



June 3, 2005

CIRCULAR LETTER TO ALL MEMBER COMPANIES

Re: Special Provisions - North Carolina  
DP 32 32 12 05  
Dwelling Policy Program

The Commissioner of Insurance recently approved a revision to Endorsement DP 32 32 amending a typographical error under Perils Insured Against Basic and Broad Coverage Forms for Windstorm or Hail. The wording "*whether driven by rain or not*" should read "*whether driven by wind or not*".

Attached is a revised copy of endorsement DP 32 32 12 05 for your convenience.

It is proposed that this revision becomes effective in accordance with the following Rule of Application:

This change is applicable to all new and renewal policies written on or after the December 1, 2005.

Please see to it that this circular is brought to the attention of all interested personnel in your company.

Very truly yours,

F Timothy Lucas

Personal Lines Manager

FTL:dp

P-05-17

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## SPECIAL PROVISIONS – NORTH CAROLINA

### DEFINITIONS

The following definition is added:

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or by-products produced or released by fungi.

### OTHER COVERAGES

11. In Forms **DP 00 02** and **DP 00 03 Glass or Safety Glazing Material** is deleted and replaced by the following:

#### 11. Glass Or Safety Glazing Material

a. We cover:

- (1) The breakage of glass or safety glazing material which is part of a covered building, storm door or storm window;
- (2) The breakage, caused directly by Earth Movement, of glass or safety glazing material which is part of a covered building, storm door or storm window; and
- (3) The direct physical loss to covered property caused solely by the pieces, fragments or splinters of broken glass or safety glazing material which is part of a building, storm door or storm window.

b. This coverage does not include loss:

- (1) To covered property which results because the glass or safety glazing material has been broken, except as provided in **a.(3)** above; or
- (2) On the Described Location if the dwelling has been vacant for more than 30 consecutive days immediately before the loss, except when the breakage results directly from Earth Movement as provided for in **a.(2)** above. A dwelling being constructed is not considered vacant.

Loss to glass covered under this Other Coverage **11.** will be settled on the basis of replacement with safety glazing materials when required by ordinance or law.

This coverage does not increase the limit of liability that applies to the damaged property.

The following Other Coverage is added to all forms except **DP 00 01**. When you are a tenant of a Described Location covered under this policy, the words 'covered building' used below, refer to property at such a Described Location covered under Other Coverage **3. Improvements, Alteration And Additions.**

#### 12. Ordinance Or Law

a. The Ordinance Or Law limit of liability determined in **b.** or **c.** below will apply with respect to the increased costs you incur due to the enforcement of any ordinance or law which requires or regulates:

- (1) The construction, demolition, remodeling, renovation or repair of that part of a covered building or other structure damaged by a Peril Insured Against;
- (2) The demolition and reconstruction of the undamaged part of a covered building or other structure, when that building or other structure must be totally demolished because of damage by a Peril Insured Against to another part of that covered building or other structure; or
- (3) The remodeling, removal or replacement of the portion of the undamaged part of a covered building or other structure necessary to complete the remodeling, repair or replacement of that part of the covered building or other structure damaged by a Peril Insured Against.

b. If you are an owner of a Described Location, and that location:

- (1) Is insured for Coverage **A** or Unit-Owner Building Items, you may use up to 10% of the limit of liability that applies to Coverage **A** or Unit-Owner Building Items at each Described Location; or
- (2) Is not insured for Coverage **A** or Unit-Owners Building Items, you may use up 10% of the total limit of liability that applies to Coverage **B** at each Described Location.

c. If you are a tenant of a Described Location, you may use up to 10% of the limit of liability that applies to Improvements, Alterations And Additions at each Described Location.

d. You may use all or part of this Ordinance Or Law Coverage to pay for the increased costs you incur to remove debris resulting from the construction, demolition, remodeling, renovation, repair or replacement of property as stated in a. above.

e. We do not cover:

- (1) The loss in value to any covered building or other structure due to the requirements of any ordinance or law; or
- (2) The costs to comply with any ordinance or law which requires you or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, pollutants on any covered building or other structure.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

This coverage is additional insurance.

The following **Other Coverage** is added to all forms:

### 13. "Fungi", Wet Or Dry Rot, Or Bacteria

a. We will pay up to a total of \$5000 for:

- (1) Direct physical loss to property covered under Coverage **A** – Dwelling, Coverage **B** – Other Structures and Coverage **C** – Personal Property caused by, resulting from, or consisting of "fungi", wet or dry rot, or bacteria if the direct result of a Peril Insured Against; and
- (2) Necessary increase in costs which you incur to maintain your normal standard of living when the Described Location is uninhabitable due to a loss caused by, resulting from, or consisting of "fungi", wet or dry rot, or bacteria which is the direct result of a Peril Insured Against.

The coverage provided above is the only coverage under Coverage **A** – Dwelling, Coverage **B** – Other Structures, Coverage **C** – Personal Property, and if provided in this policy, Coverage **D** – Fair Rental Value and Coverage **E** – Additional Living Expenses, for damage or loss caused by, resulting from, or consisting of "fungi", wet or dry rot, or bacteria caused directly or indirectly regardless of any other cause or event contributing concurrently or in any sequence.

b. The \$5000 limit is the most we will pay for the cost:

- (1) To remove "fungi", wet or dry rot, or bacteria from covered property;
- (2) To tear out and replace any part of the building or other covered property as needed to gain access to the "fungi", wet or dry rot, or bacteria; and
- (3) Of any testing of air or property to confirm the absence, presence or level of "fungi", wet or dry rot, or bacteria whether performed prior to, during or after removal, repair, restoration or replacement. The cost of such testing will be provided only to the extent that there is a reason to believe that there is the presence of "fungi", wet or dry rot, or bacteria.

The coverage provided above applies only when such loss, costs or expenses are the result of a Peril Insured Against that occurs during the policy period and only if all reasonable means were used to save and protect the property from further damage at or after the time of the occurrence of that Peril Insured Against.

If there is covered loss or damage to covered property, not caused, in whole or in part, by "fungi", wet or dry rot, or bacteria, loss payment will not be limited by the terms of this Other Coverage, except to the extent that "fungi", wet or dry rot, or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Other Coverage.

This is additional insurance and is the most we will pay for the total of all loss, costs or expenses payable under this Other Coverage regardless of the number of locations insured or the number of claims made. No deductible applies to this coverage.

(This is Other Coverage **9**. in Form **DP 00 01**).

### PERILS INSURED AGAINST

Basic Coverage Form **DP 00 01** and Broad Coverage Form **DP 00 02** only.

Under **2. Windstorm Or Hail**, Paragraph **b.** is deleted and replaced by the following:

- b. To the following property when outside of the building, unless specifically shown on Endorsement **DP 32 19** or the Declarations Page:
- (1) Signs or cloth awnings, including their supports;
  - (2) Radio or television antennas or aerials, including their lead-in wiring, masts or towers;

- (3) Swimming pools;
- (4) Screens, including their supports, around a swimming pool, patio or other areas;
- (5) Fences, property line and similar walls, including seawalls;
- (6) Bathhouses, cabanas, greenhouses, hot-houses, pergolas, slathouses, trellises;
- (7) Outdoor equipment used to service the Described Location;
- (8) Structures located over water, whether or not permanently attached to the ground, including the property in or on the structure; or

Basic Coverage Form **DP 00 01** only.

Under **2. Windstorm Or Hail**, the following paragraph is added:

- c. Caused by frost or cold weather, or ice (other than hail), snow or sleet, whether driven by ~~rain~~ wind or not.

Broad Coverage Form **DP 00 02** only.

Under **2. Windstorm Or Hail**, the following paragraphs are added:

- c. To lawns, plants, shrubs or trees; or
- d. Caused by frost or cold weather, or ice (other than hail), snow or sleet, whether driven by ~~rain~~ wind or not.

Special Coverage Form **DP 00 03** only.

Under **Coverage C – Personal Property, 2. Windstorm or Hail** is deleted and replaced by the following:

**2. Windstorm Or Hail**

This peril does not include loss:

- a. To property contained in a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening;
- b. To plants, shrubs or trees; or
- c. Caused by frost or cold weather, or ice (other than hail), snow or sleet, whether driven by wind or not.

In Form **DP 00 03**, under Coverage **A – Dwelling** and Coverage **B – Other Structure** and in Endorsement **DP 04 65**, under Perils Insured Against, Item **2.h.(3)** is deleted and replaced by the following:

- (3) Smog, rust, or other corrosion;

**GENERAL EXCLUSIONS**

Basic Coverage Form **DP 00 01**, Broad Coverage Form **DP 00 02** and Special Coverage Form **DP 00 03**.

**1. Ordinance or Law** is deleted and replaced by the following:

- 1. Ordinance Or Law, meaning any ordinance or law:
  - a. Requiring or regulating the construction, demolition, remodeling, renovation or repair of property, including removal of any resulting debris. This Exclusion **1.a.** in Form **DP 00 02**, Exclusion **A.1.a.** in Form **DP 00 01** and Exclusion **1.a.(1)** in Form **DP 00 03**, does not apply to the amount of coverage that may be provided under Other Coverages, Glass Or Safety Glazing Material or Ordinance Or Law;
  - b. The requirements of which result in a loss in value to property; or
  - c. Requiring you or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

This exclusion applies whether or not the property has been physically damaged.

(This is Exclusion **A.1.** in Form **DP 00 01** and Exclusion **1.a.** in Form **DP 00 03**).

**2. For all Forms other than DP 00 01, Earth Movement** is deleted and replaced by the following:

- 2. Earth Movement, meaning earthquake, including land shock waves or tremors before, during or after a volcanic eruption; landslide; mine subsidence; mudflow; earth sinking, rising or shifting; unless direct loss by:

- a. Fire; or
- b. Explosion;

ensues and then we will pay only for the ensuing loss.

(This is Exclusion **1.b.** in Form **DP 00 03**).

**4. Power Failure** is deleted and replaced by the following:

4. Power Failure, meaning the failure of power or other utility service if the failure takes place off the Described Location. But if the failure of power or other utility service results in a loss, from a Peril Insured Against on the Described Location, we will pay for the loss or damage caused by that Peril Insured Against.

(This is Exclusion **1.d.** in Form **DP 00 03**).

Basic Coverage Form **DP 00 01** only.

Exclusion **B.** is deleted and replaced by the following:

- B.** We do not cover loss to lawns, plants, shrubs or trees.

Special Coverage Form **DP 00 03** only.

The following subparagraph is added to Paragraph **1.:**

- i. Windstorm or hail to the following property when outside of the building unless specifically shown on Endorsement **DP 32 19** or the Declarations Page:
- (1) Signs or cloth awnings, including their supports;
  - (2) Swimming pools;
  - (3) Screens, including their supports, around a swimming pool, patio or other areas;
  - (4) Fences, property line and similar walls, including seawalls;
  - (5) Bathhouses, cabanas, greenhouses, hot-houses, pergolas, slathouses, trellises;
  - (6) Outdoor equipment used to service the Described Location; or
  - (7) Structures located over water, whether or not permanently attached to the ground, including the property in or on the structure.

Basic Coverage Form **DP 00 01**, Broad Coverage Form **DP 00 02** and Special Coverage Form **DP 00 03**.

- 8. Intentional Loss** is deleted and replaced by the following:

**8. Intentional Loss**

We do not provide coverage for a person insured under this policy who commits or directs an act with the intent to cause a loss.

(This is Item **1.h.** in Form **DP 00 03**.)

The following Exclusion is added:

- 9. "Fungi", Wet Or Dry Rot, Or Bacteria**, meaning the presence, growth, proliferation, spread or any activity of "fungi", wet or dry rot, or bacteria other than as provided in **Other Coverage**, "Fungi", Wet Or Dry Rot, Or Bacteria.

(This is **General Exclusion 1.(i)** in Form **DP 00 03**).

**CONDITIONS**

- 3. Concealment or Fraud** is deleted and replaced by the following:

**3. Concealment Or Fraud**

With respect to all persons insured under this policy, we provide no coverage for loss if, whether before or after a loss, one or more persons insured under this policy have:

- a. Intentionally concealed or misrepresented any material fact or circumstance;
  - b. Engaged in fraudulent conduct; or
  - c. Made false statements;
- relating to this insurance.

Under **4. Your Duties After Loss**, Paragraph **d.(3)** is deleted and replaced by the following:

- (3)** Submit to examination under oath, while not in the presence of any other insured under the policy, and sign same;

Broad Coverage Form **DP 00 02** and Special Coverage Form **DP 00 03** only.

**5. Loss Settlement**

Paragraph **b.(1)(c)** is deleted and replaced by the following:

- (c)** The necessary amount actually spent to repair or replace the damaged building, on the premises described in the policy, or some other location within the State of North Carolina.

Basic Coverage Form **DP 00 01**, Broad Coverage Form **DP 00 02** and Special Coverage Form **DP 00 03**.

- 8. Appraisal** is deleted and replaced by the following:

**8. Appraisal**

If you and we fail to agree on the value or amount of any item or loss, either may demand an appraisal of such item or loss. In this event, each party will choose a competent and disinterested appraiser within 20 days after receiving a written request from the other. The two appraisers will choose a competent and impartial umpire. If they cannot agree upon an umpire within 15 days, you or we may request that a choice be made by a judge of a court of record in the state where the dwelling on the Described Location shown in the Declarations 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:

- a. Pay its own appraiser: and

- b. Bear the other expenses of the appraisal and umpire equally.

In no event will an appraisal be used for the purpose of interpreting any policy provision, determining causation or determining whether any item or loss is covered under this policy. If there is an appraisal, we still retain the right to deny the claim.

**11. Suit Against Us** is deleted and replaced by the following:

**11. Suit Against Us**

No action can be brought unless the policy provisions have been complied with and the action is started within three years after the date of loss.

**13. Loss Payment** is deleted and replaced by the following:

**13. Loss Payment**

We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. We will pay within 60 days after the amount is finally determined.

This amount may be determined by:

- a. Reaching an agreement with you;
- b. Entry of a final judgment; or
- c. The filing of an appraisal award with us.

The following Condition is added and applies to all risks located in Protection Class 9, 9E, 9S or 10 in the State of North Carolina:

**26. Vacancy And/Or Unoccupancy (Unprotected Dwellings)**

- a. Coverage is extended for the described dwelling while it is vacant for not more than 60 consecutive days immediately before the loss; or unoccupied for not more than 90 consecutive days immediately before the loss.
- b. If the vacancy or unoccupancy exceeds the respective period stated above, coverage must be extended for an additional period of vacancy and/or unoccupancy by use of Endorsement **DP 32 52**, otherwise all coverage on such dwelling shall be suspended during the period of vacancy or unoccupancy.

- c. "Unoccupied" means the dwelling is entirely furnished but with personal habitants temporarily absent, provided the dwelling is secured against intrusion during this period; except as otherwise provided in this policy for certain specified perils.

- d. A building being constructed shall not be considered vacant.

The following Condition is added to Basic Coverage Form **DP 00 01**, Broad Coverage Form **DP 00 02** and Special Coverage Form **DP 00 03**:

**27. Choice Of Law**

This policy is issued in accordance with the laws of North Carolina and covers property or risks principally located in North Carolina. Any and all claims or disputes in any way related to this policy shall be governed by the laws of North Carolina.

**SPECIAL CONDITIONS**

When this policy insures real property of a condominium association, the following Provisions (1. through 3.) apply:

- 1. Under **Conditions**, Item **9. Other Insurance** is deleted and replaced by the following:

**9. Other Insurance**

If at the time of loss there is other insurance, in the name of a unit-owner, covering the same property covered by this policy, this policy shall provide primary insurance.

- 2. Under **Conditions**, Item **10. Subrogation**, the following sentence is added:

However, we waive any rights of recovery against a unit-owner or member of the unit-owner's household.

- 3. An act or omission by a unit-owner, unless acting within the scope of his authority on behalf of the condominium association, will **not** preclude recovery by you under this policy.

All other provisions of this policy apply.