Insuring Trusts and the Personal Lines Homeowners Customer

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INSURING TRUSTS & THE
PERSONAL LINES HO
CUSTOMER

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This material has been designed for use in training programs for insurance industry personnel. It is not intended to be used as a complete reference resource on the programs and coverages outlined herein.

The programs use “standard” policy forms and endorsements for the purposes of discussing the exposures to loss that may exist, some of the coverage options available to treat them, and to provide a framework for discussions with carriers you represent concerning the programs they have available.

Coverages, rules and materials presented during this program may differ from those used by individual insurance companies. Contact individual carriers for details about interpretations of their eligibility requirements, particular insurance contracts and rates.

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BACKGROUND- Insurance Challenges

**Insurance – The Basics:**

- The homeowners policy was developed to meet the needs of individuals and families.

- The contract provisions address coverage protection for individuals, not entities such as a trust.

- A traditional homeowners policy does not convey any contractual benefits to any party other than a person.

- The policy indicates that coverage applies to "you" (named insured and resident spouse) and "family members."

**Trust vs. Insurance:**

- The basic principle of a trust is that it separates the title of the property into two distinctive parts:

  1. Legal title to the property including the right to dispose of it *(the trustee’s rights)*

  2. Equitable or beneficial title to the property which provides the right to use and derive benefits from the property *(the residents rights – usually the grantor or beneficiary)*

- Since a trust is not a natural person, then it cannot have a spouse or family members.

- When the trust owns the home and no adjustments are made to the basic HO policy, the coverage may inadequate.
The Historical Law of Trusts:

Personal trust law developed in England at the time of the Crusades during the 12th and 13th centuries.

At the time, land ownership in England was based on the feudal system. When a landowner left England to fight in the Crusades, he needed someone to run his estate in his absence, often to pay and receive feudal dues. To achieve this, he would convey ownership of his lands to an acquaintance, on the understanding that the ownership would be conveyed back on his return. However, Crusaders would often return to encounter the legal owners' refusal to hand over the property.

Unfortunately for the Crusader, English common law did not recognize his claim. As far as the King's courts were concerned, the land belonged to the trustee, who was under no obligation to return it. The Crusader had no legal claim.

The Lord Chancellor:

The disgruntled Crusader would then petition the king, who would refer the matter to his Lord Chancellor. The Lord Chancellor could do what was "just" and "equitable", and had the power to decide a case according to his conscience.

The Lord Chancellor would consider it "unconscionable" that the legal owner could go back on his word and deny the claims of the Crusader (the "true" owner). Therefore, he would find in favor of the returning Crusader.

Over time, it became known that the Lord Chancellor's court (the Court of Chancery) would continually recognize the claim of a returning Crusader. The legal owner would hold the land for the benefit of the original owner, and would be compelled to convey it back to him when requested.

The Crusader was the "beneficiary" and the acquaintance the "trustee". The term use of land was coined, and in time developed into what we now know as a trust.
TRUST BASICS

- Property of any sort may be held in trust

- Growth assets are more commonly placed into trust (for tax and estate planning benefits)

- Trust is a creature of the law in which one party—the trustee—manages any form of property that has been transferred to the trust by the person establishing the trust—the grantor or settlor.

- The trustee has the very highest of legal obligations: a fiduciary duty to manage the property prudently and see that it is used only in a manner, and for the purposes, established by the grantor.

- The persons or institutions (e.g., charities) who benefit from the trust are its beneficiaries, named by the grantor in the trust document.

- A Grantor's Basic Rights - The grantor may reserve the right (personally, or for others down the line) to remove and replace the trustee for poor performance or to make other, small, administrative changes.

- A trust can be viewed as a generic form of a corporation

- One of the most significant benefits of a trust is the ability to partition and shield assets making it “bankruptcy remote”

- Two types of trusts. Trusts may be created during a person's life (living trusts) or after death in a will (testamentary)

- A living trust (a.k.a. family trust) can be revocable—subject to termination or modification at any time by the grantor, for any reason—or irrevocable (unchangeable), except for the grantors basic rights

- Revocable living trust: Assets are transferred into the ownership of the trust. Grantor retains control of those assets. The assets in the trust pass directly to the beneficiaries without going through probate upon the grantor’s death.

- Irrevocable living trust: An irrevocable trust allows grantors to permanently and irrevocably give away assets during their lifetime. After the grantor gives away these assets, they have relinquished all control and interest in these assets. These assets are no longer considered part of their estate and aren’t subject to estate taxes.
To create a trust, there are seven basic ingredients:

**Person(s) setting up the trust.** The person is commonly known as the *trustor, settlor* or *grantor*.

**Objective of the trust.** There are different types of trusts to achieve a variety of specific estate-planning objectives.

**Specific kind of trust.** Trusts come in many different varieties.

**Property.** After placing property into a trust, that property is formally known as *trust property*.

**Trustee.** The person in charge of the trust is known as the *trustee*. The trustee needs to understand the trust agreement rules for the type of trust he or she is managing to make sure everything in the trust stays in working order.

**Trust agreement (rules).** Finally, some of the rules that must be followed are inherently part of the type of trust used, while other rules depend on what is specified in the *trust agreement*. There are also more rules in state and federal law.

**Beneficiary.** Just like with other aspects of estate planning, a trust’s *beneficiary* (or, if more than one, *beneficiaries*) benefits from the trust in some way, usually because the person or institution will eventually receive some or all of the property that was placed into trust.

**From an insurance standpoint the beneficiary has no insurable interest until the property is transferred to them; therefore, we are not concerned with the beneficiary issue.**
Trustees – a.k.a. “The Insured”

- The trustee may be either a person or a legal entity such as a company.

- A trust may have one or multiple trustees. A trustee has many rights and responsibilities; these vary from trust to trust depending on the type of the trust.

- Trustees are usually appointed in the document (instrument) which creates the trust.

- A trustee may be held personally liable for certain problems which arise with the trust.

- The trustees are the legal owners of the trust’s property.

- The trustees administer the affairs attendant to the trust.

- The trust's affairs may include investing the assets of the trust, ensuring trust property is preserved and productive for the beneficiaries, accounting for and reporting periodically to the beneficiaries concerning all transactions associated with trust property, filing any required tax returns on behalf of the trust, and other duties.

- Trusts are often confused with legal persons, but are mere relationships, not entities. Thus, they have no legal existence independent from the trustee and his or her ownership of the subject matter of the trust.

- In order to sue a trust, one must sue the trustee in his or her capacity as trustee for a specific trust; conversely, if the trust needs to sue someone, the lawsuit must be brought by the trustee in his or her capacity as such.
PERSONAL TRUSTS

Trust Form and Function

A trust is a legal entity created to hold property that consists of three legal parties:
• A *grantor* who establishes a trust and places assets in it;
• A *trustee* who manages the trust property
• *Beneficiaries* who receive income, assets, or other consideration as stipulated in the trust agreement.

**TODAY:**
• No longer only for the wealthy
• Has become the standard practice for many households
• Trusts can be used when there are any appreciable assets, even if it's only a home.
• The property is passed down to heirs more quickly and at lesser cost than a will.
• Assets can pass immediately from the *grantor* (or *donor* or *settlor*) to the *beneficiaries*

**Why a Trust?**

• *Fear of lawsuits* - hides the ownership of assets

• *Gives divorced and non-married couples more options* - flexibility for splitting up ownership of residences, vehicles, and businesses without having to sell them.

• They allow *unmarried cohabitants* to *designate heirs* that are not automatically recognized by state law and whose rights may be challenged by relatives of one of the partners.

• Property in different states- Property in other states, such as vacation homes, will have to *go through probate* in those states to be *passed down to heirs upon death*. Trust ownership can eliminate this cost and effort.

• *Control* - Married couples own property under joint tenancy. Each spouse is considered to have an insurable interest in the full value of the household property, *with a right of survivorship that supersedes provisions of a will*. Thus, if both spouses died in an accident, all the property would pass from the first to die to the second to die, then to the heirs of the second to die. Children of a first marriage can be disinherited, regardless of the intentions of their parent. **Trusts can resolve these conflicts by removing property from joint tenancy and placing it in an entity structured to pass property to intended heirs.**
How insurance policies respond to insuring a residence held in trust is dependent on which one of the ISO HO editions an insurance carrier is currently offering in the marketplace.

**THE 1991 HO EDITION:**

There is no HO category or eligibility that addresses insuring a non-person entity.

The ISO Personal Manual Rule 104.A (HO 2, or 3):

**Five** eligibility situations are addressed:

1. The owner-occupant of a one-, two-, three-, or four-family dwelling used only for private residential purposes is eligible for the homeowners form.

2. The purchaser-occupant (named insured) who has entered into a long-term installment contract to purchase the dwelling is eligible for the homeowners policy. Under this arrangement, the purchaser must reside in the dwelling, but the title does not pass from the seller until all the contract terms are satisfied.

3. The occupant of a dwelling under a life estate arrangement is eligible for the homeowners policy provided the dwelling limit is at least 80% of its replacement cost.

4. A dwelling in the course of construction is eligible provided the policy is issued solely in the name of the intended owner-occupant.

5. A situation in which two or more apartment units in a two-, three-, or four-family dwelling are occupied by co-owners is eligible provided each occupies distinct living quarters with separate entrances. A homeowners policy could be issued to one of the co-owner occupants of the dwelling, and it could be endorsed to cover the interest of the other co-owner.
THE 1991 HO EDITION:

- Underwriters must be approached and the issues discussed for their determination.
- Possibility the Dwelling policy will be the solution presented for the Trust’s residence.
- A tenant’s HO policy would then be appropriate for those occupying the dwelling.

ISO DWELLING:

The dwelling property policy is frequently used for residential properties that do not qualify for a homeowners policy.

ISO Dwelling Program Eligibility:

The ISO dwelling property forms are written in accordance with Rule 103 which are specified for the following coverages.

Coverage A—Dwelling

Coverage B—Other Structures

Coverage C—Personal Property

Coverage D—Fair Rental Value
ISO DWELLING:

Endorsements to Consider when Comparing DP-3 to HO-3:

Optional Residential Theft Coverage

The unendorsed ISO dwelling property policies do not include theft as a named peril. ISO offers two options for theft coverage—the Broad Theft Coverage (DP 04 72) endorsement and the Limited Theft Coverage (DP 04 73) endorsement.

The broad theft coverage endorsement provides on-premises and off-premises coverage for theft, attempted theft, and vandalism and malicious mischief as a result of theft. Coverage applies to personal property the insured owns or uses and personal property a residence employee owns, with certain restrictions.

The limited theft coverage endorsement provides on-premises coverage for theft, attempted theft, and vandalism or malicious mischief as a result of theft. Coverage is limited to personal property that the named insured and resident spouse own or use or personal property a residence employee owns.

### PERSONAL PROPERTY SPECIAL LIMITS THEFT ENDORSEMENTS AND HO 3

<table>
<thead>
<tr>
<th>Personal Property</th>
<th>Limited Theft Coverage Endorsement</th>
<th>Broad Theft Coverage Endorsement</th>
<th>ISO HO 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Money, bank notes, gold other than goldware, and related items</td>
<td>Not Covered</td>
<td>$200</td>
<td>$200</td>
</tr>
<tr>
<td>Securities, accounts, deeds, and related items</td>
<td>Not Covered</td>
<td>$1,500</td>
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</tr>
<tr>
<td>Watercraft and related equipment</td>
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<td>$1,500</td>
<td>$1,500</td>
</tr>
<tr>
<td>Trailers not used with watercraft</td>
<td>$1,500</td>
<td>$1,500</td>
<td>$1,500</td>
</tr>
<tr>
<td>Jewelry, watches, furs, and precious and semiprecious stones</td>
<td>Not Covered</td>
<td>$1,500</td>
<td>$1,500</td>
</tr>
<tr>
<td>Firearms and related equipment</td>
<td>$2,500</td>
<td>$2,500</td>
<td>$2,500</td>
</tr>
<tr>
<td>Silverware, goldware, pewterware, and related property</td>
<td>Not Covered</td>
<td>$2,500</td>
<td>$2,500</td>
</tr>
</tbody>
</table>
Endorsements to Consider when Comparing DP-3 to HO-3:

**Personal Liability Supplement**

Personal liability and medical payments may be added to the dwelling property policy via the **personal liability (DL 34 01)** endorsement. This endorsement or supplement is comparable in format and coverage to Coverage E (Personal Liability) and Coverage F (Medical Payments to Others) of the homeowners program.

**Coverages**

*This section is nearly identical to the homeowners liability coverages section.*

- The liability coverages consist of personal liability and medical payments to others coverage.

- The personal liability coverage pays for damages arising from bodily injury or property damage caused by an occurrence for which this coverage applies. It also provides for defense coverage.

- The medical payments coverage pays necessary medical expenses incurred or medically ascertainable within 3 years of the accident.

**Exclusions**

Like the HO policy, the personal liability endorsement includes exclusions applicable:

(a) to personal liability and medical payments to others,

(b) solely to personal liability, and

(c) solely to medical payments to others.

The **key difference** between the personal liability endorsement and the HO policy concerns the **loss assessment** coverage. The HO policy provides up to $1,000 in loss assessment coverage under its liability section, **whereas the personal liability endorsement offers no such coverage.**

Medical payments coverage contains four exclusions. These **exclusions are virtually the same in the HO liability section.**
A new eligibility category was added to address the trust issue:

**Rule 104.H: Residence Held in Trust (All Forms except HO 4)**

A residence held in a trust is eligible for a HO policy under certain circumstances.

The policy can be issued in the name of a trust and trustee when the legal and eligible structure is held solely by the trust and

- the trustee and/or beneficiary or grantor regularly reside in the residence held in trust; and

- the residence held in trust is used wholly for residential purposes, except for the permitted business occupancies

The **residence held in trust (HO 05 43)** endorsement is used when the named insured is a trustee to provide coverage to the grantor or beneficiary named in the endorsement schedule.
HO 05 43 10 00 RESIDENCE HELD IN TRUST

SCHEDULE*

A. Definitions

1. With respect to the coverages provided by this endorsement, the word "trustee" is defined as follows: "Trustee" means the trustee shown in the Declarations as the "named insured". 2. If one or more persons are named in the Schedule above, Definition 5, which defines "insured", Paragraphs a. and b. are extended to include such person with respect to the coverages in the policy that are listed under B. Coverages below.

In addition to the persons named in the Schedule, the definition of "insured" is also extended to include any of the following residents of their household: a. A spouse; b. A relative; or c. Any person under the age of 21 and in the care of a person noted above.

3. Definition 6. which defines "insured location" is deleted and replaced by the following:

6. "Insured Location" means:

a. With respect to the trust and the "trustee", the following real property but only if legal title to such property is held solely by the trust: (1) The "residence premises"; (2) The part of other premises, other structures and grounds used by you as a residence; and (a) Which is shown in the Declarations; or (b) Which is acquired by the trust during the policy period for use as a residence by the "trustee" or a person described in 2. above; (3) Any premises used by the "trustee" or a person described in 2. above in connection with a premises described in (1) and (2) above; (4) Vacant land, other than farm land; (5) Land on which a 1-4 family dwelling is being built as a residence to be occupied by the "trustee" or a person described in 2. above; or (6) Individual or family cemetery plots or burial vaults; and

b. With respect to a person described in 2. above, the following real property: (1) Any premises used by such person in connection with a premises described in a.(1) and (2) above; (2) Vacant land, other than farm land, owned or rented to such person; (3) Land owned by or rented to such person on which a 1-4 family dwelling is being built as a residence to be occupied by that person; (4) Individual or family cemetery plots or burial vaults; or (5) Any part of a premises occasionally rented to such person for other than "business" use; and
c. With respect to the "trustee" or a person described in 2. above, any part of a premises: (1) Not owned by such person; and (2) Where such person is temporarily residing.


If we decide to cancel or not to renew this policy, the persons named in the Schedule, if any, will be notified in writing.

C. Section II - Liability Coverages - The following is added: When the "trustee" does not regularly reside on the "residence premises": 1. The coverages provided under Coverage E - Personal Liability and Coverage F - Medical Payments To Others for the "trustee" only apply with respect to "bodily injury" or "property damage" arising out of the ownership, maintenance or use of the "residence premises"; and 2. There is no coverage under this policy for any resident of the "trustee's" household.

D. Section II - Exclusions

1. Coverage E - Personal Liability And Coverage F - Medical Payments To Others

The following exclusion is added:

"Bodily injury" or "property damage" arising out of any act or decision or failure to act or decide by the "trustee" in administering the trust shown in the Declarations, other than as provided in Section II - Liability Coverages above.

2. Coverage E - Personal Liability

Paragraph 6. is deleted and replaced by the following:

6. "Bodily injury" to the "trustee", an "insured" as defined under Definitions 5.a. or b. in the policy form and A.2. above or any person acting on their behalf.

This exclusion also applies to any claim made or suit brought against the "trustee" or an "insured" as defined under Definitions 5.a. or b. in the policy form and A.2. above or any person acting on their behalf: a. To repay; or b. Share damages with; another person who may be obligated to pay damages because of "bodily injury" to an "insured".

All other provisions of this policy apply.
THE 2011 HO EDITION – HO 06 15 Endorsement:

Trust Endorsement (HO 06 15)

With the introduction of this endorsement the “Residence Held in Trust (HO 05 43)” is being withdrawn. The HO 06 15 Trust Endorsement more specifically describes the types of trusts typically covered under the homeowners policy.

Endorsement Schedule:

A schedule is included that provides for the entry of:

- The name and address of the trust for informational purposes
- The name(s) and address(es) of the trustee(s) to identify their status as an “insured” under the policy, and
- The name of the trust, if designated as an “insured”

Definition – “Insured”:

1. The definition of “insured” is revised to include the trust or the trustee but only for the following coverages:
   a. Coverage A – Dwelling and Coverage B – Other Structures
   b. Coverage E – Personal Liability - only with respect to BI or PD arising out of the ownership, maintenance or use of an “insured location” as defined in the policy
   c. Coverage F – Medical Payments to Others – only with respect to BI or PD arising out of the ownership, maintenance or use of an “insured location” as defined in the policy

2. 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
   - Named as an “insured” in the Schedule

3. The trustee is only an “insured” with respect to the duties as a trustee of the trust named in the schedule.
Liability – Section II:

- An exception to the “business” definition will provide that the activities of a trustee in administering the trust will not be considered a “business” for coverage purposes.

- The definition of “insured location” is revised to provide that the definition includes certain real property if the trust holds the legal title to the property.

- The Coverage E – Personal Liability is amended to exclude Bodily Injury claims of the Trustee. Although the “trustee” is not listed as excluded the exclusion is amended to incorporate any insured as defined in the amended definition of “insured”.

Conditions – Cancellation and Non-renewal:

- Section I and II Conditions are revised to provide notice of cancellation or non-renewal to the Trustee named in the schedule.

Additional Provisions – Trust Documents:

- The following provisions are added:
  
  a. The insurer must be provided with trust documents as often as it reasonably requests.

  b. A Changes and Notification Requirement provision provides that the insurer must be promptly notified of the following changes to the trust that occur during the policy period:

     i. Changes in the name of the trust, changes in the trustee, changes in the trust or trustee’s mailing address.

     ii. Termination of the trust.

     iii. Death or disability of a trustee.

     iv. If the grantor discontinues residing at the residence premises.
Personal Injury Endorsement Change:

If the Personal Injury endorsement (HO 04 82) is attached to the policy, Exclusion 1.i. – which excludes personal injury claims to an insured - incorporates the trustee.