



LINE-BY-LINE FORM ANALYSIS

Homeowners Coverage B Other Structures

Homeowners 3 - Special Form

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B. Coverage B – Other Structures

1. We cover other structures on the "residence premises" set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line or similar connection.
2. We do not cover:
 - a. Land, including land on which the other structures are located;
 - b. Other structures rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage;
 - c. Other structures from which any "business" is conducted; or
 - d. Other structures used to store "business" property. However, we do cover a structure that contains "business" property solely owned by an "insured" or a tenant of the dwelling, provided that "business" property does not include gaseous or liquid fuel, other than fuel in a permanently installed fuel tank of a vehicle or craft parked or stored in the structure.
3. The limit of liability for this coverage will not be more than 10% of the limit of liability that applies to Coverage A. Use of this coverage does not reduce the Coverage A limit of liability.

Source: Insurance Services Office, Inc., Homeowners 3—Special Form ([HO 00 03 03 22](#)), © 2021

Summary

Coverage B of the homeowners policy applies to "other structures" on the residence premises that are (1) separated by a clear and distinct space from the dwelling or (2) connected to the dwelling by a fence, wall,

wire, or a similar type of connection.

Coverage B—Other Structures does not cover (1) land, (2) other structures rented or held for rental to any party not a tenant of the dwelling, unless used only as a private garage, (3) other structures from which a business is operated, or (4) other structures used to store business property, unless the business property is owned solely by an insured or a tenant and does not include any type of liquid fuel, other than fuel in a permanently installed fuel tank of a vehicle or craft parked or stored in the structure.

The limit of insurance for other structures coverage is 10 percent of the dwelling limit. Payment under Coverage B will not reduce the dwelling limit.

IRMI Analysis

The "other structures" part of the form has three subparts. The first subpart defines "other structures." These are structures on the residence premises that are distinct and are separated from the dwelling by a clear space. The policy also covers structures that are not separated from the dwelling but are connected to it in only a tenuous fashion, such as by a fence, wall, wire, or a similar type of connection. Separate and distinct structures include a gazebo, a detached garage or tool shed, a barn, a guest house, walkways, a driveway, an in-ground swimming pool, a hot tub, or a fence. An example of the second type of "other structure" covered under "B" is a separate deck, attached to the home only via an electrical line that supplies power to the deck. (Note that above-ground pools are often covered under personal property coverage.)

Outdoor fixtures deemed as fixtures attached to the land itself, rather than to a building or structure, would also be considered "other structures." Thus, a flagpole or light pole cemented in the front yard of the house would be a good example of an "outdoor fixture" covered under section B. These items cannot be readily moved (or stolen) and are subject to the same risks of loss as are buildings. The second subpart describes four excluded types of property. First, land is excluded. If land on which the other structure sits was damaged by an insured peril, such as a volcanic event, coverage would be precluded.

Paragraph 2.b. removes coverage for other structures that the insured rents, or holds for rental, to anyone who is not a tenant of the dwelling. The only exception is a structure that the insured rents to someone else for use *only* as a private garage. If Mary Smith rents her detached garage to her neighbor for storage of household goods, the garage is *not* covered under the homeowners policy. However, if the neighbor stores his automobile in the rented garage, Mary's homeowners policy does provide coverage. Likewise, Mary's homeowners policy also applies if her tenant stores dozens of boxes of books in the garage.

Paragraph 2.c. excludes coverage for other structures from which a business is operated. According to the [definitions section](#) of the form, a "business" is a trade, profession, or occupation engaged in on a full-time, part-time, or occasional basis or any other activity engaged in for money with a few specific exceptions. Due to changing work practices, an increasing number of individuals are conducting business in other structures on the residence premises, such as detached garages. This language eliminates any coverage for other structures used for this purpose.

Although the concept of "business" use is more frequently litigated for liability losses, some claims pertain to this other structures restriction, as seen in *Fontenot v. Louisiana Farm Bureau Cas. Ins. Co.*, 517 So. 2d

1044 (La. App. 1987). When the Fontenots' barn burned, the insurer denied coverage for it, because the insured stored some farm equipment in it that was at one time used in Mr. Fontenot's occupation as a farmer. However, he testified that he had not been involved in farming for some time prior to the fire. The Louisiana Court of Appeal ruled that Louisiana Farm Bureau had not refuted the insured's contention about his not being a farmer. Furthermore, the court went on to say that the insurer had "completely failed to prove that the barn was used 'in whole or in part for business purposes.'" The court of appeal found in favor of the homeowners.

A New York appellate court ruled that the business use exclusion in the homeowners policy was subject to different reasonable interpretations. Thus, this ambiguity must be ruled in favor of the insured homeowner. The case is *Pepper v. Allstate Ins. Co.*, 20 A.D.3d 633, 799 N.Y.S.2d 292 (N.Y. App. 2005). The insured, a self-employed trucker, was attempting to repair an oil leak on his freightliner truck that he used to haul logs. During this work, which was being performed in a detached garage located at his residence premises, a fire broke out, which caused extensive damage to the garage and the property in it.

The insurer, Allstate, denied some of the claim—the destruction of the garage and its contents—based on the business use exclusion and moved for summary judgment. The lower court denied Allstate's motion, prompting Allstate to appeal the case. According to the New York Appellate Court, the pivotal issue is whether the homeowner's use of the garage to repair the truck "unambiguously falls within the definition of 'business' contained in the policy." Allstate recognized that the plaintiff was not in the business of repairing trucks. Instead, the insurer argued that since Pepper used the vehicle he repaired as a way to earn money, his repair efforts indirectly led to economic gain. The appellate court disagreed, stating that the majority of instances in which the business use exclusion has been affirmed "involved business activities that resulted directly in the acquisition of economic gain, such as ... day care services" (e.g., *Allstate Ins. Co. v. Mathis*, 302 Ill. App. 3d 1027, 706 N.E.2d 893 (1999)) "or music recording" (*Roland v. Nationwide Mut. Fire Ins. Co.*, 286 A.D.2d 872 (N.Y. App. 2001)).

The court concluded that the average person in the insured's situation could reasonably read the "business" definition and believe that since no payment was received for repairing the truck, the activity of the insured repairing it himself to save money was not an excluded use under the policy. As a result, the higher court affirmed the lower court's ruling in favor of the homeowner.

In *Melder v. Louisiana Farm Bureau Mut. Ins. Co.*, 906 So. 2d 513 (La. App. 2006), the court upheld the business use exclusion. In this case, a fire destroyed a metal shed on the Melders' residence premises. Stored in the shed were a 1972 John Deere tractor and other tools, equipment, and supplies. Mr. Melder had been engaged in farming for over 15 years, including filing their federal income taxes that way to get what Mr. Melder termed a "nice write-off." The trial court found in favor of the insured and ruled that the Melders' homeowners insurance policy should cover the fire. However, the Louisiana Court of Appeal First Circuit overturned that ruling. In finding for the insurer, that court said

[the Melders] clearly treated [their farming operation] as a business for tax purposes for over thirty years.... Based on his own admissions and on the record as a whole, we are forced to conclude that the trial court was clearly wrong in finding that Mr. Melder's shed was not 'used in whole or in part for

business.' Accordingly, the judgment of the trial court must be reversed, and judgment rendered in favor of Farm Bureau.

In the case of the Melders, it might be legitimate to ask what the agent's involvement was with this client. The Melders had, apparently, been insured with Louisiana Farm Bureau for a long time. The agent should have been more familiar with the Melders' circumstances and should have written the policy accordingly.

Similarly, the court in *Kutchera v. State Farm Fire & Cas. Co.*, 2021 U.S. Dist. LEXIS 175368 upheld the business use exclusion. In this case, the homeowner was using his garage to repair vehicles for remuneration during the relevant policy period. During this time, the garage collapsed due to the weight of ice and snow on the roof. Although the insured claimed that he no longer used the garage for business purposes, tax records indicated otherwise. The court granted State Farm's request for summary judgment in denying the claim.

The fourth exclusion, 2.d., removes coverage for other structures utilized to store business property. However, any structure that contains business property solely owned by an insured or a tenant of the dwelling is covered, provided that the property does not include liquid fuel, other than fuel in a permanently installed fuel tank of a vehicle or craft stored in the structure. This exclusion seems to use the word "craft" in an odd fashion. A standard desktop dictionary defines "craft" as "a boat of small size." It seems that most people do not refer to a boat as a "craft" but as a "watercraft." The use of the word "watercraft" here would clarify the provision.

For example, Mary Smith owns a small business and stores training materials for that business in her storage shed in the backyard. If that shed is destroyed in a fire, her homeowners policy will cover it. Similarly, if her tenant stores computer manuals in the detached garage, the shed is covered. However, if the tenant stores fuel supplies for his motorcycle rental business in the detached garage, the exclusion applies.

The third and last subpart establishes that the limit of liability for other structures is 10 percent of the dwelling amount. For example, assume that John Smith has a homeowners policy covering his new house with a \$250,000 limit. He would have an additional \$25,000 (10 percent of the dwelling amount) for other structures. If John's detached garage burns to the ground, and the total \$25,000 is paid out, the total \$250,000 of coverage on the dwelling would still apply, in case of damage to the dwelling.

This 10 percent applies to all the additional structures on the premises on a blanket basis. Thus, if John Smith had a detached garage, a barn, and a tennis court on the premises, the 10 percent figure would apply to them as a collective group of structures. It would not apply separately to each.

This 10 percent of the dwelling limit can be increased under the [Other Structures—Increased Limits](#) endorsement ([HO 04 48 03 22](#)). The other structures limit may not be decreased below the 10 percent amount.

In the 1970s, the price of homes increased rapidly in the United States. Buyers were looking for ways to save money. Builders were looking for ways to keep their prices in check. A big part of the price of a home is the value of the land. A home with a detached garage takes more land than a home with an attached or

built-in garage. As a result, builders cut way back on the number of homes constructed with detached garages.

However, the homeowners insurance policy retained a separate and distinct limit for "other structures." Many people looked at this and thought they were being charged for a coverage under which they could never collect. At this point, some insurers changed their policy wordings or the way they adjusted claims. Some insurers removed separate references to the "dwelling" and "other structures." These insurers now have one limit that applies to all structures on the residence premises—dwelling, garage, shed, fence, and anything else that qualifies as a "structure."

Other insurers maintained the two distinct coverages—dwelling and other structures—but changed the wording of the loss conditions section. Paraphrasing this wording, these insurers agreed that, in the event of a loss to the dwelling, if the insured had no separate "other structures" on the premises at the time of a loss, the limit for other structures would be added into the limit for the dwelling.

Still other insurers adopted a less formal approach. These insurers instructed their adjusters to handle such claims as if the limit for other structures were added into the limit of liability for the dwelling.

Note that the personal property coverage applies to items inside the other structure, such as tools in a shed. The personal property coverage helps protect belongings regardless of where they are kept.

Due to the 10 percent limit, other structures coverage may present coverage gaps, which was the case in *McFarland v. Liberty Ins. Corp.*, 2019 WL 362185, LEXIS 18 (Idaho Jan. 30, 2019). The homeowners owned a detached garage in addition to their main cabin. The 10 percent rule meant that they only had \$23,000 in coverage for the garage. A radiant heater burst and damaged this detached structure.

After the McFarlands filed a claim, Liberty stated that the damage was covered under the policy. Believing the damage to fall under the dwelling coverage, the McFarlands hired contractors to repair the damage. However, after Liberty paid out the \$23,000, the insurer stated that the coverage was exhausted because the damage fell under the other structures coverage. This led the insureds to sue Liberty on the issue of whether the damage fell under the dwelling coverage or the other structures coverage.

The Idaho Supreme Court ruled in favor of the insured and found that the term "dwelling" was ambiguous. In reaching this result, the court first noted that the policy failed to define the term "dwelling" despite defining various other terms. The court then found that failing to define a term when there are other defined terms weighed in favor of ambiguity. Because the policy was ambiguous, the court ruled that coverage was owed to the insureds and that "dwelling" as used in the McFarlands' policy encompassed both the cabin and the garage.

Notable Coverage Gaps or Issues

The 10 percent rule can present potential coverage gaps.