

FORMS – APPROVED

JULY 20, 2020

COMMERCIAL LINES

LI-CL-2020-031

## MASSACHUSETTS REVISED AND INTRODUCED INTENTIONAL LOSS EXCLUSION APPROVED

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### KEY MESSAGE

Filing CL-2020-OILE1, which revises and introduces various Massachusetts endorsements to address the Intentional Loss Exclusion in response to *Aquino v. United Property And Casualty Ins. Co.* (UPC), 483 Mass. 820, N.E.3d 833 (2020), has been approved.

**Applicable Lines:** AG, BP, CF, CM, EB, FR, OP

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### BACKGROUND

In circular [LI-CL-2020-023](#), we stated that in response to *Aquino v. United Property And Casualty Ins. Co.* (UPC), 483 Mass. 820, N.E.3d 833 (2020), we revised and introduced various Massachusetts endorsements to address the Intentional Loss Exclusion.

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### INSURANCE DEPARTMENT ACTION

The Massachusetts Department of Insurance has approved filing CL-2020-OILE1.

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### EFFECTIVE DATE

The ISO revision is subject to the following rule of application:

These changes are applicable to all policies written on or after January 1, 2021.

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### COMPANY ACTION

If you have authorized us to file on your behalf and decide:

- To use our revision and effective date, you are not required to file anything with the Insurance Department.
- To use our revision with a different effective date, to use our revision with modification, or to not use our revision, you must make an appropriate submission with the Insurance Department.

For guidance on submission requirements, consult the ISO State Filing Handbook.

In all correspondence with the Insurance Department on this revision, you should refer to ISO Filing Designation Number [CL-2020-OILE1](#), not this circular number. Communications with the regulator concerning a filing affecting multiple lines of business (i.e., CL, PL, AL filing designation) should specify the line(s) of business that you are addressing.

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## **RATING SOFTWARE IMPACT**

New attributes being introduced with this revision:

- New edition dates of existing form numbers are being introduced.
- New forms are being introduced.

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## **POLICYHOLDER NOTIFICATION**

If you decide to implement this revision, you should check all applicable laws for the state(s) to which this revision applies, to determine whether or not a specific policyholder notice requirement may apply. Please note that circular [LI-CL-2019-057](#) contains the ISO Guide To Renewals With Changed Conditions For Commercial Lines, which is available only as a guide to assist participating companies in complying with various conditional renewal statutes or regulations, for the major commercial lines of insurance serviced by ISO. The information in the Guide does not necessarily reflect all requirements or exceptions that may apply, and it is not intended as a substitute for your review of all applicable statutes and regulations concerning policyholder notification.

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## **REVISION DISTRIBUTION**

We will issue a Notice to Portfolioholders with an edition date of 01-21 (or the earliest possible subsequent date), along with any new and/or revised forms.

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## **RELATED RULES REVISION**

We are announcing in a separate circular the approval of a corresponding rules revision. Please refer to the Reference(s) block for identification of that circular.

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## **REFERENCE(S)**

- [LI-CL-2020-032](#) (07/20/2020) Massachusetts Introduced And Revised Rules Approved
- [LI-CL-2020-023](#) (07/01/2020) Massachusetts Revised And Introduced Intentional Loss Exclusion Filed
- [LI-CL-2020-022](#) (07/01/2020) Massachusetts Introduced And Revised Rules Filed
- [LI-CL-2020-009](#) (03/04/2020) Massachusetts Aquino V. United Property And Casualty Insurance Company Regarding Intentional Loss Exclusion Under Review
- [LI-CL-2019-057](#) (12/10/2019) Revised Lead Time Requirements Listing

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## **ATTACHMENT(S)**

Final copies of [AG 01 23 01 21](#), [BP 01 44 01 21](#), [FP 01 05 01 21](#), [IL 01 30 01 21](#) and [OP 01 15 01 21](#)

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **MASSACHUSETTS CHANGES**

This endorsement modifies insurance provided under the following:

### **AGRICULTURAL CAPITAL ASSETS (OUTPUT POLICY) COVERAGE FORM**

**A. Paragraphs A.3.n.(1) and A.3.n.(3) of the Limited Coverage For "Fungi", Wet Rot And Dry Rot Additional Coverage are replaced by the following:**

**n. Limited Coverage For "Fungi", Wet Rot And Dry Rot**

**(1)** The coverage provided in Paragraphs **A.3.n.(2)** and **A.3.n.(6)** only applies when "fungi" or wet or dry rot is the result of one or more of the following causes that occur during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after the occurrence:

- (a)** A Covered Cause of Loss other than fire or lightning; or
- (b)** Flood, if the Flood Coverage endorsement applies to the affected premises.

This Additional Coverage does not apply to lawns, trees, shrubs or plants which are part of a vegetated roof.

**(3)** The most we will pay for loss or damage under this Limited Coverage is \$15,000, unless a different Limit Of Insurance is shown in the Declarations. If the Declarations indicates that the Separate Scheduled Locations Option applies, then the amount of coverage is made applicable to separate locations as described in the Declarations. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of Covered Causes of Loss (other than fire or lightning) and flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss or damage which results in "fungi" or wet or dry rot, we will not pay more than a total of \$15,000, unless a different Limit Of Insurance is shown in the Declarations, even if the "fungi" or wet or dry rot continues to be present or active, or recurs, in a later policy period.

**B. Paragraph C.1.j. Fungi Or Wet Or Dry Rot**

Exclusion is replaced by the following:

**j. Fungi Or Wet Or Dry Rot**

Presence, growth, proliferation, spread or any activity of "fungi" or wet or dry rot.

But if "fungi" or wet or dry rot results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion does not apply:

- (1) When "fungi" or wet or dry rot results from fire or lightning; or
- (2) To the extent that coverage is provided by the Limited Coverage For "Fungi", Wet Rot And Dry Rot Additional Coverage with respect to loss or damage by a Cause of Loss other than fire or lightning.

**C. The Intentional Loss Exclusion is replaced by the following:**

**Intentional Loss**

1. We will not pay for loss or damage arising out of any act committed:
  - a. By or at the direction of the insured; and
  - b. With the intent to cause a loss.
2. However, this exclusion does not apply to an innocent coinsured who does not commit or conspire to commit any act that results in loss or damage by fire and the innocent coinsured making a claim:
  - a. Did not cooperate in or contribute to the creation of the loss; and
  - b. Cooperates in any investigation relating to the loss.
3. If we pay a claim pursuant to Paragraph **C.2.** of this endorsement, our payment to the insured is limited to that insured's insurable interest in the property. In no event will we pay more than the Limit of Insurance.

**D. If loss or damage is caused by fire or lightning, the Vacancy And Unoccupancy Loss Condition is replaced by the following:**

**Vacancy And Unoccupancy**

If the building where loss or damage occurs, whether intended for occupancy by owner or tenant, has been vacant or unoccupied for more than:

1. 60 consecutive days for residential "covered location" of three units or less; or
2. 30 consecutive days for all other "covered locations";

immediately before that loss or damage, we will not pay for the loss or damage.

A building is vacant when it does not contain enough business personal property to conduct customary operations or enough household personal property for customary use.

**E. The Mortgageholders Additional Condition is replaced by the following:**

**Mortgageholders**

We will pay for covered loss of or damage to real estate to each mortgageholder shown in the Declarations, or in an attached Schedule, in the order of precedence, as interests may appear.

**F. Paragraph H.7.a.(3) of the Valuation Loss Condition is replaced by the following:**

- (3) We will not pay on a replacement cost basis for any loss or damage:

(a) Until the lost or damaged property is actually repaired or replaced:

(i) On the "covered location"; or

(ii) At some other location in the Commonwealth of Massachusetts; and

(b) Unless the repairs or replacement is made within a reasonable time, but no more than two years after the loss or damage.

With respect to tenants' improvements and betterments, if covered, the following also apply:

(c) If the conditions in Paragraphs (3)(a) and (3)(b) above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Condition of the Agricultural Capital Assets (Output Policy) Coverage Form; and

(d) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.

**G. The following provisions are added:**

1. In spite of any provision of any general or special law:

a. We will not pay for loss or damage to real property caused by any Covered Cause of Loss if the amount of loss is \$5,000 or more unless you first submit to us a certificate of municipal liens from the collector of taxes of the city or town where the property is located.

- b. We will pay to the city or town any amount outstanding on the certificate of municipal liens arising from the provisions of Massachusetts General Law Chapters 40, 59, 60, 80, 83 and 164, Sections 58B through 58F.

The payment will not exceed the amount of loss payable under this Coverage Part.

We will send you and the mortgageholder proof of our payment to the city or town.

- c. The claim of the city or town will have priority over the claim of any mortgageholder, assignee, you or any other interested party, except where otherwise provided by the laws of the United States.
- d. We will not be liable to any city, town, mortgageholder, assignee, you or any other interested party for:

- (1) Amounts paid to a city or town; or
- (2) Amounts not paid to a city or town based upon a certificate showing that no municipal liens exist.

- e. Paragraphs 1.a., 1.b., 1.c. and 1.d. above will not apply to any owner-occupied one- to four-family "dwelling" if the owner of the "dwelling" lived there when the claim for loss or damage arose.

- 2. We will not pay any claim for:

- a. Loss, damage or destruction of \$1,000 or more to a building or structure; or
- b. Loss, damage or destruction, of any amount, that causes a building or structure to become:
  - (1) Dangerous to life or limb; or
  - (2) Unused, uninhabited or abandoned and open to the weather;

as provided under Massachusetts General Law, Section 6 of Chapter 143;

without giving at least 10 days' written notice before such payment to:

- c. The Building Commissioner or the appointed Inspector of Buildings; and
- d. The Board of Health or the Board of Selectmen of the city or town where the property is located.

- 3. If at any time before our payment, the city or town notifies us by certified mail of its intent to begin proceedings designed to perfect a lien under Massachusetts General Law:

- a. Chapter 143, Section 3A or 9; or
- b. Chapter 111, Section 127B;

we will not pay while the proceedings are pending. The proceedings must be started within 30 days after we receive the notice.

Any lien perfected under the Massachusetts General Laws referred to in Paragraphs 3.a. and 3.b. above will extend to the city or town and may be enforced by it against the proceeds of this policy.

- 4. We will not be liable to any city, town, mortgageholder, assignee, you or any other interested party for:

- a. Amounts paid to a city or town; or
- b. Amounts not paid to a city or town; under Paragraphs 2. and 3. above.

- H. The following condition is added and supersedes any provisions to the contrary:

#### **Nonrenewal**

This provision applies to coverage on real property which is used predominantly for residential purposes and consists of not more than four "dwelling" units, and to coverage on personal property of a person residing in such real property:

- 1. Ordinarily we will renew this policy automatically and send you the renewal notice. Our notice will explain what you should do if you do not want to continue this policy.
- 2. We may elect not to renew this policy. We may do so by delivering to you or mailing to you at your last mailing address shown in the Declarations, written notice of nonrenewal, accompanied by the specific reasons for nonrenewal, at least 45 days before the expiration date of this policy. However, if your policy was executed on behalf of us, in whole or in part, by or on behalf of your insurance agent or our insurance broker, we will send such written notice only to the agent or broker. Every insurance agent or broker receiving this notice is required to, within 15 days of its receipt, send a copy to you unless the agent or broker has replaced the insurance.

- I. Paragraph A.1.a.(8) of the **Building** Covered Property is replaced by the following:

- (8) Building personal property owned by you that is used to maintain or service a building or structure, or "covered location", including:

- (a) Fire extinguishing equipment;
- (b) Outdoor furniture;
- (c) Floor coverings;
- (d) Heating, air conditioning and ventilation equipment; and

- (e) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;

J. The following is added:

### STANDARD FIRE POLICY PROVISIONS

Your policy contains Legal Action Against Us, Appraisal and Cancellation Provisions. Massachusetts law requires that the Suit, Appraisal and Cancellation Provisions of the Massachusetts Standard Fire Policy supersede any similar provisions contained in your policy. Therefore, all Legal Action Against Us, Appraisal and Cancellation Provisions contained in your policy are void. The Suit, Appraisal and Cancellation Provisions of the Massachusetts Standard Fire Policy shall apply instead.

In consideration of the Provisions and Stipulations Herein or Added Hereto and of the Premium Specified in the Declarations, this company, for the term of years specified in the Declarations from inception date (At 12:01 A.M. Standard Time) to expiration date (At 12:01 A.M. Standard Time) at location of property involved, to an amount not exceeding the amount(s) specified in the Declarations, does insure the Insured named in the Declarations and legal representatives, to the extent of the actual cash value of the property at the time of loss, but in no event for more than the interest of the insured, against all Loss By Fire, Lightning And By Removal From Premises Endangered By The Perils Insured Against In This Policy, Except As Hereinafter Provided, to the property described in the Declarations while located or contained as described in this policy or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

**Concealment  
Fraud**

This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance

concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

**Uninsurable  
And Excepted  
Property**

This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

**Perils Not  
Included**

This Company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by **(a)** enemy attack by armed

forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; **(b)** invasion; **(c)** insurrection; **(d)** rebellion; **(e)** revolution; **(f)** civil war; **(g)** usurped power; **(h)** order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; **(i)** neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in the neighboring premises; **(j)** nor shall this company be liable for loss by theft.

**Other  
Insurance**

Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

**Conditions  
Suspending Or  
Restricting  
Insurance**

Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring (a) while the hazard is increased by any means within the control or knowledge of the insured; or (b) while the described premises, whether intended for occupancy by owner or tenant, are vacant or unoccupied beyond a period of sixty consecutive days, for residential premises of three units or less and thirty (30) consecutive days for all other premises, or (c) as a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

**Other Perils  
Or Subjects**

Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

**Added  
Provisions**

The extent of the application of insurance under this policy and of the contribution to be made by this company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

**Waiver  
Provisions**

No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this company relating to appraisal or to any examination provided for herein.

**Cancellation  
Of Policy**

This policy shall be cancelled at any time at the request of the insured, in which case this company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time by this company by giving to the insured a five days written notice of cancellation, and to the mortgagee to whom this policy is payable twenty days written notice of cancellation except where the stated reason for cancellation is nonpayment of premium where, in such instance, this policy may be cancelled at any time by this company by giving to the insured a ten days written notice of cancellation, and the mortgagee a twenty days written notice of cancellation, with or without tender of the excess paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand and shall state or be accompanied by a statement of the specific reason or reasons for such cancellation. After this policy has been in effect for sixty days, or after sixty days from any anniversary date, no notice of cancellation shall be effective unless it is based on the occurrence, after the effective date of the policy, of one or more of the following: (1) nonpayment of premium; (2) conviction of a crime arising out of acts increasing the hazard insured against; (3) discovery of fraud or material misrepresentation by the insured in obtaining the policy; (4) discovery of willful or reckless acts or omissions by the insured increasing the hazard insured against; (5) physical changes in the property insured which result in the property becoming uninsurable; or (6) a determination by the commissioner that continuation of the policy would violate or place the insurer in violation of the law. Where the stated reason is nonpayment of premium, the insured may continue the coverage and avoid the effect of the cancellation by payment at any time prior to the effective date of cancellation.



**Mortgagee  
Interests And  
Obligations**

Notwithstanding any other provisions of this policy, if this policy shall be made payable to a mortgagee of the covered real estate, no act or default of any person other than such mortgagee or his agent or those claiming under him, whether the same occurs before or during the term of this policy, shall render this policy void as to such mortgagee nor affect such mortgagee's right to recover in case of loss on such real estate; provided, that the mortgagee shall on demand pay according to the established scale of rate for any increase of risk not paid for by the insured; and whenever this company shall be liable to a mortgagee for any sum for loss under this policy for which no liability exists as to the mortgagor, or owner, and this company shall elect by itself, or with others, to pay the mortgagee the full amount secured by such mortgage, then the mortgagee shall assign and transfer to the company interested, upon such payment, the said mortgage together with the note and debt thereby secured.

**Pro Rata  
Liability**

This company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved.

**Requirements  
In Case Loss  
Occurs**

The insured shall give immediate written notice to this company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed and damaged property, showing in detail the quantity, description, actual cash value and amount of loss claimed; and the insured shall forthwith render to this company a signed, sworn statement in proof of loss which sets forth to the best knowledge and belief of the insured the following: the time and cause of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupancy, location, possession or exposures of said property, since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and detailed estimates for repair of the damage. The insured, as often as may be reasonably required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

**When Loss Payable**

In case of any loss or damage, the company within thirty days after the insured shall have submitted a statement, as provided in the preceding clause, shall either pay the amount for which it shall be liable, which amount if not agreed upon shall be ascertained by award of referees as hereinafter provided, or replace the property with other of the same kind and goodness, or it may, within fifteen days after such statement is submitted, notify the insured of its intention to rebuild or repair the premises, or any portion thereof separately covered by this policy, and shall thereupon enter upon said premises and proceed to rebuild or repair the same with reasonable expedition. It is moreover understood that there can be no abandonment of the property described to the company, and that the company shall not in any case be liable for more than the sum insured, with interest thereon from the time when the loss shall become payable, as provided above. The company shall be liable for the payment of interest to the insured at a rate of one percent over the prime interest rate on the agreed figure commencing thirty days after the date an executed proof of loss for such figure is received by the company, said interest to continue so long as the claim remains unpaid.

**Arbitration**

In case of loss under this policy and a failure of the parties to agree as to the amount of loss, it is mutually agreed that the amount of such loss shall be referred to three disinterested men, the company and the insured each choosing one out of three persons to be named by the other, and the third being selected by the two so chosen, and the award in writing by a majority of the referees shall be conclusive and final upon the parties as to the amount of loss or damage, and such reference, unless waived by the parties, shall be a condition precedent to any right of action in law or equity to recover for such loss; but no person shall be chosen or act as a referee, against the objection of either party, who has acted in a like capacity within four months.

**Suit**

No suit or action against this company for the recovery of any claim by virtue of this policy shall be sustained in any court of law or equity in this commonwealth unless commenced within two years from the time the loss occurred; provided, however, that if, within said two years, in accordance with the provisions of the preceding paragraph, the amount of the loss shall have been referred to arbitration after failure of the parties to agree thereon, the limitation of time for bringing such suit or action shall in no event be less than ninety days after a valid award has been made upon such reference or after such reference or award has been expressly waived by the parties. If suit or action upon this policy is enjoined or abated, suit or action may be commenced at any time within one year after the dissolution of such injunction, or the abatement of such suit or action, to the same extent as would be possible if there was no limitation of time provided herein for the bringing of such suit or action.

**Subrogation**

This company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this company.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **MASSACHUSETTS CHANGES – INTENTIONAL LOSS**

This endorsement modifies insurance provided under the following:

### **BUSINESSOWNERS COVERAGE FORM**

The following exclusion and related provisions are added to Paragraph **B. Exclusions** with respect to loss or damage to Covered Property caused by fire:

#### **Intentional Loss**

1. We will not pay for loss or damage arising out of any act committed:
  - a. By or at the direction of the insured; and
  - b. With the intent to cause a loss.
2. However, this exclusion does not apply to an innocent coinsured who does not commit or conspire to commit any act that results in loss or damage by fire and the innocent coinsured making a claim:
  - a. Did not cooperate in or contribute to the creation of the loss; and
  - b. Cooperates in any investigation relating to the loss.
3. If we pay a claim pursuant to Paragraph 2. of this endorsement, our payment to the insured is limited to that insured's insurable interest in the property. In no event will we pay more than the Limit of Insurance.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **MASSACHUSETTS CHANGES**

This endorsement modifies insurance provided under the following:

### **FARM COVERAGE PART**

- A.** If loss or damage is caused by fire or lightning, the **Unoccupancy And Vacancy** Loss Condition in the Farm Property – Other Farm Provisions Form – Additional Coverages, Conditions, Definitions is replaced by the following:

#### **Vacancy Or Unoccupancy**

If the building where loss or damage occurs, whether intended for occupancy by owner or tenant, has been "vacant" or "unoccupied" for more than:

1. 60 consecutive days for residential premises of three units or less; or
  2. 30 consecutive days for all other premises;
- immediately before that loss or damage, we will not pay for the loss or damage.

- B.** The **Mortgageholders** General Condition in the Farm Property – Other Farm Provisions Form – Additional Coverages, Conditions, Definitions is replaced by the following:

#### **Mortgageholders**

We will pay for covered loss of or damage to real estate to each mortgageholder shown in the Declarations, or in an attached schedule, in the order of precedence, as interests may appear.

- C.** The **Appraisal** Farm Property Condition in the Farm Property – Other Farm Provisions Form – Additional Coverages, Conditions, Definitions and the **Appraisal** Farm Inland Marine Condition in the Mobile Agricultural Machinery And Equipment Coverage Form and the Livestock Coverage Form is replaced by the following:

#### **Arbitration**

If you and we fail to agree on the value of the property or the amount of loss, we shall, upon receipt of your written request to do so, refer this matter to a three-member board of referees. They are selected and must act according to the procedures set by the law. Their decision will be binding. This board does not make decisions about matters of coverage or fault.

However, we still retain our right to deny the claim even if there is an arbitration in accordance with the above paragraph.

- D.** The **Intentional Loss** Exclusion in the Causes Of Loss Form – Farm Property is replaced by the following:

#### **Intentional Loss**

1. We will not pay for loss or damage arising out of any act committed:
  - a. By or at the direction of the "insured"; and
  - b. With the intent to cause a loss.
2. However, this exclusion does not apply to an innocent coinsured who does not commit or conspire to commit any act that results in loss or damage by fire and the innocent coinsured making a claim:
  - a. Did not cooperate in or contribute to the creation of the loss; and
  - b. Cooperates in any investigation relating to the loss.
3. If we pay a claim pursuant to Paragraph **D.2.** of this endorsement, our payment to the "insured" is limited to that "insured's" insurable interest in the property. In no event will we pay more than the Limit of Insurance.

- E.** The following provisions are added:

1. In spite of any provision of any general or special law:
  - a. We will not pay for loss or damage to real property caused by any Covered Cause of Loss if the amount of loss is \$5,000 or more unless you first submit to us a certificate of municipal liens from the collector of taxes of the city or town where the property is located.

- b. We will pay to the city or town any amount outstanding on the certificate of municipal liens arising from the provisions of Massachusetts General Law Chapters 40, 59, 60, 80, 83 and 164, Sections 58B through 58F.

The payment will not exceed the amount of loss payable under the applicable Coverage Form.

We will send you and the mortgageholder proof of our payment to the city or town.

- c. The claim of the city or town will have priority over the claim of any mortgageholder, assignee, you or any other interested party, except where otherwise provided by the laws of the United States.
- d. We will not be liable to any city, town, mortgageholder, assignee, you or any other interested party for:
  - (1) Amounts paid to a city or town; or
  - (2) Amounts not paid to a city or town based upon a certificate showing that no municipal liens exist.
- e. Paragraphs 1.a., 1.b., 1.c. and 1.d. above will not apply to any owner-occupied one- to four-family dwelling if the owner of the dwelling lived there when the claim for loss or damage arose.

**2. We will not pay any claim for:**

- a. Loss, damage or destruction of \$1,000 or more to a building or structure; or
- b. Loss, damage or destruction, of any amount, that causes a building or structure to become:
  - (1) Dangerous to life or limb; or
  - (2) Unused, uninhabited or abandoned and open to the weather;

as provided under Massachusetts General Law, Section 6 of Chapter 143;

without giving at least 10 days' written notice before such payment to:

- (1) The Building Commissioner or the appointed Inspector of Buildings; and
- (2) The Board of Health or the Board of Selectmen of the city or town where the property is located.

- 3. If at any time before our payment, the city or town notifies us by certified mail of its intent to begin proceedings designed to perfect a lien under Massachusetts General Law:

- a. Chapter 143, Section 3A or 9; or

- b. Chapter 111, Section 127B;

we will not pay while the proceedings are pending. The proceedings must be started within 30 days after we receive the notice.

Any lien perfected under the Massachusetts General Laws referred to in 3.a. and 3.b. above will extend to the city or town and may be enforced by it against the proceeds of this Policy.

- 4. We will not be liable to any city, town, mortgageholder, assignee, you or any other interested party for:

- a. Amounts paid to a city or town; or

- b. Amounts not paid to a city or town; under Provisions E.2. and E.3. above.

- F. The following condition is added and supersedes any provisions to the contrary:

**Nonrenewal**

This provision applies to coverage on real property which is used predominantly for residential purposes and consists of not more than four dwelling units, and to coverage on personal property of a person residing in such real property:

- 1. Ordinarily we will renew this Policy automatically and send you the renewal notice. Our notice will explain what you should do if you do not want to continue this Policy.
- 2. We may elect not to renew this Policy. We may do so by delivering to you or mailing to you at your last mailing address shown in the Declarations, written notice of nonrenewal, accompanied by the specific reasons for nonrenewal, at least 45 days before the expiration date of this Policy. However, if your policy was executed on behalf of us, in whole or in part, by or on behalf of your insurance agent or our insurance broker, we will send such written notice only to the agent or broker. Every insurance agent or broker receiving this notice is required to, within 15 days of its receipt, send a copy to you unless the agent or broker has replaced the insurance.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **MASSACHUSETTS CHANGES – INTENTIONAL LOSS**

This endorsement modifies insurance provided under the following:

COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
EQUIPMENT BREAKDOWN PROTECTION COVERAGE FORM  
STANDARD PROPERTY POLICY

The following exclusion and related provisions are added with respect to loss or damage to Covered Property caused by fire:

### **Intentional Loss**

1. We will not pay for loss or damage arising out of any act committed:
  - a. By or at the direction of the insured; and
  - b. With the intent to cause a loss.
2. However, this exclusion does not apply to an innocent coinsured who does not commit or conspire to commit any act that results in loss or damage by fire and the innocent coinsured making a claim:
  - a. Did not cooperate in or contribute to the creation of the loss; and

b. Cooperates in any investigation relating to the loss.

3. If we pay a claim pursuant to Paragraph 2. of this endorsement, our payment to the insured is limited to that insured's insurable interest in the property. In no event will we pay more than the Limit of Insurance.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **MASSACHUSETTS CHANGES**

This endorsement modifies insurance provided under the following:

### **CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE FORM**

- A.** If loss or damage is caused by fire or lightning, the **Vacancy And Unoccupancy** Loss Condition is replaced by the following:

#### **Vacancy And Unoccupancy**

If the building where loss or damage occurs, whether intended for occupancy by owner or tenant, has been vacant or unoccupied for more than:

1. 60 consecutive days for residential "covered location" of three units or less; or
2. 30 consecutive days for all other "covered locations";

immediately before that loss or damage, we will not pay for the loss or damage.

A building is vacant when it does not contain enough business personal property to conduct customary operations.

- B.** The **Mortgageholders** Additional Condition is replaced by the following:

#### **Mortgageholders**

We will pay for covered loss of or damage to real estate to each mortgageholder shown in the Declarations, or in an attached Schedule, in the order of precedence, as interests may appear.

- C.** The **Intentional Loss** Exclusion is replaced by the following:

#### **Intentional Loss**

1. We will not pay for loss or damage arising out of any act committed:
  - a. By or at the direction of the insured; and
  - b. With the intent to cause a loss.
2. However, this exclusion does not apply to an innocent coinsured who does not commit or conspire to commit any act that results in loss or damage by fire and the innocent coinsured making a claim:
  - a. Did not cooperate in or contribute to the creation of the loss; and

- b. Cooperates in any investigation relating to the loss.

3. If we pay a claim pursuant to Paragraph **C.2.** of this endorsement, our payment to the insured is limited to that insured's insurable interest in the property. In no event will we pay more than the Limit of Insurance.

- D** Paragraph **H.7.a.(3)** of the **Valuation** Loss Condition is replaced by the following:

- (3)** We will not pay on a replacement cost basis for any loss or damage:

- (a)** Until the lost or damaged property is actually repaired or replaced:

- (i)** On the "covered location"; or

- (ii)** At some other location in the Commonwealth of Massachusetts; and

- (b)** Unless the repairs or replacement is made within a reasonable time, but no more than two years after the loss or damage.

With respect to tenants' improvements and betterments, if covered, the following also apply:

- (c)** If the conditions in **(3)(a)** and **(3)(b)** above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Condition of the Capital Assets Program Coverage Form (Output Policy); and
- (d)** We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.

**E. The following provisions are added:**

**1. In spite of any provision of any general or special law:**

- a.** We will not pay for loss or damage to real property caused by any Covered Cause of Loss if the amount of loss is \$5,000 or more unless you first submit to us a certificate of municipal liens from the collector of taxes of the city or town where the property is located.

- b.** We will pay to the city or town any amount outstanding on the certificate of municipal liens arising from the provisions of Massachusetts General Law Chapters 40, 59, 60, 80, 83 and 164, Sections 58B through 58F.

The payment will not exceed the amount of loss payable under this Coverage Part.

We will send you and the mortgageholder proof of our payment to the city or town.

- c.** The claim of the city or town will have priority over the claim of any mortgageholder, assignee, you or any other interested party, except where otherwise provided by the laws of the United States.

- d.** We will not be liable to any city, town, mortgageholder, assignee, you or any other interested party for:

**(1)** Amounts paid to a city or town; or

**(2)** Amounts not paid to a city or town based upon a certificate showing that no municipal liens exist.

- e.** Paragraphs **1.a.**, **1.b.**, **1.c.** and **1.d.** above will not apply to any owner-occupied one- to four-family dwelling if the owner of the dwelling lived there when the claim for loss or damage arose.

**2. We will not pay any claim for:**

- a.** Loss, damage or destruction of \$1,000 or more to a building or structure; or

- b.** Loss, damage or destruction, of any amount, that causes a building or structure to become:

**(1)** Dangerous to life or limb; or

**(2)** Unused, uninhabited or abandoned and open to the weather;

as provided under Massachusetts General Law, Section 6 of Chapter 143;

without giving at least 10 days' written notice before such payment to:

- c.** The Building Commissioner or the appointed Inspector of Buildings; and

- d.** The Board of Health or the Board of Selectmen of the city or town where the property is located.

**3. If at any time before our payment, the city or town notifies us by certified mail of its intent to begin proceedings designed to perfect a lien under Massachusetts General Law:**

**a.** Chapter 143, Section 3A or 9; or

**b.** Chapter 111, Section 127B;

we will not pay while the proceedings are pending. The proceedings must be started within 30 days after we receive the notice.

Any lien perfected under the Massachusetts General Laws referred to in **3.a.** and **3.b.** above will extend to the city or town and may be enforced by it against the proceeds of this policy.

**4. We will not be liable to any city, town, mortgageholder, assignee, you or any other interested party for:**

**a.** Amounts paid to a city or town; or

**b.** Amounts not paid to a city or town;

under Provisions **2.** and **3.** above.

**F. The following condition is added and supersedes any provisions to the contrary:**

**Nonrenewal**

This provision applies to coverage on real property which is used predominantly for residential purposes and consists of not more than four dwelling units, and to coverage on personal property of a person residing in such real property:

- 1.** Ordinarily we will renew this policy automatically and send you the renewal notice. Our notice will explain what you should do if you do not want to continue this policy.

- 2.** We may elect not to renew this policy. We may do so by delivering to you or mailing to you at your last mailing address shown in the Declarations, written notice of nonrenewal, accompanied by the specific reasons for nonrenewal, at least 45 days before the expiration date of this policy. However, if your policy was executed on behalf of us, in whole or in part, by or on behalf of your insurance agent or our insurance broker, we will send such written notice only to the agent or broker. Every insurance agent or broker receiving this notice is required to, within 15 days of its receipt, send a copy to you unless the agent or broker has replaced the insurance.



**G. Paragraphs A.3.j.(1) and A.3.j.(3) of the Limited Coverage For Fungi, Wet Rot And Dry Rot Additional Coverage are replaced by the following:**

**j. Limited Coverage For Fungi, Wet Rot And Dry Rot**

(1) The coverage provided in Paragraphs **A.3.j.(2)** and **A.3.j.(6)** only applies when "fungi" or wet or dry rot is the result of one or more of the following causes that occur during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after the occurrence:

- (a) A Covered Cause of Loss other than fire or lightning; or
- (b) Flood, if the Flood Coverage endorsement applies to the affected premises.

This Additional Coverage does not apply to lawns, trees, shrubs or plants which are part of a vegetated roof.

(3) The most we will pay for loss or damage under this Limited Coverage is \$15,000, unless a different Limit Of Insurance is shown in the Declarations. If the Declarations indicates that the Separate Scheduled Locations Option applies, then the amount of coverage is made applicable to separate locations as described in the Declarations. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of Covered Causes of Loss (other than fire or lightning) and flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss or damage which results in "fungi" or wet or dry rot, we will not pay more than a total of \$15,000, unless a different Limit Of Insurance is shown in the Declarations, even if the "fungi" or wet or dry rot continues to be present or active, or recurs, in a later policy period.

**H. Paragraph C.1.j. of the Fungi Or Wet Or Dry Rot Exclusion is replaced by the following:**

**j. Fungi Or Wet Or Dry Rot**

Presence, growth, proliferation, spread or any activity of "fungi" or wet or dry rot.

But if "fungi" or wet or dry rot results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion does not apply:

- (1) When "fungi" or wet or dry rot results from fire or lightning; or
- (2) To the extent that coverage is provided by the Limited Coverage For "Fungi", Wet Rot And Dry Rot Additional Coverage with respect to loss or damage by a Cause of Loss other than fire or lightning.

**I. Paragraph A.1.a.(5) of the Building Covered Property is replaced by the following:**

(5) Building personal property owned by you that is used to maintain or service a building or structure or the "covered location", including:

- (a) Fire extinguishing equipment;
- (b) Outdoor furniture;
- (c) Floor coverings;
- (d) Heating, air conditioning and ventilation equipment; and
- (e) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;

J. The following is added:

### STANDARD FIRE POLICY PROVISIONS

Your policy contains Legal Action Against Us, Appraisal and Cancellation Provisions. Massachusetts law requires that the Suit, Appraisal and Cancellation Provisions of the Massachusetts Standard Fire Policy supersede any similar provisions contained in your policy. Therefore, all Legal Action Against Us, Appraisal and Cancellation Provisions contained in your policy are void. The Suit, Appraisal and Cancellation Provisions of the Massachusetts Standard Fire Policy shall apply instead.

In consideration of the Provisions and Stipulations Herein or Added Hereto and of the Premium Specified in the Declarations, this company, for the term of years specified in the Declarations from inception date (At 12:01 A.M. Standard Time) to expiration date (At 12:01 A.M. Standard Time) at location of property involved, to an amount not exceeding the amount(s) specified in the Declarations, does insure the Insured named in the Declarations and legal representatives, to the extent of the actual cash value of the property at the time of loss, but in no event for more than the interest of the insured, against all Loss By Fire, Lightning And By Removal From Premises Endangered By The Perils Insured Against In This Policy, Except As Hereinafter Provided, to the property described in the Declarations while located or contained as described in this policy or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

**Concealment  
Fraud**

This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance

concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

**Uninsurable  
And Excepted  
Property**

This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

**Perils Not  
Included**

This Company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by **(a)** enemy attack by armed

forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; **(b)** invasion; **(c)** insurrection; **(d)** rebellion; **(e)** revolution; **(f)** civil war; **(g)** usurped power; **(h)** order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; **(i)** neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in the neighboring premises; **(j)** nor shall this company be liable for loss by theft.

**Other  
Insurance**

Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

**Conditions  
Suspending Or  
Restricting  
Insurance**

Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring **(a)** while the hazard is increased by any means within the control or knowledge of the insured; or **(b)** while the described premises, whether intended for occupancy by owner or tenant, are vacant or unoccupied beyond a period of sixty consecutive days, for residential premises of three units or less and thirty (30) consecutive days for all other premises, or **(c)** as a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

**Other Perils  
Or Subjects**

Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

**Added  
Provisions**

The extent of the application of insurance under this policy and of the contribution to be made by this company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

**Waiver  
Provisions**

No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this company relating to appraisal or to any examination provided for herein.

**Cancellation  
Of Policy**

This policy shall be cancelled at any time at the request of the insured, in which case this company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time by this company by giving to the insured a five days written notice of cancellation, and to the mortgagee to whom this policy is payable twenty days written notice of cancellation except where the stated reason for cancellation is non-payment of premium where, in such instance, this policy may be cancelled at any time by this company by giving to the insured a ten days written notice of cancellation, and the mortgagee a twenty days written notice of cancellation, with or without tender of the excess paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand and shall state or be accompanied by a statement of the specific reason or reasons for such cancellation. After this policy has been in effect for sixty days, or after sixty days from any anniversary date, no notice of cancellation shall be effective unless it is based on the occurrence, after the effective date of the policy, of one or more of the following: **(1)** nonpayment of premium; **(2)** conviction of a crime arising out of acts increasing the hazard insured against; **(3)** discovery of fraud or material misrepresentation by the insured in obtaining the policy; **(4)** discovery of willful or reckless acts or omissions by the insured increasing the hazard insured against; **(5)** physical changes in the property insured which result in the property becoming uninsurable; or **(6)** a determination by the commissioner that continuation of the policy would violate or place the insurer in violation of the law. Where the stated reason is nonpayment of premium, the insured may continue the coverage and avoid the effect of the cancellation by payment at any time prior to the effective date of cancellation.

**Mortgagee  
Interests And  
Obligations**

Notwithstanding any other provisions of this policy, if this policy shall be made payable to a mortgagee of the covered real estate, no act or default of any person other than such mortgagee or his agent or those claiming under him, whether the same occurs before or during the term of this policy, shall render this policy void as to such mortgagee nor affect such mortgagee's right to recover in case of loss on such real estate; provided, that the mortgagee shall on demand pay according to the established scale of rate for any increase of risk not paid for by the insured; and whenever this company shall be liable to a mortgagee for any sum for loss under this policy for which no liability exists as to the mortgagor, or owner, and this company shall elect by itself, or with others, to pay the mortgagee the full amount secured by such mortgage, then the mortgagee shall assign and transfer to the company interested, upon such payment, the said mortgage together with the note and debt thereby secured.

**Pro Rata  
Liability**

This company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved.

**Requirements  
In Case Loss  
Occurs**

The insured shall give immediate written notice to this company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed and damaged property, showing in detail the quantity, description, actual cash value and amount of loss claimed; and the insured shall forthwith render to this company a signed, sworn statement in proof of loss which sets forth to the best knowledge and belief of the insured the following: the time and cause of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupancy, location, possession or exposures of said property, since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and detailed estimates for repair of the damage. The insured, as often as may be reasonably required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

**When Loss  
Payable**

In case of any loss or damage, the company within thirty days after the insured shall have submitted a statement, as provided in the preceding clause, shall

either pay the amount for which it shall be liable, which amount if not agreed upon shall be ascertained by award of referees as hereinafter provided, or replace the property with other of the same kind and goodness, or it may, within fifteen days after such statement is submitted, notify the insured of its intention to rebuild or repair the premises, or any portion thereof separately covered by this policy, and shall thereupon enter upon said premises and proceed to rebuild or repair the same with reasonable expedition. It is moreover understood that there can be no abandonment of the property described to the company, and that the company shall not in any case be liable for more than the sum insured, with interest thereon from the time when the loss shall become payable, as provided above. The company shall be liable for the payment of interest to the insured at a rate of one percent over the prime interest rate on the agreed figure commencing thirty days after the date an executed proof of loss for such figure is received by the company, said interest to continue so long as the claim remains unpaid.

**Arbitration** In case of loss under this policy and a failure of the parties to agree as to the amount of loss, it is mutually agreed that the amount of such loss shall be referred to three disinterested men, the company and the insured each choosing one out of three persons to be named by the other, and the third being selected by the two so chosen, and the award in writing by a majority of the referees shall be conclusive and final upon the parties as to the amount of loss or damage, and such reference, unless waived by the parties, shall be a condition precedent to any right of action in law or equity to recover for such loss; but no person shall be chosen or act as a referee, against the objection of either party, who has acted in a like capacity within four months.

**Suit** No suit or action against this company for the recovery of any claim by virtue of this policy shall be sustained in any court of law or equity in this commonwealth unless commenced within two years from the time the loss occurred; provided, however, that if, within said two years, in accordance with the provisions of the preceding paragraph, the amount of the loss shall have been referred to arbitration after failure of the parties to agree thereon, the limitation of time for bringing such suit or action shall in no event be less than ninety days after a valid award has been made upon such reference or after such reference or award has been expressly waived by the parties. If suit or action upon this policy is enjoined or abated, suit or action may be commenced at any time within one year after the dissolution of such injunction, or the abatement of such suit or action, to the same extent as would be possible if there was no limitation of time provided herein for the bringing of such suit or action.

**Subrogation** This company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this company.