

Amendatory Mandatory Endorsement

For use with form TDP-1

This Endorsement Changes the Policy. Please Read it Carefully.

Coverage is subject to all terms and conditions of the policy except as changed by this endorsement.

DEFINITIONS.

The **DEFINITIONS** section is amended to add the following definitions:

Claimed Loss – means your claim of direct physical loss or damage to property from a specific date of loss and specific named peril.

Incurred Property Damage – means the verifiable, actual, accidental, direct, distinct, and demonstrable physical injury to or destruction of property.

Component parts – means each of the individual items or parts of covered property. As an example, for a roof, the individual **component parts** or items of the roof would include, as applicable: a truss, a rafter, a section of decking, underlayment, sheathing or drip edge, a shingle, a tile or other outer covering, a jack pipe, a vent or a skylight, and all other individual items or parts.

Actual cash value - means the reasonable replacement cost at time of loss less deduction for depreciation. We may depreciate all replacement costs, including, but not limited to, the costs of material and labor.

CONDITIONS.

For Form TDP-1, **CONDITIONS**, Paragraph 8, **Appraisal** is deleted in its entirety and replaced with the following:

8. Appraisal

A. If you or we fail to agree on the **actual cash value** or the **incurred property damage** of your **claimed loss**, either you or we may make a written demand for appraisal. The appraisal shall be made in strict conformance with the terms of this Appraisal condition. At least 10 days before demanding appraisal, the party seeking appraisal must provide the other party with written, itemized documentation of a specific dispute as to the **actual cash value** or the **incurred property damage** of the **claimed loss**, identifying separately each item being disputed. Neither you nor we may assign the right to demand appraisal, whether before or after loss or damage. Any assignment shall be void.

B. (1) Within 20 days of the receipt of a written demand for appraisal that complies with the requirements of this policy, you, and we each shall:

- a.** appoint a qualified individual person as an appraiser; and
- b.** notify the other in writing of the appraiser's name and contact information.

(2) In order for a person to be qualified to act as an appraiser, the person must be competent, independent, neutral, and impartial. A person shall not be qualified to serve as an appraiser if that person:

- a.** has performed, or is employed by any entity that has performed, any work or service for either you or us in relation to any **claimed loss** under your policy, regardless of whether such work or service has been or will be paid; or
- b.** has or may perform, or who is employed by an entity which has or may perform, repairs of your property.

(3) Upon acceptance of the appointment, each appraiser shall, within 20 days,:

a. provide a list of the claims in the last two years where they have served as an appraiser in an appraisal that involved you or us, or involved any retained counsel for you or us, and

b. disclose any known facts which a reasonable person may consider to affect the independence, neutrality, or impartiality of the appraiser, including, without limitation, any financial or personal interest in the outcome of the appraisal.

C. You and we may provide the appraisers, and the umpire if appointed, with estimates, expert opinions, appraisal forms, examination under oath transcripts and exhibits, or any information you or we believe to be relevant to the appraisal. Any such documents and information must also be provided to the other party. However, no civil discovery shall be conducted by either the appraisers, any umpire, or you or us during or for the preparation of the appraisal, and no court reporter shall be used. The rules of civil procedure and the rules of evidence shall not apply to the appraisal process, and no hearing shall be conducted by the appraisers at which either you or we provide any evidence pertaining to your **claimed loss**.

Inspection of your residence by both appraisers must occur within 30 days of the date that the last appraiser is designated unless the inspection is waived in writing by both appraisers.

D. (1) The appraisers shall determine the **incurred property damage**, if any, to each of the **component parts** of that property for which you have **claimed loss**, and the **actual cash value** of the **incurred property damage**. The appraisers shall only use reasonable costs of materials of like kind and quality unless the policy expressly provides otherwise. The scope of the appraisal is limited to the specific

disputed items listed in the written itemized list provided 10 days before appraisal was invoked.

(2) The appraisal shall separately state and itemize the following for each individual **component part** of the **incurred property damage**.

a. a description of each component part of the property;

b. a description of the distinct and demonstrable physical injury to or destruction of each **component part**, if any.

c. a description of the reasonably necessary repairs or replacement(s) for each **component part** of property;

d. the estimated costs of the reasonably necessary repairs or replacement(s) to each **component part** of property;

e. the estimated amount of proper depreciation to each **component part** of property; and

f. the **actual cash value** of the **incurred property damage**.

Evidence of the reasonableness of the costs and that the materials are of like kind and quality shall also be included with the appraisal.

(3) The appraisers may consider and provide you and us with a separate statement of the estimated cost(s) for any repairs or replacement(s) which may be required by **building laws**, but the appraisers may not determine whether such amounts are covered by this policy.

(4) The appraisers shall submit their written appraisal in strict conformance with this subsection d., to both you and to us, and the amounts agreed upon by the appraisers will be the **incurred property damage** and the **actual cash value** of the **incurred property damage** to each **component part** of property for which you have **claimed loss**.

(5) The appraisers are not authorized to decide whether any **incurred property damage** is covered by this policy.

E. (1) If the appraisers cannot agree on the **incurred property damage** or the **actual cash value** of the **incurred property damage**, they will advise each of us of their failure to agree within 30 days of the inspection, unless the period of time is extended by mutual agreement. The appraisers will then select a competent, disinterested umpire and will submit only their differences to the umpire.

(2) If the appraisers are unable to agree upon an umpire within 15 days, then we agree to jointly request a judge of a district court in the judicial district where the property described in **COVERAGE A – DWELLING** is located to select an umpire. A judge of a district court does not include a commissioner or a judge of a county court at law, a justice court, a municipal court, a probate court, or a commissioner's court.

(3) In order for a person to be qualified to act as an umpire under this Appraisal clause, such person must be one of the following and be licensed or certified as required by the applicable jurisdiction:

- a. an engineer or architect with experience and training in building construction, repair, estimating, or investigation of the type of property damage in dispute; or
- b. an adjuster with experience and training in estimating the type of property damage in dispute.

(4) In addition, in order for a person to be qualified to act as an umpire under this Appraisal clause, such person must meet the same conditions as required for an appraiser in subsection B. (2).

(5) Upon the appointment of an umpire by the appraisers or a district judge, the umpire shall, within 10 business days, disclose in writing to you and to us the information required in subsection B(3) and provide a list of the claims in the last two years where the umpire has served in any capacity in an

appraisal that involved you or us, or involved any retained counsel for you or us.

(6) Within 20 days of a qualified umpire being appointed, each of the appraisers shall then submit to the umpire, and to both you and us, their appraisal estimates. Their appraisal estimates shall contain all the information required in subsection D. above and shall identify each specific matter upon which they disagree and explain in detail why they disagree. Both appraisers and the umpire shall then together meet and confer. The umpire shall then prepare an appraisal award. A written appraisal award in conformance with and setting forth all the information required in subsection D. above agreed upon and signed by the umpire and either one or both of the two appraisers will determine the **incurred property damage** and the **actual cash value** of the **incurred property damage** of your **claimed loss**.

(7) If a vacancy should occur regarding the umpire, the vacancy shall be filled using the same process stated above by which the vacating umpire was appointed. Any appointed umpire is subject to (3), (4) and (5) of this subsection E.

F. Each party will pay the costs and fees of the appraiser it chooses. The costs and fees of the umpire and all other expenses of the appraisal will be shared and paid equally by you and us.

G. The appraisal shall not:

(1) determine whether your **claimed loss** or any **incurred property damage**, or any part thereof, is covered by this policy,

(2) determine the cause or causes of the **claimed loss** or any **incurred property damage**,

(3) interpret this policy,

(4) award or determine any interest or penalties,

(5) award any amount for matching property which has not sustained incurred property damage with property that has sustained **incurred property damage**,

(6) determine loss settlement under a loss settlement provision of this policy; or

H. Any demand for appraisal must be made within the contractual suit limitations period stated in this policy. After that time neither you nor we may demand an appraisal.

I. If you or we timely demand an appraisal, then upon request made by either you or us for abatement of any suit involving the **claimed loss**, the suit shall be abated until after an appraisal award is made.

J. Even after an appraisal award, we retain the right to deny any **claimed loss** or **incurred property damage**, or any part thereof.

For Form **TDP-1, CONDITIONS**, Paragraph 12. **Suit Against Us** is deleted in its entirety and replaced with the following:

12. Filing a Claim And Suit Against Us.

A. Filing A Claim. You may file a claim with us not later than one year after the date of the loss that is the subject of the claim. However, if you can show good cause for not filing the claim within the above timeframe, you may file the claim after the first anniversary date of the loss.

B. Suit Against Us. Appraisal is a condition precedent to suit against us only if you and we fail to agree on the **actual cash value** or **incurred property damage** of your **claimed loss**. **Suit Against Us** provisions of the policy apply as modified by this endorsement. Before you file or proceed with suit or action against us under this policy concerning the **actual cash value** or **incurred property damage** of your **claimed loss**:

(1) you must provide written notice of your dispute to us and make a written demand for appraisal consistent with the terms for appraisal under the policy, and

(2) The appraisal process must be completed and a determination made as described in

CONDITIONS, Paragraph 8. Appraisal (as modified by this endorsement).

This condition precedent cannot be waived absent a written agreement signed by you and us specifically and unequivocally waiving this condition.

No action can be brought against us unless there has been full compliance with all the terms of this policy and the action is started by the earliest of the following dates:

a. two years and one day from the date we accept or reject the claim; or

b. three years from the date of the loss that is the subject of the claim.

The policy's **Suit Against Us** limitation provisions shall be suspended from the date of the first written demand for appraisal until the date of the appraisal award.