be rented, you should request the endorsement titled “Structures Rented To Others;” and if your rental home is a condominium unit, you should request the endorsement titled “Unit-Owners Rental To Others.”

Notice Requirements

Immediately after an occurrence of property damage or a bodily injury you must immediately notify your insurer. Failure to give such written notice as soon as is practical following a loss may result in the insurer disclaiming coverage. Such notice should include the Policy Number, insured’s name, information concerning the time, place and circumstances of the loss, and the name/address of anyone injured as well as any witnesses to the occurrence. Be sure to send this notice to the insurer by way of certified mail, return-receipt-requested, while maintaining a copy of the enclosures. Most policies only require you to notify either the insurer or their agent. However, do not skip providing notice to the insurer as notice overkill is recommended so as to avoid claims that you failed to provide notice in a timely fashion. Nonetheless, it would be wise to seek legal advice prior to providing specific details about the occurrence to your insurer. An attorney can help you to best craft your articulation of the facts applicable to an occurrence in order to maximize your likelihood of receiving coverage.

Mitigation Requirements

An insured has a duty to protect property from further damage following an occurrence (e.g., if your window is broken by a neighbor kid’s baseball an insurer will not pay for your flood damage from rain entering through that hole—you must immediately seal the opening). You may have to outlay monies in order to effectuate these reasonable and necessary repairs to your property. To be reimbursed by your insurer for your outlay, keep receipts and take date-stamped pictures of the damage prior to effectuating the repair.

Duty to Defend

Courts interpret insurance laws as providing a greater duty to defend than the duty to insure. This means that even if you are not covered under your policy, you may still receive an attorney to defend you if you are sued. While deductibles are still applicable, the insurer will pay for your attorney and, as a result, often has the final say over who will provide you with such representation. Consequently, if you ever receive a summons and complaint (i.e., legal pleadings) you should immediately notify your insurer of the lawsuit and seek a defense (i.e., even if you just believe that you will be sued, such notice is recommended). However, waiting for the insurer to decide if it will be providing you with a defense before acting in the lawsuit is a terrible idea that may result in you losing the lawsuit (i.e., lawsuits have specific time periods in which a defendant has to serve and file papers in order to avoid defaulting in an semi-automatic loss). As a result, your first stop after being sued is to see an attorney of your choosing, who can help you obtain a covered insurance defense attorney, and, at least, prevent you from defaulting in the instant lawsuit during the interim of seeking a defense and coverage.

Declaratory Judgment Option

You do not need to just accept your insurer’s denial of affording you with either coverage for damages or a defense to a lawsuit. Instead, an insured has a right to sue their insurer in Court to have a Judge decide if coverage should be provided under the circumstances. The rules of construction for insurance policies result in any ambiguity as to whether the policy is applicable to the specific occurrence or otherwise being interpreted against the insurer. Simply not understanding if the policy provides coverage may work in your favor. ■

Andrew M. Lieb, Esq., MPH, is the Managing Attorney of Lieb at Law P.C. and is a contributing writer for “Behind the Hedges: Inside Hamptons Real Estate” magazine.