# Addendum: for use with Nebraska Property and Casualty online ExamFX courses and study guides version 26143en/26144en, per exam content outline updates.

*The following are **content additions** to supplement your existing text unless otherwise indicated:*

## Introduction

### Exam Breakdown – *new exam breakdowns*

**Nebraska Property and Casualty Insurance Examination**
**100 Questions**
**Time Limit: 2 hours**

| CHAPTER | PERCENTAGE OF EXAM |
|---|---|
| General Insurance | 10% |
| Property and Casualty Insurance Basics | 14% |
| Dwelling Policy | 7% |
| Homeowners Policy | 11% |
| Auto Insurance | 13% |
| Commercial Package Policy (CPP) | 10% |
| Businessowners Policy | 7% |
| Workers Compensation Insurance | 7% |
| Other Coverages and Options | 6% |
| Insurance Regulation | 15% |

## PROPERTY & CASUALTY

## General Insurance

### B. Insurers

### 1. Types of Insurers

### Self-insurers

Self-insuring is when a person or entity, as an alternative to the purchase of insurance from an insurance company, develops a formal program identifying, evaluating and funding its losses. It is frequently used for workers compensation where losses are fairly predictable and states have established regulations for self-insurance.

Self-insurers frequently structure their programs to only retain losses up to a certain specified limit and purchase insurance to cover loss above that level. (This is called stop-loss coverage.)

## National Association of Insurance Commissioners (NAIC)

The **National Association of Insurance Commissioners (NAIC)** is an organization composed of insurance commissioners from all 50 states, the District of Columbia, and the U.S. territories.

The NAIC resolves insurance regulatory problems. They are active in the formation and recommendation of model legislation and regulations designed to bring uniformity from state to state and simplify the marketing of insurance.

# Property and Casualty Insurance Basics

## A. Principles and Concepts

## 11. Loss Valuation

## Valued Policy

**Valued policies** are used when it is difficult to establish the value of insured property after a loss occurs, or when it is desirable to agree on a specific value in advance. A valued policy provides for payment of the full policy amount in the event of a total loss *without* regard to actual value or depreciation. Valued policies often are used in marine coverages because it is very difficult to establish value of the cargo loss after a ship sinks.

## Broad Evidence Rule

The **broad evidence rule** allows the examination of every standard of value with a bearing on the insured property. The rule either enhances the presumptive actual cash value, or can demonstrate factors showing that the property was obsolete prior to the loss. The purpose of the rule is to find the value which will, in the event of a loss, provide no more or less than full indemnification.

## D. Nebraska Laws, Regulations, and Required Provisions

## Federal Crop Insurance Program (FCIP)

The **Federal Crop Insurance Program (FCIP)** offers farmers the opportunity to purchase insurance against losses due to adverse growing or market conditions, including losses resulting from natural disasters. Coverage applies to most field crops, grazing lands, and a variety of specialty crops.

Crop insurance provided by the FCIP covers losses due to:

- Drought;
- Heat;
- Hail;
- Excess moisture;
- Precipitation or rain;
- Frost;
- Freeze;
- Cold;
- Wet weather;
- Wind;
- Tornados;
- Cyclones;
- Hurricane or tropical depression;
- Certain fires;
- Earthquake;
- Insect or wildlife damage;
- Plant disease;
- Volcanic eruption; and
- Other covered causes of loss.

# PROPERTY

## Homeowners Policy

## D. Coverage Forms

### HO-8

The **HO-8 (modified coverage form)** is a unique homeowners form. It is intended for use when replacement cost coverage is not practical. When the market value of the structure is considerably lower than the replacement cost, such as some older homes, this form may be useful. Listed below are some of the differences that are applicable to this form:

- **Theft coverage** — There is also a $1,000 basic limit that applies to theft losses, and no coverage for theft of personal property off premises.
- **Worldwide coverage** — Coverage for personal property away from the premises is limited to the larger of 10% of the personal property limit or $1,000.
- **Debris removal** — This is not considered an additional amount of insurance and is included in the total policy limit.
- **Trees, plants or shrubs** — The maximum limit for any one tree, plant or shrub is only $250.
- **Property of guests or residence employees** — Property may be covered only while on the insured premises.
- **Coverages A and B** are provided on a functional replacement cost basis.
- **Glass or safety glazing material** losses are limited to $100.

## I. Selected Endorsements

### Personal Injury

**Personal injury coverage**, including injuries that result from false arrest, libel, slander, defamation of character, and invasion of privacy, may be added by endorsement.

### Water Backup

The **water back up and sump discharge or overflow endorsement** provides up to $5,000 coverage for direct physical loss to property caused by water or water-borne material which backs up through sewers or drains or overflows or is discharged from a sump, sump pump, or other related equipment. The coverage is only for the property damage caused by the water or water-borne materials, not damage to the equipment which caused the overflow or discharge. A special deductible, usually $250, applies to this coverage except in respect to Coverage D - Loss of Use.

The loss cannot be due to the negligence of the insured. In addition, coverage is not provided if the backup is caused by a flood.

### Additional Limits

The **additional limits of liability for Coverages A, B, C, and D endorsement**, as discussed here, is only applicable to the HO-2, HO-3, and HO-5 policy forms. This endorsement will amend the limits of liability if the insured has allowed the insurer to adjust Coverage A limits and premium in accordance with property evaluations and inflation, or if the insured notifies the insurer within 30 days of completing any improvements, alterations, or additions that increase the replacement cost of the insured building by 5% or more.

If a loss occurs that exceeds the Coverage A limits, the insurer will do the following:

- Increase Coverage A limits to equal the current replacement cost;
- Increase Coverages B, C, and D by the same percentage as Coverage A was increased (this only applies if the increase in Coverage A occurred);
- Adjust the policy premium from the time of the loss for the remainder of the policy term based on the increase limits; and
- Change the loss settlement condition under Section I.

## Commercial Package Policy (CPP)

### E. Farm Coverage

### Crop Insurance

The Federal Crop Insurance Act makes **Crop insurance** available on an all risk basis through the Federal Crop Insurance Corporation or at a subsidized rate through private insurers. Crop insurance is written on most types of growing crops on a reduced yield basis. This means the actual economic loss at the time of the occurrence. Crop policies usually exclude damage to trees, plants, vines or blossoms.

## Other Coverages and Options

### C. National Flood Insurance Program

### Flood Insurance Rate Map

Rates are determined according to Pre-FIRM rates, Post-FIRM rates, and zone classifications.

**Pre-FIRM rates** apply to buildings in communities that qualify for the regular program. They are used for building constructions beginning on or before December 31, 1974, or before the community's first Flood Insurance Rate Map (FIRM) was published, whichever is later.

**Post-FIRM rates**, also used in the regular program, are used on building construction that began after December 31, 1974, or after the community's first FIRM was published, whichever is later. Post-FIRM rates are lower than Pre-FIRM rates.

Property located in a more hazardous zone will have higher rates than property in a less hazardous zone.

### D. Other Policies

### **Watercraft** – *new section*

Like many other policy forms, the Watercraft policy form starts with agreement and definitions, and is further divided into the following sections:

- Part A – Liability Coverage;
- Part B – Medical Payments Coverage;

- Part C *(not currently used);*
- Part D – Coverage for Damage to Your Watercraft;
- Part E – Your Duties after Accident or Loss; and
- Part F – General Provisions.

## Part A - Liability Coverage

**Part A – Liability Coverage** will pay for damages for bodily injury or property damage for which any insured becomes legally liable because of a watercraft accident. As deemed appropriate, the insurer will settle or defend any claim or suit asking for these damages. In addition to the limit of liability shown in the Declarations, the insurer will pay all defense costs they incur.

Liability coverage supplementary payments are as follows, and will not reduce the limit of liability:

- Up to 10% of the limit of liability for Part A;
- Up to $250 for the cost of bail bonds required because of an accident;
- Premiums on appeal bonds;
- Interest accruing after a judgment is entered in the suit;
- Up to $200 a day for loss of earnings (but not other income) because of attendance at hearings or trials at the insurer's request; and
- Other reasonable expenses.

## Exclusions

Some of the main **exclusions** to liability coverage are listed below:

- Intentional bodily injury or property damage;
- Property damage to property rented to, used by, or in the care of the insured;
- Bodily injury to a person who is entitled to benefits under the Jones Act, workers compensation benefits, or Federal Longshore and Harbor Workers Compensation benefits;
- Insured's liability for a watercraft while it is being rented to others, used as a public or livery conveyance, or hired for charter;
- Losses incurred while the insured is employed or engaged in the business of selling, repairing, servicing, storing, or docking watercraft;
- Using a watercraft without a reasonable belief that the insured is entitled to do so;
- Bodily injury or property damage for an insured under a nuclear energy liability policy; and
- Watercraft that is being operated in any prearranged or organized race, stunt activity, or other speed competition.

## Part B - Medical Payments Coverage

**Part B – Medical Payments Coverage** covers expenses incurred for necessary medical and funeral services sustained by an insured. The policy will only pay for services rendered within 3 years from the date of the accident.

Part B exclusions are similar to those listed in Part A. The main distinction is that bodily injuries sustained while occupying a personal watercraft will not be covered.

## Part D - Coverage for Damage to Your Watercraft

**Part D – Coverage for Damage to Your Watercraft** pays for direct and accidental loss of the covered watercraft and boating equipment minus any applicable deductible shown in the Declarations. If loss to more than one item of covered property results from the same loss, only one deductible will apply.

The **limit of liability** for Part D will be the lesser of

- Amount shown in the Declarations;
- Actual cash value of the stolen or damaged property; or
- Amount necessary to repair or replace the property.

The insurer will make an adjustment for depreciation and physical condition in determining actual cash value in the event of a total loss.

## Additional Coverages

This policy section also provides the following **additional coverages**:

- **Salvage expense coverage** — up to 25% of the Part D limit of liability. This coverage is additional insurance without a deductible.
- **Towing and assistance expense coverage** — if the watercraft becomes disabled, the insurer will pay reasonable expenses for
    - Towing it to the nearest repair place;
    - Delivery of gas, oil, or repair parts at the site of disablement;
    - Watercraft trailer roadside repair; and
    - The limit of coverage is $500 for any one disablement, subject to a maximum of $1,000 for any one policy period.
- **Personal effects coverage** — the insurer pays for direct and accidental loss to personal effects owned by the insured or the insured's guests (at insured's request). Personal effects include cameras, cell phones, clothing, fishing equipment, water skiing and other sporting equipment. It does not include, however, animals, jewelry, money, watches, or permanently attached equipment. This coverage is limited to $500. It is additional insurance with no deductible.

## Part E - Duties after an Accident or Loss

Duties of the insured after accident or loss under the watercraft policy form are similar to any other policy form, and can be summarized as follows:

- Promptly notify the insurer of how, when, and where the accident or loss occurred;
- Cooperate with the insurer and provide any documentation as requested;
- Take reasonable steps after loss to protect the damaged property from further loss;
- Promptly notify the police, Coast Guard, or other authorities if covered property is stolen; and
- Permit the insurer to inspect and appraise the damaged property before its repair or disposal.

## Part F - General Provisions

The following **general provisions** apply to watercraft policies. Most of these provisions have already been discussed in other types of property and liability coverages:

- **Abandonment**;
- **Bankruptcy**;
- **Changes**;
- **Financial responsibility** — when the policy is certified as future proof of financial responsibility, it must comply with the law to the extent required;
- **Fraud**;
- **Lay-up period** — insurer will not provide coverage while a watercraft is operated during the lay-up period, or not stored in the lay-up location;
- **Legal action against insurer**;
- **Loss payable clause**;
- **Insurer's right to recover payment**;
- **Out of state coverage**;
- **Policy period**;
- **Policy territory** — coverage only applies to accidents and losses that occur within the Custom Policy Territory shown in the Declarations, or if not specified, coverage applies on land, in inland waters, in coastal waters within 12 miles of the shoreline, or in the Great Lakes within U.S., its territories or possessions, Puerto Rico, or Canada;
- **Termination** (including cancellation, nonrenewal, automatic termination, and other termination provisions);
- **Transfer of insured's interest in this policy**; and
- **Two or more watercraft policies.**

## Recreational Vehicles – *new section*

The definition of a personal **recreational vehicle** includes all-terrain vehicles (ATVs), mopeds, go-carts, motorized scooters, snowmobiles and golf carts.

While some people assume their Homeowners policy will cover a personal recreational vehicle, in most cases, it will not. The coverage is similar to an auto policy, and requires both on and off premises coverage. There is also coverage for damage or theft of the vehicle and coverage for liability for a lawsuit arising out of it use.

# CASUALTY

## <u>Auto Insurance</u>

## A. Personal Auto Policy

## 10. Selected Endorsements

## Mexico Coverage

Since the coverage territory does not include Mexico, the insured must purchase separate **Mexico Coverage** if they plan on driving in Mexico. This coverage is limited and applies only to accidents which occur within 25 miles of the U.S. border and only if the insured is in Mexico for 10 days or less. The insured is also required to purchase liability coverage through a Mexican insurer and coverage will only apply as excess over other collectible insurance. Suits must be brought in the U.S., but only by a United States citizen. Suits brought by Mexican citizens are not covered.

## Transportation Network Coverage

With the upward trend in ride-sharing services, such as Uber and Lyft, most states have passed legislation requiring insurance protection for transportation network company drivers. A **transportation network company (TNC)** is any company that uses a digital network to connect riders to drivers for the purpose of providing transportation.

The National Association of Insurance Commissioners divides TNC services into three exposure periods:

1. Waiting for a match (or pre-match);
2. Match accepted (driver is on the way to pick up the passenger); and
3. Passenger in the vehicle and until the passenger exits the vehicle.

Because drivers who contract with TNCs are using their personal vehicles, many of them do not have a livery driver's license, nor are their vehicles registered or insured as commercial vehicles. This is opposed to limousine or taxi drivers who drive commercial vehicles and have commercial insurance coverage. Personal auto policies do not generally provide coverage for ride sharing.

As of June 2017, 48 states and the District of Columbia have enacted legislation addressing insurance.

## B. Commercial Auto

## Employees as Insureds

The **employees as insureds** endorsement will provide the insured's employees additional protection while using a vehicle not owned, hired, or borrowed for the insured business, if, for example, an employee uses a personal vehicle to run an errand for the insured business owner. Employees are not covered under the commercial auto coverage part while using their own vehicles in the course of business due to one of the exceptions listed in the permission clause in the Who is an Insured section of the policy.

## SAFER System

The **Safety and Fitness Electronic Records (SAFER) System** is a federal government online database which offers company safety data to industries and the public. Information provided by the SAFER System includes, but is not limited to a company's

- Identification;
- Size;
- Commodity information;
- Safety records;
- Roadside out-of-service inspection summaries; and
- Crash information.

## C. Laws

## 3. Uninsured and Underinsured Motorist

### Stacking

**Stacking** uninsured or underinsured coverages ensures that policyholders will be able to collect more than they could collect under one car insurance policy, and that they will receive full payment for their injuries and damages to property.

### No-fault Coverage

**Personal Injury Protection** (also known as no-fault or PIP) is a form of auto insurance where compensation for auto accident victims is made by their own insurance company. Legal liability or fault is not usually determined, unless certain damages exceed a specified amount and an insured takes legal action. **Nebraska is not a no-fault state**. In Nebraska, the party at fault for causing an accident is responsible for **all damages**.

## Commercial Package Policy (CPP)

## C. Commercial Crime

### Employee Dishonesty

**Employee dishonesty**, also known as *fidelity*, is defined as a loss of company money, securities and other property caused by employee theft, burglary, and robbery.

This commercial crime fidelity bond does not cover losses that can only be proved by inventory computation. Coverage may be written on a blanket basis (covering all employees), on a per-loss basis, or on a scheduled basis (the coverage applies per employee). Further, scheduled coverage may be written on a named-schedule basis, in which each covered employee is named, or on a position-schedule basis, in which just the job title (position) is named and whoever holds the position is covered.

## 3. Coverages

### Lessees of Safe Deposit Boxes

Property, excluding money and securities, is covered for loss resulting from actual or attempted burglary, robbery or vandalism under the **Lessees of Safe Deposit Boxes** form (Coverage I). The property must be in a vault or the loss must occur during the deposit or removal of property from a safe deposit box located in a bank or other depository. Securities are only covered for theft, disappearance or destruction, and *money is not covered*.

The following exclusions apply to this coverage form in addition to those in the general provisions:

- Dishonest acts of employees and representatives.
- Giving or surrendering property in an exchange or purchase.
- Loss of property, except securities, caused by fire.
- Loss of property owned by the depository or held by it as collateral or in trust for more than 30 days.

- Property transferred outside the premises because of unauthorized instructions or threat to do injury or damage.
- Voluntarily parting with property or title.

## Securities Deposited with Others

The **Securities Deposited with Others** (Coverage J) form is used to cover securities held in trust by another party as collateral for some obligation. Coverage includes loss from theft, disappearance or destruction, including while in the possession of the other party outside the premises. The same exclusions found in the Lessees of Safe Deposit Boxes form also apply to this coverage, in addition to an exclusion for property at any location the insured occupies.

## Liability for Guests' Property - Safe Deposit Box

The **Liability for Guests' Property - Safe Deposit Box** form (Coverage K) is used by hotels, motels and other lodging places to cover loss to guest's property while on the premises in a safe deposit box. The Commercial Crime General Provisions Form does not apply to this coverage.

The **exclusions** found in this coverage form are

- War;
- Governmental action;
- Nuclear hazard;
- Fire;
- Dishonest acts of the insured or the insured's partners. There is no exclusion for dishonest acts of employees.
- Liability assumed under a written agreement;
- Loss resulting from the insured's release of any other negligent party from their legal liability; and
- Damage caused by inherent vice, insects, animals, wear and tear, and gradual deterioration.

The following **conditions** are contained within the coverage form; many are the same as those found in the general provisions:

- Joint Insured;
- Legal Action Against the Insurer;
- Non-cumulation of Limits;
- Other Insurance;
- Policy Period;
- Territory;
- Transfer of Rights of Recovery;
- Bankruptcy;
- Defense, Investigation and Settlement — The insurer will not defend a suit after having paid a claim to the policy limit; and
- Duties in the Event of a Loss — The insured must notify the insurer as soon as possible, and provide a detailed, sworn proof of loss within 120 days.

# Workers Compensation Insurance

## B. Workers Compensation and Employers Liability Insurance Policy

## 2. Part One - Workers Compensation Insurance

### Work-Related vs. Non-Work-Related

Bodily injury and occupational disease that arise out of or during employment are covered under Workers Compensation insurance. Occupational disease must be caused or aggravated by a condition of the employment. In other words, there must be a direct relationship between the job and the disease. Ordinary diseases suffered by the general public are not covered. The following types of injuries are generally **excluded** from coverage:

- Injuries that occur traveling to and from work;
- Injuries that result from intoxication of the employee;
- Injuries willfully caused by the employee;
- Injuries that result from a willful failure to follow safety precautions; and
- Injuries that occur from activities not a part of the job.

Penalties and/or increased benefits may be required for certain types of injuries, such as the employer's willful failure to provide required safety equipment, or to minors injured while illegally employed. These penalties must be paid by the employer, as they are excluded under Workers Compensation insurance.

## 8. Selected Endorsements

### Foreign Coverage

The **foreign coverage** endorsement extends coverage to suits brought in foreign jurisdictions. This endorsement often provides for the insured's expenses to return to the US.

### Waiver of Subrogation

The **waiver of subrogation** endorsement waives the insurer's right of subrogation (or right to recover from others), for an additional premium, against a specific organization or person named in the endorsement or on a blanket basis for all persons or organizations for whom the named insured has agreed by written contract to furnish such a waiver.

## C. Premium Computation

### Participation Plans

In some states, insurance companies or state workers compensation funds are allowed to write **participating policies** (also referred to as safety groups). This means the insured is eligible for dividends (partial premium refund) if the experience during the policy term falls within guidelines established by the insurer at the inception of the policy term. Dividends are not guaranteed. To be eligible for participation, the insured must meet the associated underwriting requirements for participation.

In the case of a group policy, the group must qualify for the dividend. In the event the group's loss experience is low, participating members may receive a dividend. (No penalty is levied for a high loss experience.)

## D. Other Sources of Coverage

### Assigned Risk Plan

**Workers Compensation assigned risk plans** have been established to make coverage available for difficult to place risks and for those employers who are unable to obtain coverage in the competitive market. Basically, the assigned risk plan is an insurance pool where the risks are shared by the insurers who are participating in the plan. The following are most common requirements for obtaining coverage through an assigned risk plan:

- Before becoming eligible for insurance through the risk plan, the applicant must provide evidence of rejection from other carriers;
- Risk submitted to the plan may be assigned to a single insurer or may be shared proportionally by all participating insurers;
- Other requirements may be imposed by the Department of Insurance.

## Other Coverages and Options

## B. Specialty Liability Insurance

### Employee Benefits Liability

**Employee Benefits Liability Coverage** is a Commercial Liability Umbrella policy which pays for the liability expenses caused by the mistakes or errors of an insured under the policy. The policy applies to damages only if there is an act, error or omission and it was negligently committed in the administration of the employee benefits program. Therefore, negligence must be proven for the policy to pay. The act must have occurred during the policy period, after the retroactive date or during the Extended Reported Period.

The coverage does not apply to the following:

- Dishonest, fraudulent, criminal or malicious acts by the insured;
- Bodily injury, property damage, or personal and advertising injury;
- Failure to perform a contract by an insurer;
- Insufficiency of funds;
- Inadequacy of performance of investment;
- Workers' compensation, unemployment compensation, social security and similar laws;
- Damages covered by the Employee Retirement Income Security Act of 1974 (ERISA);
- Claims for available benefits;
- Taxes, fines or penalties; and
- Employment-related practices.

The limit of insurance for the Commercial Liability Umbrella Policy is paid on an aggregate basis with a sublimit for each employee. *Each employee limit* is the most it will pay for any one employee, including damages sustained by the employee's dependents and beneficiaries.

The policy may also be written as an endorsement to a Businessowners Coverage Form and the limits and deductible will be stated differently in this policy.

## Identity Fraud Expense Coverage

**Identity Fraud Expense Coverage** is purchase as an endorsement to a Businessowners Coverage Form or BOP Policy. The policy will pay up to $25,000 unless higher limits are purchased. The limit is an aggregate amount for the sum of all expenses incurred by the insured as the direct result of all acts of identity fraud first discovered during the policy period. The policy will also pay up to $5,000 for the sum of all additional advertising expense the insured incurs to restore the reputation of the business as a result of all acts of identity fraud.

The policy will not pay, however, for dishonest acts or identity fraud of the insured, partners, officers, managers, directors or trustees.

The insured is required to provide any receipts, bills or other records to support claims for identity fraud expenses within 60 days of the insurer's request. There is a standard $500 deductible for this policy.

## Cyber Security

The ISO has recently introduced a new line of insurance that covers cyber risks, called the Internet Liability and Network Protection Policy. The policy includes 5 separate agreements listed below:

1. **Website publishing liability** — provides coverage against Internet-related publishing perils, including libel, and copyright, trademark, or service mark infringement;
2. **Network security liability** — protects the policyowner against claims for failing to maintain the security of a computer system;
3. **Replacement or restoration of electronic data** — covers the cost of replacing or restoring data lost due to a virus, malicious instruction, or denial-of-service attack;
4. **Cyber extortion** — covers expenses, including ransom payments, incurred from extortion threats; and
5. **Business income and extra expense** — provides coverage for expenses incurred as a result of an extortion threat or e-commerce incident.

Each agreement offers its own aggregate limit of coverage, subject to an overall policy limit. Defense expenses are included within the policy limits. All coverage is written on a claims-made basis, and allows the additional of endorsements for worldwide protection.

## Kidnap/Ransom and Extortion

Kidnap/Ransom and Extortion insurance combines coverage for loss resulting from a kidnapping or extortion and crisis management. This insurance covers named employees for individual aggregate amounts, with deductibles.

The policy covers various perils through the following insuring agreements:

- **Kidnap/Ransom and Extortion - Direct Loss** provides coverage for losses resulting from payment of a ransom demand from a kidnapping or extortion threat;
- **Kidnap/Ransom and Extortion - Expenses Incurred** provides coverage for expenses incurred in obtaining the release of a kidnapped victim or resolution of an extortion threat;
- **Detention or Hijack** provides coverage for the various costs and fees from securing the release of a detained or hijacked person; and
- **In-Transit Delivery of Property** provides coverage for the loss of money while being delivered by a messenger for the purpose of ransom.

## **Fidelity Bonds** – *new section*

**Fidelity bonds** are used to guarantee honesty and trust as opposed to surety bonds that guarantee performance. A fidelity bond is crime coverage, and is often called *honesty insurance*. It protects the business from employee larceny, embezzlement, forgery, theft, and identity theft, to name just a few. For example, the bond covers a bonded employee for dishonesty. It can cover an individual or a group for loss of real property, personal property, money, securities, or merchandise.

## Types of Fidelity Coverage

## Employee Theft

In almost any type business there is some risk of loss resulting from dishonesty (infidelity) of employees. Fidelity bonds may be used to cover these types of losses. A typical fidelity bond covers losses caused by theft, embezzlement, forgery, misappropriation, or any other dishonest or fraudulent act.

Every fidelity bond is written with a stated limit called a limit of liability. The coverage applies to acts committed during the bond period. Normally fidelity bonds are written with no expiration dates and stay in force until cancelled. Most also have a discovery period in which losses are covered if discovered within a time period after the bond has terminated or coverage for a dishonest employee has terminated. Typically, the discovery period is 1 year (2 years for blanket position).

Fidelity bonds are "one bite" bonds. As soon as an employer becomes aware of an employee's dishonesty which could lead or has led to a claim, coverage for that employee terminates immediately. The act could have occurred before the current bond period or even with a different employer. This prevents second chances for anyone who has committed the kind of act covered by the bond.

Employee fidelity bonds may be written as any of the following:

- **Individual** — covers **1 employee** named on the bond;
- **Name schedule** — covers several employees **named** on the bond for varying amounts;
- **Position schedule** — covers anyone occupying a scheduled **position**, listed by job title rather than name;

- **Commercial blanket** — covers all employees and limits of liability on a **per loss** basis no matter how many employees may have been involved; or
- **Blanket position** — covers all employees and the limit of liability on a **per employee** basis no matter how many employees may have been involved.

## Public Official

A public official holds office through election, selection, appointment, or employment, and is held accountable to the public to faithfully perform his or her duties according to the respective governing laws and regulations. A public official can be a government manager, a judge or court clerk, a mayor or sheriff, or even a tax collector. The public official is most often required to obtain a **public official bond**. These bonds are issued so as to comply with a statute requiring the bond, cover whatever liability the statute imposes, and are written for the length of the term of the elected public official.

## Financial Institution

Financial institutions have a unique exposure because of all the funds around and the transactions they handle for clients. Employees may steal or misuse funds. Criminals may be attracted by all the money around. **Financial Institution bonds** normally have several insuring agreements including one that covers employee dishonesty and others covering robbery, theft, and hold-up. On-premises burglary is also covered.

## Fiduciary

**Fiduciary Bonds**, which may be issued for executors or administrators of an estate, guardians, or trustees, guarantee that the fiduciary will perform and act in the best interest of the party they represent. A fiduciary is someone that handles property or money for another, and has a duty to do so in a responsible manner.

## Bond Provisions

## Insuring Agreement

There are several insuring agreements to a fidelity bond depending on the scope of coverage needed by the company. Following are typical insuring agreements for a fidelity bond:

- Forgery or alteration;
- Inside the premises – theft of money and securities;
- Inside the premises – robbery or safe burglary of other property;
- Outside the premises – theft of money and securities, and robbery of other property; and
- Computer fraud.

The insuring agreement may also include additional coverages as needed, such as coverage on partners, extortion threats to persons, extortion threats to property, and registered representatives' coverage.

## Bond Period

The fidelity bond period is the term of coverage by stating the time and date for the effective and expiration dates.

## Discovery Period

The discovery period is the span of time after bond termination to discover any losses that occurred during the term of the bond. Some policies may not contain a clause allowing for a discovery period after the bond terminates but do allow the right to purchase a discovery period after termination for an additional premium. Other policies contain a clause allowing for a discovery period. A 1-year period after termination is the most common discovery period, and in some cases it is required. It should allow any potential loss during the bond term to be known. A discovery bond is available that allows a buyer to protect against undiscovered losses that occurred before the bond was issued. This generally applies to a first-time buyer.

## Limit of Liability

## Aggregate

The aggregate clause limits the total dollar amount of all losses during the bond term to the bond amount regardless of the number of claims. For example, if the bond amount total is $50,000, once the total dollar amount of all claims paid during the bond period exceeds $50,000, the bond no longer pays.

## Single Loss

Fidelity bonds define a single loss to include all covered losses, including court costs and attorneys' fees, that result from a single act or a series of related acts. Payment of a single loss (including all related acts) is covered, and a company's coverage for future losses due to other related acts is not reduced. For example, if the bond amount total is $50,000, as long as the claim is within the bond period and meets the bond terms, each claim for a single loss will individually be paid up to $50,000.

## Termination of Coverage

The termination of coverage section in the fidelity bond defines when and why a bond will be terminated, or the interest of any employee is terminated. The discovery of dishonesty after the bond is cancelled will be declined in the event the termination provisions indicate that there is no discovery option after the bond is cancelled. Understanding the termination provisions is very important to the bond owner. Here are some of the reasons and time requirements for termination that might be included in the bond provisions:

- 60 days after receipt of the underwriter's written request to cancel the bond;
- Immediately upon receipt by the company of a written notice of the insured;
- Immediately upon the takeover of the insured by a receiver, liquidator, state, or federal official;
- Immediately when the first-named insured no longer is in control of the company;
- Immediately when the aggregate limit is reached; and
- Immediately when the bond period expires.

# Insurance Regulation

## A. Licensing

### 2. Types of Licensees

### Public Adjusters

A **public adjuster** refers to any person who prepares property claims and negotiates settlements on behalf of an insured. The definition also applies to any person who advertises or directly or indirectly solicits the business of investigating or adjusting losses. Unlike independent adjusters, public adjusters are employed by an insured to protect the insured's interest, usually in respect to property damaged by fire, wind, or other covered perils.

### Surplus Lines

**Surplus lines** insurance coverage provides risk protection for parties who have sought insurance through authorized insurers and who, after diligent efforts, have been unable to procure such insurance. A **surplus lines licensee** procures insurance on behalf of an insured from a qualified **unadmitted insurer**.

The Department, in consideration of the payment of the license fee, may issue a surplus lines license, revocable at any time, to any individual who currently holds an insurance producer license or to a foreign or domestic corporation. If the applicant is an individual, the application for the license must include the applicant's social security number. The Director may utilize the national insurance producer database of the National Association of Insurance Commissioners, or any other equivalent uniform national database, for the licensure of an individual or an entity as a surplus lines producer and for renewal of such license.

### Crop Insurance Producers

**Crop insurance** is limited line insurance for damage to crops from unfavorable weather conditions, fire, lightning, hail, or any other peril subsidized by the **Federal Crop Insurance Corporation (FCIC)**, including multi-peril crop insurance.

The sale or solicitation of crop insurance requires a separate producer license. To secure a crop license, an applicant must pass an examination related to the specifics of crop insurance.

## B. State Regulation

### Acts Constituting Insurance Transaction

In Nebraska, any of the following acts constitute an act of **transacting insurance**, and require an insurance license or a certificate of authority:

- Solicitation and inducement to purchase insurance;
- Preliminary insurance negotiations;
- Effectuation of an insurance contract;
- Transaction of matters subsequent to and arising out of effectuation of an insurance contract (such as collecting premiums, or delivering contracts).

## Testimonials

**Testimonials** used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertised, and be accurately reproduced. If a person providing a testimonial has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly, that information must be disclosed in the advertisement.

## 4. Unfair Trade Practices

### False Financial Statements

**False financial statements** are those that are intended to deceive public officials or the general public about the financial condition of an insurer. This often occurs when an important fact about the financial status of an insurer is deliberately withheld in order to present the company in a more favorable light.

### Twisting

**Twisting** is a misrepresentation, or incomplete or fraudulent comparison of insurance policies that persuades an insured/owner, to his or her detriment, to cancel, lapse, switch policies, or take out a policy **with another insurer**. Twisting is prohibited.

### Impersonation

**Impersonation** (also known as false pretense) refers to the act of assuming the name and/or identity of another person for the purpose of committing a fraud. In Life insurance, impersonation may occur when an uninsurable individual applying for coverage is asking another person to take the physical examination in his or her place. In regards to agent/producer regulations, impersonation may refer to the act of impersonating a candidate during the prelicensing examination.

**Any form or impersonation in insurance is illegal.**

## Other Prohibited Practices

### Larceny

An insurance producer or broker who receives any money or substitute for money as a premium for a policy or contract from the insured is deemed to hold those premiums in trust for the company. If the producer fails to pay the premiums collected to the company after written demand is made, the failure is evidence that the producer has used or applied the premium for a purpose other than paying the premiums to the company. The producer, upon conviction, would be guilty of **larceny**.

### Stranger-originated Life Insurance (STOLI) and Investor-originated Life Insurance (IOLI)

**Stranger-originated life insurance (STOLI)** is a life insurance arrangement in which a person with no relationship to the insured (a "stranger") purchases a life policy on the insured's life with the intent of selling the policy to an investor and profiting financially when the insured dies. In other words, STOLIs are financed and purchased solely with the intent of selling them for life settlements.

STOLIs **violate the principle of insurable interest**, which is in place to ensure that a person purchasing a life insurance policy is actually interested in the longevity rather than the death of the insured. Because of this, insurers take an aggressive legal stance against policies they suspect are involved in STOLI transactions.

Note that lawful life settlement contracts do not constitute STOLIs. Life settlement transactions result from existing life insurance policies; STOLIs are initiated for the purpose of obtaining a policy that would benefit a person who has no insurable interest in the life of the insured at the time of policy origination.

**Investor-owned life insurance (IOLI)** is another name for a STOLI, where a third-party **investor who has no insurable interest in the insured** initiates a transaction designed to transfer the policy ownership rights to someone with no insurable interest in the insured and who hopes to make a profit upon the death of the insured or annuitant.

## Acting Without a License

No person may sell, solicit, or negotiate insurance in this state for any class of insurance unless the person is licensed in the appropriate line of authority. Anyone who violates this requirement may be subject to temporary or permanent injunction.

## C. Federal Regulation

## Consumer Data Privacy and Security Act

The **Consumer Data Privacy and Security Act** requires businesses adhere to established standards for the collection of personal information. Businesses must receive consent from an individual, prior to the collection of personal data, unless data collection is considered reasonably necessary and permissible under the Act.

Personal data refers to any information that identifies or is linked to a specific individual. The following would not be considered personal data and would not be subject to Act requirements:

- De-identified data;
- Unreadable or indecipherable data;
- Personal information collected or used by an employer pursuant to an employer-employee relationship;
- Publicly available information; or
- Data which uses pseudonyms or other replacement identifiers.

Businesses are required to publish privacy policies, which include the type of personal data collected, purposes for which data is collected, and an individual's right to access and control their collected data. The Act also requires businesses develop and maintain a comprehensive data security program, designed to protect the security, confidentiality, and integrity of personal data.

## National Do Not Call List

In 2003, the Federal Trade Commission (FTC) and the Federal Communications Commission (FCC) worked together to create the **National Do Not Call Registry**, allowing consumers to include their telephone numbers on the list to which solicitation calls cannot be made by telemarketers. Insurance companies need to comply with this regulation when making solicitation phone calls.

To comply with the telemarketing sales rules, telemarketers must not do any of the following:

- Call any number on the National Do Not Call Registry or on that seller's Do Not Call list;
- Deny someone a right to be placed on any Do Not Call Registry;
- Call outside permissible calling hours (before 8 a.m. and after 9 p.m.);
- Abandon calls;
- Fail to transmit caller ID information;
- Threaten or intimidate a consumer or use obscene language; or
- Cause any telephone to ring or engage a person in conversation with the intent to annoy, abuse, or harass the person called.

Some exceptions to the Do Not Call Registry include the following calls:

- From or on behalf of organizations which have established a business relationship with the consumer (established business relationships last 18 months from the date of a sale or transaction);
- For which the consumer has given prior written permission;
- Not commercial or that do not include unsolicited advertisements; and
- By or on behalf of tax-exempt nonprofit organizations.

To keep in compliance with the Do Not Call rules, organizations must consult the registry every **31 days**. Any phone numbers on the registry must be dropped from the organization's call lists.

## CAN-SPAM Act

CAN-SPAM legislation was established to set the rules for commercial e-mail, and to give recipients the right to reject commercial messages. CAN-SPAM covers all commercial electronic messages, including business-to-business messages, the purpose of which is the commercial advertisement or promotion of a product or service.

CAN-SPAM requires that any commercial email must contain an opt-out mechanism; all opt-out requests must be honored within **10 business days**. To be in compliance with this legislation, the entity that sends out e-mails must do the following:

- Make sure that the advertiser is identified in the from line;
- Not use misleading subject lines;
- Include an opt-out mechanism and honor all opt-out requests within 10 days;
- Include the advertiser's valid physical postal address; and
- If the message is unsolicited, it must be identified as an *advertisement* somewhere in the e-mail.

Each violation of the above provisions is subject to fines of up to $16,000. On top of that is a penalty of $250 per each noncompliant e-mail, with a cap of $2 million dollars.

## Sarbanes-Oxley Act

The **Sarbanes-Oxley (SOX) Act** of 2002 was enacted to protect investors from fraudulent financial reporting by companies. The act mandates that all publicly traded companies in the United States, along with foreign companies which do business in the United States, adhere to federal financial reporting and record maintenance regulations.

## National Flood Insurance Program (NFIP)

The **National Flood Insurance Program (NFIP)** is a federal program managed by the Federal Emergency Management Agency (FEMA), which is allows homeowners, businessowners, and renters to purchase federally-backed flood insurance. Coverage is made available to states and communities that agree to adopt and enforce floodplain management regulations.