

FORMS – APPROVED

AUGUST 25, 2022

COMMERCIAL LINES

LI-CL-2022-031

OREGON INTENTIONAL ACTS EXCLUSION REVISION IN RESPONSE TO OREGON DEPARTMENT OF INSURANCE'S BULLETIN NO. DFR 2022-2 APPROVED

KEY MESSAGE

Revisions to Oregon state-specific commercial lines endorsements in response to Oregon Department Of Insurance's Bulletin No. DFR 2022-2 have been approved.

Filing ID: CL-2022-OSPE1

Effective Date: 12/1/2022

BACKGROUND

In circular [LI-CL-2022-027](#), we announced that, in response to Oregon Bulletin No. DFR 2022-2, we were revising various commercial lines endorsements to not preclude a co-insured who did not purposefully participate in the intentional act from recovering for losses due to acts committed.

INSURANCE DEPARTMENT ACTION

The Oregon Department of Insurance has approved this revision as filed.

EFFECTIVE DATE

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

These changes are applicable to all policies written on or after December 1, 2022.

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-2022-OSPE1](#) and SERFF Tracking Number ISOF-133363709, 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.

RATING SOFTWARE IMPACT

New attributes being introduced with this revision:

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

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-2022-006](#) 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.

REVISION DISTRIBUTION

We will issue a Notice to Portfolioholders with an edition date of 12-22 (or the earliest possible subsequent date), along with any new and/or revised forms.

REFERENCE(S)

- [LI-CL-2022-027](#) (07/21/2022) Oregon Intentional Acts Exclusion Revised In Response To Oregon Department Of Insurance's Bulletin No. DFR 2022-2
- [LI-CL-2022-006](#) (02/22/2022) Revised Lead Time Requirements Listing

ATTACHMENT(S)

Final copies of [AG 01 42 12 22](#) and [IL 01 39 12 22](#)

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CONTACT INFORMATION

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OREGON CHANGES

This endorsement modifies insurance provided under the following:

AGRICULTURAL CAPITAL ASSETS (OUTPUT POLICY) COVERAGE PART

- A.** Paragraph 2. of the **Cancellation** Common Policy Condition is replaced by the following:
- 2.** If this policy has been in effect for:
- a.** Fewer than 60 days and is not a renewal policy, we may cancel for any reason.
 - b.** 60 days or more or is a renewal policy, we may cancel only for one or more of the following reasons:
 - (1)** Nonpayment of premium;
 - (2)** Fraud or material misrepresentation made by you or with your knowledge in obtaining the policy, continuing the policy or in presenting a claim under the policy;
 - (3)** Substantial increase in the risk of loss after insurance coverage has been issued or renewed, including but not limited to an increase in exposure due to rules, legislation or court decision;
 - (4)** Failure to comply with reasonable loss control recommendations;
 - (5)** Substantial breach of contractual duties, conditions or warranties;
 - (6)** Determination by the commissioner that the continuation of a line of insurance or class of business to which the policy belongs will jeopardize our solvency or will place us in violation of the insurance laws of Oregon or any other state; or
 - (7)** Loss or decrease in reinsurance covering the risk.
- B.** Paragraph 3. of the **Cancellation** Common Policy Condition is amended by the addition of the following:
- 3.** We will mail or deliver to the first Named Insured written notice of cancellation, stating the reason for cancellation.
- C.** The following is added to the **Cancellation** Common Policy Condition:
- 7. Number Of Days' Notice Of Cancellation:**
- Cancellation will not be effective until at least:
- a.** 10 days after the first Named Insured receives our notice, if we cancel for nonpayment of premium; or
 - b.** 30 days after the first Named Insured receives our notice, if we cancel for any other reason.
- D.** Paragraph 6. of the **Cancellation** Common Policy Condition does not apply.
- E.** The following are added and supersede any provision to the contrary:
- 1. Nonrenewal**
- We may elect not to renew this policy by mailing or delivering to the first Named Insured, at the last mailing address known to us, written notice of nonrenewal before the:
- a.** Expiration date of the policy; or
 - b.** Anniversary date of the policy if the policy is written for a term of more than one year or without a fixed expiration date.
- However, if this policy is issued for a term of more than one year and for additional consideration the premium is guaranteed, we may not refuse to renew the policy at its anniversary date.
- Nonrenewal will not be effective until at least 45 days after the first Named Insured receives our notice.

2. Mailing Of Notices

- a. If notice of cancellation or nonrenewal is mailed, a post office certificate of mailing will be conclusive proof that the first Named Insured received the notice on the third calendar day after the date of the certificate of mailing.
- b. If the first Named Insured has affirmatively consented to our use of an electronic record to deliver notice of cancellation or nonrenewal and has not withdrawn such consent, then the electronic record delivering notice of cancellation or nonrenewal satisfies the requirement that the notice of cancellation or nonrenewal be provided, or made available, to the first Named Insured in writing if we send the first Named Insured the electronic record with a request for a return receipt and we receive the return receipt. If we do not receive the return receipt, we may cancel or nonrenew the policy only after providing or delivering the notice of cancellation or nonrenewal to the first Named Insured in writing, subject to Paragraph 2.a. above.

F. The **Concealment, Misrepresentation Or Fraud** Condition is replaced by the following:

CONCEALMENT, MISREPRESENTATION OR FRAUD

1. Subject to Paragraphs 2. and 3. below, this entire Coverage Part will be void if, whether before or after a loss, you have willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject of it, or your interest in it, or in case of any fraud or false swearing by you relating to it.
2. All statements made by you or on your behalf, in the absence of fraud, will be deemed representations and not warranties. No such statements that arise from an error in the application will be used in defense of a claim under this Coverage Part unless:
 - a. The statements are contained in a written application; and
 - b. A copy of the application is endorsed upon or attached to this Coverage Part when issued.

3. In order to use any representation made by you or on your behalf in defense of a claim under this Coverage Part, we must show that the representations are material and that we relied on them.

G. The **Appraisal** Condition is replaced by the following:

APPRAISAL

If we and you disagree on the value of the property, the amount of Net Income and operating expense or the amount of loss both parties may agree to an appraisal of the loss and to be bound by the results of that appraisal. If both parties so agree, then each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property, the amount of Net Income and operating expense and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

H. The **Duties In The Event Of Loss Or Damage** Loss Condition is revised as follows:

The provision requiring a signed, sworn proof of loss is replaced by the following:

Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 90 days after you receive the necessary forms from us.

I. The **Mortgageholders** Condition is replaced by the following:

MORTGAGEHOLDERS

- a. Oregon law states as follows:

- (1) "If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be canceled by giving to such mortgagee a 10 days' written notice of cancellation."

(2) "If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing."

- b. The term mortgageholder includes trustee.
- c. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- d. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- e. If we deny your claim because of your acts or because you have failed to comply with the terms of this insurance, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
 - (1) Pays any premium due under this insurance at our request if you have failed to do so;

- (2) Submits a signed, sworn proof of loss in accordance with Paragraph a.(2); and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All the terms of the affected insurance will then apply directly to the mortgageholder.

- f. If we cancel this policy, we will give written notice to the mortgageholder:

- (1) In accordance with Paragraph a.(1); or

- (2) At least:

- (a) 10 days before the effective date of the cancellation if we cancel for your nonpayment of premium; or

- (b) 30 days before the effective date of cancellation if we cancel for any other reason other than provided for in Paragraph a.(1).

- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

- J. Paragraph 1.c. **Intentional Loss** under C. **Exclusions** is replaced by the following:

- c. **Intentional Loss**

- We will not pay for loss or damage arising out of any act an insured commits or conspires to commit with the intent to cause a loss.

- This exclusion only applies to an insured who commits or conspires to commit an act with the intent to cause a loss.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OREGON CHANGES

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
 COMMERCIAL INLAND MARINE COVERAGE PART
 COMMERCIAL PROPERTY COVERAGE PART
 FARM COVERAGE PART – FARM PROPERTY – OTHER FARM PROVISIONS FORM – ADDITIONAL
 COVERAGES, CONDITIONS, DEFINITIONS
 FARM COVERAGE PART – LIVESTOCK COVERAGE FORM
 FARM COVERAGE PART – MOBILE AGRICULTURAL MACHINERY AND EQUIPMENT COVERAGE FORM

- A.** When this endorsement is attached to the **Standard Property Policy CP 00 99**, the term Coverage Part in this endorsement is replaced by the term Policy.
- B.** The **Concealment, Misrepresentation Or Fraud** Condition is replaced by the following:
CONCEALMENT, MISREPRESENTATION OR FRAUD
1. Subject to Paragraphs 2. and 3. below, this entire Coverage Part or Coverage Form will be void if, whether before or after a loss, you have willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject of it, or your interest in it, or in case of any fraud or false swearing by you relating to it.
 2. All statements made by you or on your behalf, in the absence of fraud, will be deemed representations and not warranties. No such statements that arise from an error in the application will be used in defense of a claim under this Coverage Part or Coverage Form unless:
 - a. The statements are contained in a written application; and
 - b. A copy of the application is endorsed upon or attached to this Coverage Part or Coverage Form when issued.
 3. In order to use any representation made by you or on your behalf in defense of a claim under the Coverage Part or Coverage Form, we must show that the representations are material and that we relied on them.
- C.** Except as provided in **D.** below, the **Appraisal** Condition is replaced by the following:
APPRAISAL
- If we and you disagree on the value of the property or the amount of loss ("loss") both parties may agree to an appraisal of the loss and to be bound by the results of that appraisal. If both parties so agree, then each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss ("loss"). If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:
1. Pay its chosen appraiser; and
 2. Bear the other expenses of the appraisal and umpire equally.
- If there is an appraisal, we will still retain our right to deny the claim.
- D.** The **Appraisal** Condition in:
1. Business Income Coverage Form (And Extra Expense) **CP 00 30**;
 2. Business Income Coverage Form (Without Extra Expense) **CP 00 32**; and

3. Capital Assets Program Coverage Form (Output Policy) **OP 00 01**, Paragraph **H.2.** Business Income And Extra Expense

is replaced by the following:

APPRAISAL

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, both parties may agree to an appraisal of the loss and to be bound by the results of that appraisal. If both parties so agree, then each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

E. The following Loss Conditions:

1. **Duties In The Event Of Loss (Or Damage);**
2. **Duties If You Incur Extra Expense** in Extra Expense Coverage Form **CP 00 50**; and
3. **Duties In The Event Of Loss Of Covered Leasehold Interest** in Leasehold Interest Coverage Form **CP 00 60**

are revised as follows:

The provision requiring a signed, sworn proof of loss is replaced by the following:

Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 90 days after you receive the necessary forms from us.

F. The Mortgageholders Condition in the:

1. Commercial Property Coverage Part; and
2. Farm Coverage Part – Farm Property – Other Farm Provisions Form – Additional Coverages, Conditions, Definitions;

is replaced by the following and the following is added to the Commercial Inland Marine Coverage Part:

MORTGAGEHOLDERS

a. Oregon law states as follows:

- (1) "If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured ('insured'), such interest in this policy may be canceled by giving to such mortgagee a 10 days' written notice of cancellation".
- (2) "If the insured ('insured') fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing".

b. The term mortgageholder includes trustee.

c. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.

d. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.

e. If we deny your claim because of your acts or because you have failed to comply with the terms of this insurance, the mortgageholder will still have the right to receive loss payment if the mortgageholder:

- (1) Pays any premium due under this insurance at our request if you have failed to do so;

- (2) Submits a signed, sworn proof of loss in accordance with Paragraph a.(2); and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All the terms of the affected insurance will then apply directly to the mortgageholder.

- f. If we cancel this policy, we will give written notice to the mortgageholder:

- (1) In accordance with Paragraph a.(1); or

- (2) At least:

- (a) 10 days before the effective date of the cancellation if we cancel for your nonpayment of premium; or

- (b) 30 days before the effective date of cancellation if we cancel for any other reason other than provided for in Paragraph a.(1).

- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

- G. The **Intentional Loss** Exclusion in the Capital Assets Program (Output Policy) Coverage Part is replaced by the following:

Intentional Loss

We will not pay for loss or damage arising out of any act an insured commits or conspires to commit with the intent to cause a loss.

This exclusion only applies to an insured who commits or conspires to commit an act with the intent to cause a loss.

- H. The **Intentional Loss** Exclusion in the Causes Of Loss Form – Farm Property, Mobile Agricultural Machinery And Equipment Coverage Form and Livestock Coverage Form is replaced by the following:

Intentional Loss

We will not pay for loss ("loss") or damage arising out of any act an "insured" commits or conspires to commit with the intent to cause a loss ("loss").

This exclusion only applies to an "insured" who commits or conspires to commit an act with the intent to cause a loss ("loss").