Homeowners and the New MA Oil Law Requirement

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It's almost "D" Day ... July 1st when Chapter 453 of the Acts of 2008 becomes effective. The new law affects your homeowners in two ways.

First, they must make sure that their oil tank ... above or underground ... conforms to the new code requirement - and there is no grandfathering!

Two, if their oil system DOES conform, their insurance company must make coverage for loss due to an oil spill available to them.

Oil heating systems must conform to new law
Most of your insureds have been contacted by their oil delivery carriers regarding this new building code requirement.

The law states:

(b) An owner of residential property utilizing a heating oil tank for consumptive use on the premises with 1 or more fuel supply lines or return lines in direct contact with concrete, earth or other floor surfaces shall:
1. enclose any fuel supply line with a continuous non-metallic sleeve;
2. cause an oil safety valve to be installed at the tank end of any fuel supply line in accordance with the manufacturer’s instructions; or
3. employ any other release prevention method approved by the board; provided,

A residential property is defined as:
"Residential property," a 1- to 4-unit dwelling used for living or sleeping.

Who is exempt?
Homeowners are exempt from taking these leak prevention steps if:
- the oil burner is located above the oil storage tank and the entire oil supply line is connected to and above the top of the tank OR
- an oil safety valve or oil supply line with protective sleeve was installed on or after January 1, 1990, AND
- those changes are in compliance with the oil burning equipment regulations; a copy of the oil burner permit from the local fire department may be used to demonstrate compliance.

I'm not exactly sure who has the responsibility to enforce this code change, but IF your insured is already in compliance or has the modifications performed to achieve compliance, they will be "allowed" to purchase insurance should something go awry and an oil spill results.

What will an upgrade cost?
An article written by the MA Department of Environmental Protection states:
The typical cost of installing either an oil safety valve or oil supply line with a protective sleeve ranges from $150 - $350 (including labor, parts, and local permit fees). For those households that meet certain income criteria, financial assistance of up to $300 is available

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through the Low Income Home Energy Assistance Program (LIHEAP). For more information on financial assistance, see the Department of Housing and Community Development Web site at mass.gov/dhcd or call them at 800.632.8175.

**Mandatory offer of insurance for new and renewal policies as of 7/1/10**
As of 7/1/10 all companies insuring "residential property" (1-4 family homes) must offer coverage for oil spills. A minimum of $50,000 for first party property and $200,000 for third party liability coverage must be offered.

**Doesn't the HO policy already COVER these losses?**
Not necessarily. First a look at the ISO HO policy.

**ISO Homeowners coverage - HO-91 or HO-2000**

**Section I Coverage**
Oil release or oil leak or oil spill is NOT a "named peril" for loss to contents. In order for oil spill damage to contents to be covered, one of the named perils MUST happen and damage by oil is a result of the covered named peril.

Even the Special Form or Comprehensive Form won't cover most oil spill damage to the building. The ISO HO-2000 Special and Comprehensive form has the following exclusion (HO-91 is similar):

2. We do not insure, however, for loss:
   c. Caused by:
      (6) Any of the following:
      (e) Discharge, dispersal, seepage, migration, release or escape of pollutants unless the discharge, dispersal, seepage, migration, release or escape itself caused by a Peril Insured Against named under Coverage C.

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;

If it is a wear and tear or mechanical breakdown issue that causes the oil spill ... no coverage. You would need a named peril situation such as vandalism, vehicle, windstorm, etc. to disperse the oil damaging the building or structure for coverage to apply.

**Section II Coverage**
The ISO HO policy does NOT have a Section II pollution exclusion. If an oil spill on the insured's property sinks into the ground and ground water, then "property damage" to property of others has occurred. The HO policy would respond with defense and payout if the insured property owner is considered legally liable.

**Unfortunately, some ISO-based carriers include a Section II Pollution exclusion**
Some insurance carriers have added a pollution exclusion to their Section II coverage, and your client currently HAS no pollution coverage.

Some companies are ADDING a "pollution from fuel system" exclusion to their NEW and RENEWAL policies to coincide with this new MA requirement to offer of coverage.

If there is a pollution and/or fuel system exclusion under Section II, then the purchase of this new mandated coverage becomes IMPERATIVE for the client. The MA Department of Environmental Protection wrote:

*In cases where the leak affects the groundwater or is more extensive, the cleanup costs can reach $250,000 or more.*
I know someone who incurred more than $1 million in oil clean up costs!

**AAIS (American Association of Insurance Services, Inc) HO form has a pollution exclusion**

**Property Coverage**

a. **Exclusions That Apply To Coverage A And Coverage B**

11) **Pollutants** -- "We" do not pay for loss caused by the release, discharge, dispersal, seepage, migration, or escape of "pollutants", unless the release, discharge, dispersal, seepage, migration, or escape is caused by a Peril Insured Against described under Coverage C.

Though ... the 2006 form has a potential buyback for

10. **Liquid Fuel Remediation**

...  
g. The most "we" pay for this Incidental Property Coverage for Liquid Fuel Remediation is $10,000 unless a higher "limit" for Liquid Fuel Remediation is shown on the "declarations".

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**Liability Coverage**

There is no pollution exclusion included in the form; however, there is a separate pollution exclusion endorsement that could be added.

**HO 1125 01 06 Liability Exclusion - Pollutants:**

**EXCLUSIONS THAT APPLY TO LIABILITY COVERAGES**

1. The following exclusion is added under Exclusions That Apply To Coverage L And Coverage M:

Coverage L and Coverage M do not apply to "bodily injury" or "property damage" that arises out of the actual, alleged, or threatened discharge, dispersal, disposal, emission, escape, leaching, leakage, migration, release, seepage, or spillage of "pollutants" into or upon land, water, or air, except if such discharge, dispersal, disposal, emission, escape, leaching, leakage, migration, release, seepage, or spillage is sudden and accidental.

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There is always the possibility that a carrier could add this or their own pollution exclusion.

**New ISO form filing to meet new law replaces previous endorsement**

**Property Remediation For Escaped Liquid Fuel and Limited Escaped Liquid Fuel Liability Coverages - Massachusetts Endorsement** (that's a mouthful)

The HO 05 47 applies to the HO-3 and HO-5 form; the HO 05 48 applies to the HO-4; and the HO 05 49 applies to the HO-6.

This endorsement replaces the previous Property Remediation for Escaped Liquid Fuel and Limited Escaped Liquid Fuel Liability Coverages (HO 05 72 for the HO-3; HO 05 73 for the HO-4; HO 05 74 for the HO-6).

This new version is MUCH better than the old ... but it still has a MAJOR glitch in it ...

**Good news**

The Section I limit that MUST be offered is $50,000. ISO has also filed for an increased limit offering of $100,000. A company does NOT have to offer more than the required $50,000. The previous endorsement offering started at $10,000 with increased offerings of $25,000, $50,000 and $100,000.
It is a per occurrence limit so that multiple separate and distinct oil spill situations could be covered each year. This is good news since the unendorsed HO policy is on an "occurrence basis.” The previous offering was on an "aggregate" limit basis.

Section I loss is paid when covered real or personal property is damaged by the "escape of fuel from a fuel system.” Both content and building losses are now paid even if wear and tear or mechanical breakdown caused the oil escape/spill. Not only does the endorsement cover damage to covered property but the scheduled limit it *also covers* clean-up and testing.

Additional Living Expense necessary due to escape of fuel is also covered under this endorsement scheduled limit.

The endorsement limits all loss arising out of the fuel escape to the scheduled limit; HOWEVER, if the limit is not sufficient, an additional 20% of scheduled limit COULD be available for additional living expense.

Suppose your insured buys the $50,000 limit and the oil tank leaks into the basement. The smell is overpowering so the family needs to move elsewhere while the clean up and repairs are made. If it takes the full $50,000 to pay for the oil damage TO the basement as well as the clean up then an additional $10,000 COULD be available towards the Additional Living costs.

The endorsement has a separate $1,000 deductible unless the loss arises from fire and the policy deductible for fire is less than $1,000.

**Bad news**

When one buys the endorsement, they get BOTH Section I and Section II *scheduled limits*. ISO only filed for the minimum limit requirement of $200,000 and one increase of $300,000. If your insured’s Coverage E limit is greater than $300,000, the higher Declarations Page limit will NO LONGER APPLY to BI/PD arising out of fuel oil spills. This WILL be a reduction in coverage for those carriers who are "straight ISO" such as the Fair Plan.

This endorsement IS better than the prior edition in that the Section II scheduled limit is on a "per occurrence" basis and NOT an "aggregate" basis.

**More bad news**

Beware of some companies who are adding a FUEL OIL EXCLUSION onto all new and renewal policies as of 7/1/10. If your client wants ANY BI/PD coverage arising from a fuel oil spill, they MUST buy this endorsement. I guess it is an "added incentive.”

**For those AAIS carriers**

A new pollution exclusion endorsement has been created as well as the required endorsement offering for Property and Liability coverage.

**Notice from carriers**

Your carriers have or should be contacting you regarding what they are offering and the cost. Most companies are discussing the notification of clients at renewal and for new policies.

If the insureds' personal umbrella policy is also furnished by the HO carrier, you might want to ask how THAT policy will respond to the oil spill if the endorsement is added to the underlying HO policy.

I "hear" that some companies are going to file a rate and limit for Coverage E limits higher than $300,000 so that the endorsement scheduled limit will match the Declarations Page limit. Hurray for them!
Midterm Endorsement
You might want to consider offering coverage to clients "mid-term" for those carriers who did not previously offer this endorsement. Or, for those carriers utilizing the older version of the endorsement at a lower Section I scheduled and aggregate limit basis.

The law does NOT limit the offering to "new" and "renewal" policies. The law states: The joint underwriting association, formed pursuant to chapter 175C, and each insurer licensed to write and engaged in the writing of homeowners’ insurance shall make the following coverage available to residential owners

Dwelling Fire Policies
Even though most companies only appeared to file for the HO policies, there is now the belief that the law applies to dwelling fire policies also, which makes sense.

The law applies to "residential properties" which are defined as:

"Residential property”, a 1- to 4-unit dwelling used for living or sleeping.  
SECTION 4. Chapter 175 of the General Laws is hereby amended by inserting after section 4C the following section:-

Section 4D. (a) As used in this section, unless the context clearly requires otherwise, “residential property” shall mean a 1- to 4-unit dwelling used for living or sleeping.  
(b) The joint underwriting association, formed pursuant to chapter 175C, and each insurer licensed to write and engaged in the writing of homeowners’ insurance shall make the following coverage available to residential owners: (1) first-party property coverage for response action costs incurred under chapters 21E or 21K, or regulations promulgated pursuant thereto, in response to a release of heating oil from a residential liquid fuel tank or any piping, fuel supply lines, equipment or systems connected thereto; and (2) liability coverage for third-party claims arising out of a release of heating oil into the environment. Minimum coverage of $50,000 per occurrence for first-party property, minimum coverage of $200,000 per occurrence for third-party liability and for legal defense costs shall be made available, subject to a reasonable deductible not to exceed $1,000 per claim.

Just when you get used to auto problems … we change it up a little for you … as if you didn't have enough to do already!

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Good luck! If I can be of service to you, please call me, Irene Morrill, Vice President of Technical Affairs at 800.870.7091 or email me at imorrill@massagent.com.

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