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LegalEye

By Patricia McHugh Lambert

New agent rules in force because of sewer problems



In almost every sewer back-up case, the homeowners begin their claims saga by saying, "The first thing we noticed was the smell." And no matter how small the backup or how quickly the problem was cleaned up, these homeowners continue to

have the memory of that disgusting smell.

It is somewhat difficult to get a handle on how many homeowners have suffered uncovered sewer and water back-up losses. According to one out of state

process. And the notice must be provided even if the homeowners for a decade receives such notices and never chooses to act to obtain such coverage. Perhaps there is a hope that on the 11th year the

Agents must offer the choice of sewer back-up coverage on every new or renewal policy.

industry report, even though the cost for such coverage is fairly minimal, less than a quarter of homeowners nationally opt for this optional coverage. What a mess!

So the Maryland General Assembly felt it had to come to the rescue and save homeowners who did not choose to purchase such optional coverage. A new law requires that every time homeowners apply for new policies or renew an old one that they be given a choice of sewer back-up coverage. And merely giving them a choice is not enough. They must be given specific information and special notice as to the coverage.

Options must be sent

For example, every year insurers are required to send to a homeowner a list of optional coverages that are available for an insured to purchase. But it is not enough that optional sewer back-up coverage is included in this list. According to Maryland Insurance Administration Bulletin 08-17, a special and separate notice must be provided regarding sewer back-up coverage. According to this bulletin, the renewal offering must tell the homeowner that the offering of such coverage is "mandatory" and indicates that the coverage, if purchased, would provide coverage for such losses that are "caused by or results from water that backs up through sewers or drains" but are "not caused by negligence of the insured."

This renewal notice must be provided even where an applicant for a homeowner's policy has refused sewer back-up coverage during the application

homeowner will have an epiphany and choose this important coverage.

Ramifications likely

There will be ramifications for those who do not fulfill their obligations to provide appropriate notice to homeowners of this optional coverage. The Maryland Insurance Administration has already been considering sewer backup offerings in market conduct examinations and other regulatory reviews. One company, Meritplan Insurance Company entered into a consent order whereby it agreed in January 2007 to pay an administrative penalty of \$15,000 due to its admitted failure to offer to some customers sewer back-up coverage.

Despite such notices, I am sure that there will remain uncovered claims because there will be foolish homeowners who do not purchase such coverage. In my more flippant moments, I have thought that the notices that should be provided for this coverage should be of the "scratch-and-sniff" kind. No one who has smelled raw sewage is likely to forgo such coverage. Until then, insurance producers should remind their customers that they do not want to be faced with a situation where they are wading through raw sewage in their basement wondering if they are covered.

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