

Standard Answers

Insuring a Trust under a Homeowners Policy

When a trust owns the home, you need to make adjustments to the basic homeowners policy to ensure adequate coverage.

A trust separates the title to property into two distinct parts. First, there is legal title to the property, including the right to dispose of it (the trustee's rights). Second, there is equitable or beneficial title to the property, including the right to use and derive benefits from the property (the resident's rights). Usually, the person who creates the trust, or grantor, is the resident.

The basic homeowners policy covers individuals, not entities such as trusts. The policy covers "you" (named insured and resident spouse) and "family members." Since a trust is not a natural person, it cannot have a spouse or family members.

When an individual transfers a property title to a trust, the legal ownership of that property changes. However, most insurance professionals would agree, there has been no significant increase in underwriting hazards. Therefore, the property should still be eligible for coverage under the homeowners policy.

A couple of years ago, Insurance Services Office (ISO) revised eligibility standards to allow for these situations.

Why a Trust?

One of the most significant benefits of a trust is the ability to partition and shield assets, making the trust "bankruptcy remote," which means its obligations are secure in the event of the bankruptcy of the trustee. Trusts can also shield assets from lawsuits because ownership is hidden.

Trusts also help property pass to heirs more quickly. Assets can pass

immediately from the grantor to the beneficiaries.

Trusts allow unmarried cohabitants to designate heirs that are not automatically recognized by state law. They give divorced and unmarried couples more options for splitting up ownership of residences, vehicles, and businesses without having to sell them.

Trust Endorsement

Both the trustee who holds legal

title and beneficiaries who hold equitable title have insurable interests and may be named insureds under a homeowners policy. The trust should not be named as the named insured, however, and may be designated as an additional insured only in states where a trust is statutorily recognized as a legal entity capable of holding title.

Most often, the policy names the trustee as the named insured.

The HO 06 15 Trust Endorsement



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specifically describes the types of trusts typically covered under a homeowners policy.

The endorsement schedule provides for the entry of: the name and address of the trust; the name and address of the trustee(s) to identify their status as “insured” under the policy; and the name of the trust, if designated as an “insured.”

The definition of “insured” is revised to include the trust or the trustee, but only for the following coverages: 1) Coverage A (Dwelling) and Coverage B (Other Structures); 2) Coverage E (Personal Liability) only with respect to bodily injury or property damage arising out of the ownership, maintenance, or use of an “insured location” as defined in the policy; and 3) Coverage F (Medical Payments to Others) only with respect to bodily injury or property damage arising out of the ownership, maintenance, or use of an “insured location” as defined in the policy.

In some states, a trust is not recognized as an insured. Therefore, the endorsement specifies that the trust is an “insured” only if the trust is recognized in the state as a legal entity with the ability to sue and be sued,

and is named as an “insured” in the schedule.

In states where a trust cannot be an insured, ISO has filed alternate endorsements that state the trustee is an insured only with respect to his duties as a trustee of the trust named in the schedule.

Traditionally, underwriters have stated that the homeowners policy should be written in the name of the person who has title to the property. However, if you list the trust as the named insured, the occupants of the home will not have personal liability coverage. That's because the policy provides personal liability coverage only for the named insured and spouse and the named insured's family members.

With respect to liability, the activities of the trustee in administering the trust are not considered a “business” for coverage purposes. The “insured location” definition includes certain real property if the trust holds legal title to the property.

Finally, under Coverage E, bodily injury claims of the trustee are excluded.

This endorsement also contains explicit notice provisions. A Trust Documents provision provides that the insurer, as often as it reasonably requests, must be provided with copies of the trust documents. A Changes and Notification Requirement provision provides that the insurer be promptly notified of any of the following changes that occur during the policy period: 1) changes in the name of the trust; changes in the trustee of the trust, including the addition or removal of a trustee; changes in the mailing address of the trust or any trustee of the trust; 2) termination of the trust; or 3) death or disability of a trustee.

In addition, the insurer must be promptly notified if the grantor of the trust discontinues residing at the residence premises.

List the Trust as an Additional Insured

Traditionally, underwriters have stated that the homeowners policy should be written in the name of the person who has title to the property. However, if you list the trust as the named insured, the occupants of the home will not have personal liability coverage. That's because the policy provides personal liability coverage only for the named insured and spouse and the named insured's family members.

If you write the policy in both the name of the trust and the name of the individuals, this provides very broad coverage for the trust. Ideally, you would want to restrict the coverage for the trust to the premises exposures. This cannot be done if the trust is the named insured.

The best solution is to write the policy in the name of the individuals and list the trust as an additional insured. This gives the individuals broad liability coverage and the liability coverage provided for the trust is limited to the premises.

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Beware the Massachusetts Wage Act: A Law with Teeth

By Robert M. Granger

The only real concern is other premises. If the homeowners policy is also covering the liability exposure of vacant land or a premises rented to others, the trust would not be covered for liability in relation to those premises. This is because the additional insured endorsement only provides liability for the residence premises. If these exposures exist, you would have to work with the underwriter to create coverage.

What about personal property coverage? The homeowners policy states, "We cover personal property owned or used by an 'insured'." This is broad enough to cover the personal property owned by the trust but used by the individuals who are the named insureds.

Finally, the insurable interest clause does not appear to be a problem because the individuals retain full use interest in the property. The insurer should pay a property claim even though the policy is written in the name of the individual and the property is titled in the name of the trust.

What Does it Mean?

A trust is a legal creation wherein one party, the trustee, manages a form of property that has been transferred to the trust by the person establishing the trust, the grantor. Trusts may be created during a person's life (a living trust) or after death in a will (testamentary). A living trust can be revocable at any time by the grantor, for any reason, or irrevocable. The trustee has legal obligations as a fiduciary to manage the property prudently and see that it is used only in a manner, and for the purposes, established by the grantor.

The grantor's basic rights include the right (personally, or by others down the line) to remove and replace the trustee for poor performance or to make other small administrative changes.

The beneficiary of the trust receives the property's income, assets, or other consideration as named in the trust agreement. ■

A trap for the unwary. Every company doing business in Massachusetts should pay strict attention to the Massachusetts Wage Act.¹ The Wage Act regulates the timing of payments to current and terminated employees. Failure to comply with the Wage Act's requirements can subject a company to mandatory triple damages. It can also subject the company's officers and owners to personal liability.

Don't be misled by its name. The Wage Act reaches far beyond weekly wage earners, and extends to all current-day employees regardless of the manner in which they are compensated.² It also applies to many so-called independent contractors and freelancers. Massachusetts has a broad independent contractor law which treats most individuals in the same line of business as the company as employees for purposes of the Wage Act.³

The Wage Act may even extend to

individuals who live and work in another state for a company headquartered in Massachusetts. The Massachusetts Supreme Judicial Court recently held that the Massachusetts Independent Contractor Law applied to individuals who performed contract services exclusively in New York for a Massachusetts company. The parties had agreed that Massachusetts law would govern their contracts. If it is ultimately determined that these individuals were misclassified as independent contractors, the Wage Act will apply to their claims.⁴

1 G.L. c. 149, § 148 and § 150 are referred to collectively in this article as the "Wage Act".

2 See *Okerman v. VA Software Corporation*, 69 Mass. App. Ct. 771, 778 n. 9 (2007).

3 See G.L. c. 149, § 148B.

4 *Taylor v. Eastern Connection Operating, Inc.*, Mass. Supreme Judicial Court, No. SJC-11222 (May 17, 2013).

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