

Homeowners Liability Coverage

HO-3 SECTION II—LIABILITY COVERAGES

Individuals and families are exposed to liability through the property they own and use and through their personal activities. Section II—Liability Coverages in the Insurance Services Office, Inc. (ISO) Homeowners 3—Special Form (HO-3) form addresses this and other personal liability loss exposures.

Homeowners forms are not all alike. Some insurers draft their own homeowners forms and endorsements. Also, state-by-state variations on all forms are common. ISO homeowners policy forms combine property and liability coverages (Section I and Section II) to meet the common loss exposures faced by individuals and families. Of the ISO homeowners forms, the HO-3 is used most frequently. The forms can be endorsed to meet certain uncommon loss exposures. Section I of the ISO homeowners policy forms provides coverage for an insured's first-party loss exposures. Section II provides coverage for an insured's **third-party** loss exposures.

The HO-3's Section II contains the same coverage provisions found in the other ISO Homeowners program policy forms (HO-2, HO-4, HO-5, HO-6, and HO-8). The basic coverage provided by the HO-3 Section II—Liability Coverages applies to losses related to an insured's premises (dwelling location); personal activities (for example, pet ownership); and other incidental sources of personal liability, such as residence employees.

Section II of the ISO HO-3 contains two primary coverages and an additional coverages section:

- Coverage E—Personal Liability
- Coverage F—Medical Payments to Others
- Section II—Additional Coverages

Coverage E—Personal Liability

The Coverage E—Personal Liability Coverage provisions provide coverage if a claim is made or a suit is brought against an insured because of **bodily injury** or **property damage** arising from a covered **occurrence**. If the claim or suit brought by the third party does not allege bodily injury or property damage as defined in the policy, or if the bodily injury or property damage occurs before or after the policy period, the insurer is not obligated to pay any damages under Coverage E or to defend the insured.

Third party

A person or business who is not a party to the insurance contract but who asserts a claim against the insured.

Bodily injury

Physical injury to a person, including sickness, disease, and death.

Property damage

Physical injury to, destruction of, or loss of use of tangible property.

Occurrence

An accident, including continuous or repeated exposure to substantially the same general harmful conditions.

The term “occurrence” is particularly important in the homeowners insuring agreement. Liability coverage applies only to bodily injury and property damage that result from an occurrence during the policy period. One accident is an occurrence, even if it involves injury to more than one person or damage to more than one piece of property. Also, an occurrence can be a sudden event, a gradual series of incidents, or a continuous condition, as long as it is fortuitous. An example of a nonsudden occurrence is the gradual yet accidental seepage of pollutants from an insured’s defective septic system into a neighbor’s supply of drinking water.

The insurer pays up to the limit of liability for the damages for which an insured is legally liable. Liability coverage, which applies worldwide, applies to bodily injury and property damage arising from the insured’s activities or premises. In most instances, such liability arises from the insured’s negligence. Basic personal liability limits are \$100,000 per occurrence, with higher limits available for an additional premium.

The circumstances under which personal liability can arise may be illustrated by examining the circumstances surrounding a loss. For example, if a policyholder’s poodle bites and seriously injures a neighbor’s one-year-old child in the child’s own yard, the insured will likely be held liable for the resulting injuries and damages. In this example, a claim notice to the insurer is sufficient for the insurer to investigate and settle the loss. However, if the insured’s dog bites a trespasser who enters the insured’s fenced yard and mistreats the animal, the insured’s liability might be questionable. In such a case, the insurer might deny the claim on the grounds that the insured does not appear to be liable for the injury. However, if the injured trespasser brings a suit against the insured, the insurer would be obligated to provide for the insured’s defense and pay damages if the insured is found liable.

Defense costs coverage, which is supplemental to the liability limit, is provided even if a suit is groundless, false, or fraudulent. For example, if an individual falsely claims he tripped on an insured’s sidewalk and sustained a back injury, the insurer would have to respond to the suit. The insurer provides for defense costs in addition to any coverage. If the insured is found liable, the insurer also covers the damages, up to the personal liability limit, that might apply to the trip-and-fall claim.

The insurer’s obligation to defend ends only when the liability limit for the occurrence is exhausted by payment of a settlement or judgment (even if policy limits are exhausted by the costs of the claim). For example, in the trip-and-fall occurrence, assume the claimant’s injuries are legitimately caused by the insured. If the individual claims \$200,000 in damages and the insured’s homeowners coverage has a \$100,000 personal liability limit, the insurer cannot simply pay \$100,000 and avoid further litigation. Rather, the insurer must defend the insured until a settlement is reached. If a settlement can be reached for \$150,000, the insurer’s obligations end when it pays defense costs and pays the claimant’s \$100,000 in damages (the policy limit). See the exhibit “Policy Definitions and How They Apply to Section II.”



Policy Definitions and How They Apply to Section II

Who is an insured for liability coverage?

- The policyholder (the named insured) shown on the Declarations page and the named insured's spouse if a resident of the same household. The policyholder and resident spouse are identified as "you" in the policy.
- Residents of the household who are relatives of the named insured or spouse.
- Residents of the household who are under the age of twenty-one and in the care of the named insured or resident relatives.
- A full-time student who resided in the household before moving out to attend school. This person must be either under the age of twenty-one and in the care of the named insured or resident relatives, or a relative of the named insured under the age of twenty-four. The policyholder's twenty-two-year-old daughter who is a full-time college student would therefore qualify as an insured.
- Any person or organization legally responsible for animals or watercraft that are covered by the policy and owned by a person defined in the first three bulleted items. For example, a neighbor who walks the named insured's dog while the insured is on vacation is protected as an insured for liability coverage under the named insured's homeowners policy if the dog causes an injury while in the neighbor's care.
- Anyone employed by a person defined in the first three bulleted items, with respect to any motor vehicle covered by the policy. For example, a gardener who accidentally hits a neighbor's car while using the named insured's riding lawn mower to mow the named insured's lawn is an insured for liability coverage under the named insured's homeowners policy.
- Other persons using any vehicle covered by the policy on an insured location, with the consent of the named insured or spouse, are insureds for liability coverage. For example, if a neighbor takes the named insured's all-terrain vehicle for a test drive in the named insured's yard and accidentally strikes and injures a child, the neighbor becomes an insured for liability coverage under the named insured's homeowners policy.

Who is a residence employee versus other employees?

Coverage F—Medical Payments to Others applies to insured "residence employees," but not to other "employees." The policy defines both terms. Residence employees include domestic workers whose duties relate to maintaining or using the household premises or performing domestic or household services. Four Section II exclusions—an insured's premises that are not an insured location, motor vehicles, watercraft, and aircraft—do not apply to bodily injury sustained by a "residence employee" in the course of employment by an insured. Therefore, Coverages E and F will cover a residence employee's injuries in some situations.

An employee, as defined by the policy, is an employee of an insured who is not a residence employee.

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