

declarations

HIGHLIGHTS

Earthquake Preparedness p.14 | Data Breach p.17 | Big Moves p.20



HOME INSURANCE

A household name

If your clients have housemates, you may need to find out how closely their living activities are integrated

BY GREG MECKBACH, *Associate Editor*

For clients who are not living alone, do you know who is living with them and who is in their household?

In insurance policy wording, “the word household may have legal significance,” says Kenny Nicholls, CEO of Western Financial Group.

One reason for this is that the term “household” often appears in the section on who is insured, and it may expand insurance coverage to people other than the named insured, cautions Robert Smith, an insurance defence lawyer with Dolden Wallace Folick LLP.

“It is our responsibility as brokers to know and understand insurance terminology,” adds Bart Robinson, director of market relations at Western Financial, which has 179 brokerage offices. “The term ‘household’ could mean different things to different people.”

Living in the same home is not always the same thing as living in the same household, notes Ari Krajdjen, a partner with Kawaguchi Krajdjen LLP, whose specialties include coverage disputes.

For example, one set of adult siblings living in the same residence might be

considered a household because of the specifics of their arrangement. But another set of adult siblings also living in the same residence would not because the circumstances are different.

Court battles can arise over what a “household” means in an insurance policy. A case in point is *Ferro v. Weiner*, a Court of Appeal for Ontario ruling released in January. In *Ferro*, a person drowned in 2010 at a vacation property west of Barrie, Ont. The woman who owned the property was living in a nursing home and has since died. The

CLIMATE CHANGE EFFECTS | APR. 3

Coastal flooding, more intense rainfalls and more extreme hot temperatures are predicted as a result of climate change, according to a federal government report.



HOME FLOOD VULNERABILITY | APR. 2

One in five Canadian households are in some way exposed to overland flooding, and that figure is increasing, the Insurance Bureau of Canada reported at the *Swiss Re Canadian Annual Outlook Breakfast*.



canadianunderwriter.ca | May 2019 13

DECLARATIONS

estate of the homeowner was sued by the family of the drowning victim. The home was insured by Intact.

One defendant in the lawsuit was the son of the cottage owner, who was using the property for a vacation. His regular home was insured by TD.

Intact and TD did not agree on whether the adult son was a member of his mother's household. Originally, the Ontario Superior Court of Justice ruled the son was in the mother's household and therefore was a named insured under the Intact policy (meaning Intact had to share the son's legal defence costs with TD). The ruling was overturned by the Court for Appeal of Ontario.

The fact that the son used his mother's cottage whenever he wished is one reason why the lower court found he was part of the household. But the appeal court disagreed, noting that before the mother moved into a nursing home, she lived with a son other than the one who was sued as a result of him using the cottage.

"Given that [household is] a pretty open-ended, often-undefined term, I think that the broker's investigation can be very important," Smith observes. "First off, they should identify who is living in the household. If there are renters, I think that they should dig a little bit deeper. See if they are sharing services. Identify from the get-go whether you have people living in the house who either could or could not be considered living in the same household."

It can be particularly ambiguous when adult children are living with their parents, Smith says.

"In any given year, everybody goes through various changes," says Western Financial's Nicholls. "It could be all of a sudden you have new arrivals to the household. Kids are going back to school or going to university. A lot of people might think, 'I still have the same house I have owned for 20 years and ev-

SURVEY SAYS...

EARTHQUAKE PREPAREDNESS

Is Canada's P&C insurance industry prepared to respond quickly and effectively to an earthquake in either Eastern or Western Canada? We put the question to 261 insurance professionals, including brokers, insurers, claims personnel and risk managers. Here's what you told us:

Western Canadian Earthquake		Eastern Canadian Earthquake
0%	COMPLETELY PREPARED	0%
11%	PREPARED	8%
40%	NOT SURE	36%
40%	NOT WELL PREPARED	36%
9%	NOT AT ALL PREPARED	20%*

*Of note is that the number who answered "Not at All Prepared" jumped by 11% when respondents were asked about industry preparedness for an Eastern Canadian earthquake.

everything is fine.' But lots of things could have changed that customers don't necessarily think about. It's our job to get this information through discussions and various questions and building that relationship with the customers."

When disputes end up in court, judges often look to *Wawanesa Mutual Insurance Co. v. Bell*, released in 1957 by the Supreme Court of Canada. "The 'household,' in the broad sense of a family, is a collective group living in a home, acknowledging the authority of a head, the members of which, with few exceptions, are bound by marriage, blood, affinity or other bond, between whom there is an intimacy and by whom there is felt a concern with and an interest in the life of all that gives it a unity," Supreme Court of Canada Justice Ian Rand wrote in *Wawanesa*. That case resulted from an

auto bodily injury lawsuit in which the defendant drove the car of his brother, with whom he was living temporarily.

In disputes over whether a person is part of a household, courts will ask whether there is some permanence to an arrangement. "The intimacy and unity requirement is likely more difficult for an underwriter to pick up on through standard questioning," Krajden says.

If the owner's son is staying in the house while the parents are away on vacation, this would probably not be seen as permanent and therefore the son would not be in the same household, Krajden observes. But, "if there is a son or daughter who is away at university, but they come home for every single holiday and every summer, and they live as a family unit, then a court would likely find they are part of the same household." cu

HUB ACQUIRES ALBERTA BROKERAGE | APR. 2

Hub International announced the acquisition of Del Fisher Insurance, a Calgary-based independent brokerage doing personal and commercial lines business.



MARSH-JLT DEAL OFFICIAL | APR. 1

Marsh & McLennan Companies Inc. finalized its \$5.6-million acquisition of London, England-based Jardine Lloyd Thompson Group plc. The deal was first announced last September.

