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A Home-Insurance Trap?

By LESLIE SCISM

Home-insurance policies are pretty much the same, and carriers compete on the basis of price and service—right?

Believe those two myths and you might wind up paying dearly.

Homeowner policies have important differences that can affect whether claims are paid, according to a study scheduled to be published early next year in the University of Chicago Law Review. The problem is that those differences are poorly understood.

Home insurers historically relied on standard policy forms drafted by the Insurance Services Office, an industry group. But Daniel Schwarcz, a University of Minnesota Law School associate professor and the study's author, says he found instances where policies now differ "radically with respect to numerous important coverage provisions."

While some of these differences might work to homeowners' advantage, a substantial majority could hurt them, he says. Some policies provide \$1,000 per item damaged by a sudden electrical current, and others pay an aggregate of \$1,000. Some include mold and lead coverage, while others don't.

Many of the variations involve broader contract language, and it's unclear how they will ultimately affect consumers. Some of the biggest insurers "employ policy language that is systematically less generous than that provided" in the standard ISO policy, Mr. Schwarcz writes.

For example, a standard ISO policy insures against "risk of direct physical loss to property," according to the professor. But some carriers insure against what they call "risk of accidental

direct physical loss" instead, and others against "sudden and accidental direct physical loss."

"You have a core provision of a policy and these really important adjectives being added," Mr. Schwarcz says, noting that they "could easily be used to justify expansive claims denials."

He also found policies that allow insurers not to cover loss "to the extent that the policyholder's negligence contributed to the loss."

That is an important provision, says Mr. Schwarcz, because many losses could be tied to alleged negligence. Say a homeowner is advised by a tree trimmer that a backyard tree is dying and needs to be chopped down. If it isn't cut down and eventually falls on the house, is the policyholder negligent?

Among changes that might work in consumers' favor are liability protection for certain claims and coverage for mold more generous than that of the typical ISO policy, says Mr. Schwarcz, who also serves as a consumer representative at the National Association of Insurance Commissioners, an organization of state regulators.

In an example of how such wording can hurt consumers, Mr. Schwarcz points to a 2007 ruling by a federal judge in Minneapolis in favor of a unit of Allstate. The insurer had denied a claim for water damage brought by a couple in Eden Prairie, Minn. They were selling their 15-year-old home and a presale inspection revealed moisture behind the home's stucco exterior.

Among other things, Allstate cited policy exclusions for wear and tear, and for losses arising from defective construction. The judge noted that the policy language specified coverage of "sudden and accidental direct

physical loss," a phrase he said was "not ambiguous."

While the policyholders "considered their discovery of the water damage to be abrupt and unexpected, they have presented no evidence that the loss was sudden," the judge wrote. "Rather, all the evidence of record indicates that the water damage was caused by a variety of original construction defects present in the home since 1989."

Allstate spokeswoman Stephanie Sheppard says the company "agrees with the court's ruling that the language is clear." Speaking generally, she says the company's coverage is defined "to ensure we help keep costs down for all our customers by covering appropriate losses."

The insurer's contract language, she says, reflects that, "like most homeowner insurers, Allstate provides coverage against losses that occur only on a chance basis," or where the insured cannot control the loss.

Mr. Schwarcz is wrong to interpret such wording differences as efforts to reduce coverage, when some changes are efforts to clarify what the insurers have priced the policies to cover, says Alex Hageli, an official with the Property Casualty Insurers Association of America, a trade group with more than 1,000 member companies.

Mr. Hageli says the changes are often reactions by insurers to adverse judicial rulings, with insurers adjusting wording "to what they thought their contracts said before the judge ruled the way he did." He added that he doesn't "see the same kind of deliberate attempt to weaken consumer protection" that Mr. Schwarcz does.

For his study, Mr. Schwarcz collected policies from the top-10-selling insurance groups in six states: North Dakota, South

Tips for Buyers

◆ Use a reputable independent agent with access to a range of insurers and coverage options.

◆ Ask about exclusions and wording differences across policies.

◆ Ask about coverage for water damage from sewer or pipe problems, and whether damage to the foundation is covered, limited or excluded.

◆ Ask which items will be paid at "replacement value" versus "actual cash value."

Source: United Policyholders

Dakota, Pennsylvania, Illinois, California and Nevada. Insurers' forms can vary by state.

Mr. Schwarcz has been pushing state insurance departments to post policies online, so consumer groups and others comfortable with the dense language of contracts can work up comparisons to aid buyers.

At least one state recently took him up on the offer: Nevada, which began posting policy forms in October for its 10 largest home and auto insurers. Gennady Stolyarov, a Nevada insurance regulator, said in an email that officials "hope that this is just the beginning" of an effort to improve consumers' ability to comparison-shop for insurance.

For now, many consumers' best option is to seek out an experienced and reputable insurance agent to cut through all the confusing language, says Amy Bach, who runs United Policyholders, a consumer-advocacy group in San Francisco. The group has long sought to educate consumers on the importance of comparison-shopping "for quality, not just price."

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