

**OHIO MINE SUBSIDENCE INSURANCE
UNDERWRITING ASSOCIATION**
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BULLETIN # 21

December 26, 2012

To: All Members of the Ohio Mine Subsidence Insurance Underwriting Association
From: Ohio Mine Subsidence Insurance Underwriting Association (OMSIUA)
Subject: Revision to Ohio Mine Subsidence Insurance Coverage Form

The Mine Subsidence Insurance Governing Board recently approved the addition of verbiage to the OMSIUA Coverage Form (OH-MSI-2) that provides further detail on the Board's rights of assignment, subrogation, and reimbursement.

The effective date for the new version of Coverage Form OH-MSI-2 will be **9/1/13**. This form change has been filed with the Ohio Department of Insurance and a redline copy is being included with this bulletin so it is clear where the new verbiage has been inserted. **This form has been filed by OMSIUA on behalf of all Association members so no further filing is required.**

OMSIUA understands that the logistics in getting the new form integrated into company systems and educating agents will take some time. To better assist the member companies in handling the change, below are several steps that each member should do as soon as practical.

1. **Inform your agency force** of the form revision so they are prepared to explain to your insureds and prospective insureds,
2. **Modify the Coverage Form (OH-MSI-2) to include the new verbiage and change edition date from 7/2009 to 9/2013** on any new or renewal declarations pages issued with an effective date on or after 9/1/13,

3. **Assure the new Coverage Form (OH-MSI-2 (9/2013))** is being attached to all new and renewal policies issued where coverage is applicable,
4. **Inform OMSIUA** that the new form has been successfully implemented.

This Bulletin and enclosures will be made available on the web site www.ohiominesubsidence.com. Effective 9/1/13, an updated Procedural Guide will also be available by going to the *Member Companies* tab on the web site.

Please review the enclosed materials, make any necessary changes, and advise OMSIUA of successful implementation via communication to omsi@ohiofairplan.com. If needed, member companies can get a copy of the updated form in the Word format by contacting this office. Should you have questions concerning this change, please contact us at 614-839-6446 extensions #156, #116, or #102.

OHIO MINE SUBSIDENCE INSURANCE UNDERWRITING ASSOCIATION

MINE SUBSIDENCE INSURANCE COVERAGE FORM

In consideration of an additional premium the structure at the described location per the insurance policy to which this mine subsidence insurance coverage form attaches is insured against direct loss on an occurrence basis caused by mine subsidence as herein defined and for the limit(s) of liability as stated below. This mine subsidence insurance is provided by the Mine Subsidence Insurance Fund. This endorsement creates no liability on the part of the insurance company issuing the policy to which this endorsement attaches or the Ohio Mine Subsidence Insurance Underwriting Association or its members, or the Ohio FAIR Plan Underwriting Association or the Ohio Guaranty Association or its members. Also, no liability is created on the part of the state of Ohio beyond the premiums paid into the Fund.

DEFINITIONS

1. “Mine subsidence” means lateral or vertical movement including the collapse, which results from such movement as a result of man made underground coal mines, clay mines, limestone mines and salt mines. Mine subsidence does not include loss caused by earthquake, landslide, volcanic eruption, or collapse of strip mines, any surface mines, storm and sewer drains, or rapid transit tunnels.
2. An “occurrence” is a single subsidence event or several subsidence events which are continuous.
3. A “structure” means a 1-4 family dwelling building fixed to realty but does not include the land, trees, plants, crops, sidewalks, driveways, outbuildings, detached garages, industrial, or commercial buildings.
4. “Private garages” are other structures at the described location, set apart from the dwelling structure by clear space. This includes structures connected to the dwelling structure by only a fence, utility line, or similar connection. However, these other structures may not be used in whole or in part for commercial, manufacturing, or farming purposes nor be rented by or held for rental to any person not a tenant of the dwelling structure.
5. “Sidewalks and driveways” are those that are usual to a 1-4 family dwelling structure and that are used primarily by the residents of the structure at the described location.
6. “Additional living expense” is any necessary increase in living expenses due to damage to the structure at the described location by mine subsidence which causes the structure to be unfit for habitation.
7. “Fair rental value” is the rental income lost net of non-continuing expenses if a part of the structure is damaged by mine subsidence

and that damage causes the rental structure or the rented part of the structure to be unfit for habitation.

PROPERTY COVERED

This coverage applies to the structure at the described location including:

- (1) The cost of excavation or grading.
- (2) Foundations of buildings, boilers or engines which are below the under surface of the lowest basement floor or where there is no basement below the surface of the ground.
- (3) Underground pilings, piers, pipes, flues and drains and/or pilings, which are below the watermark.

This coverage may apply to private garages within the special limits of liability of the following loss payment clause of this coverage form.

This coverage may apply to sidewalks and driveways but only if there is subsidence damage by the same occurrence to the insured structure. See the special limits of liability within the following loss payment clause of this coverage form.

LOSS PAYMENT

The limit of liability for loss to the structure at the described location under this coverage form shall not exceed the smallest of the following amounts:

- (1) The limit of liability on your dwelling in the insurance policy to which this mine subsidence insurance coverage form attaches or \$300,000, whichever is less;
- (2) If more than one coverage for mine subsidence insures any given structure, the limit of liability is the largest limit of coverage on a single insurance policy to which this mine subsidence insurance coverage form attaches or one single limit of \$300,000, whichever is less;
- (3) The actual cash value of the loss if repairs will not be made to the property damaged by mine subsidence. Actual cash value is defined as replacement cost less depreciation or betterment;
- (4) The amount actually and necessarily expended in repairing or replacing the insured structure with modern building materials only if that structure's repair or replacement is made intending that the structure have the same occupancy and use;
- (5) The amount available in the Mine Subsidence Insurance Fund administered by the Governing Board of the Mine Subsidence Insurance Underwriting Association.

Special limits of liability apply to the coverage for driveways, sidewalks, and private garages as follows:

- (1) The total limit of liability for all sidewalks and driveways is an amount of up to 10% of the mine subsidence coverage limit of liability for the insured structure. In no case will this limit of liability exceed the amount actually and necessarily expended by the insured in repairing or replacing any sidewalks and driveways for which the insured has the responsibility for repair or replacement.
- (2) The total limit of liability for all private garages is an amount of up to 10% of the mine subsidence coverage limit of liability for the insured structure. In no case will this limit of liability exceed the amount actually and necessarily expended in repairing or replacing the private garages with modern building material and payment will be made only if the repair is made intending that the building(s) be private garage(s) after repaired or replaced.

An amount of coverage of up to \$5,000 will be paid for additional living expense and/or fair rental value if the insured structure is not fit to live in due to a mine subsidence occurrence. Payment will be for the shortest time required for repair of the mine subsidence damage.

The total of all amounts of coverage compensable to an insured will not exceed \$300,000.

PERILS NOT INSURED AGAINST

The mine subsidence coverage does not insure against loss caused by earthquake, landslide, volcanic eruption, or collapse of strip mines, any surface mines, storm and sewer drains or rapid transit tunnels, or other earth movement.

DEDUCTIBLE

The following deductible provision applies per occurrence:

2% of the coverage available with a minimum deductible of \$250 and a maximum deductible of \$500.

OTHER PROVISIONS

- (1) This coverage is provided by provisions of Ohio Revised Code 3929.50 to 3929.53 and 3929.55 to 3929.56 and 3929.58 to 3929.61 and any subsequent amendments thereof enacted by the Ohio legislature. The amounts payable under this coverage are limited to the balance in the Mine Subsidence Insurance Fund from which all claims and other expenses of administering this Fund are paid.
- (2) The coverage afforded herein shall not be subject to provisions 3929.25 commonly known as the valued policy law.
- (3) All claims authorized for payment shall be paid directly by the Mine Subsidence Insurance Fund.

- (4) This entire coverage 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.
- (5) There is no coverage for any loss occurring:
 - (a) While the hazard is increased by any means within the control or knowledge of the insured; or
 - (b) While a described building, whether intended for occupancy by owner or tenant, is vacant, or more than 50% unoccupied beyond a period of sixty consecutive days.
- (6) This coverage shall terminate when the insurance policy to which this mine subsidence insurance coverage form attaches is cancelled or non-renewed. The insured shall receive a pro-rata refund of the unearned premium provided that if the unearned premium to be refunded is less than \$3.00, it will be refunded only if the first named insured specifically requests in writing that it be returned.
- (7) If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, and 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 the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association 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 payoff the mortgage debt and require an assignment thereof and the mortgage.
- (8) The insured shall give immediate written notice of any loss to the Fund through his insurance company, protect the property from further damage, put it in the best possible order, furnish an estimate of the damaged property showing in detail, the amount of loss claimed; and within sixty (60) days after the loss, unless such time is extended in writing, by the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association, the insured shall render a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, 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, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any structure 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, if destroyed or damaged, the insured, as often as may be reasonably required, shall exhibit to any

person designated by the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association all that remains of any property herein described, and submit to examinations under oath by any person named by the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association and subscribe the same; and, as often as may be reasonably required, shall produce for examination of 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 the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association or its representative, and shall permit extracts and copies thereof to be made.

- (9) In case the insured and the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association shall fail to agree as to the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately the loss to each item; and failing to agree; shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association shall determine the amount of loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.
- (10) There can be no abandonment to the Ohio Mine Subsidence Insurance Fund Association of any property.
- (11) No suit or action on this coverage for the recovery of any claims shall be sustainable in any court of law or equity unless all the requirements of this coverage shall be complied with, and unless commenced within twelve months next after inception of the loss.
- (12) As part of consideration given for the coverage provided by this endorsement, the insured agrees that the Governing Board of the Ohio Mine Subsidence Insurance Underwriting Association will receive full subrogation rights to the extent of any payment made to the insured. The Board's right shall be against any party who might be legally liable for the loss as determined by the Board. These subrogation rights shall be considered both contractual and equitable and shall be self-executing at the time any payment is made by the Board through the Ohio Mine Subsidence Insurance Fund, without the necessity of any written assignment. **The Board's rights of assignment, subrogation and reimbursement are primary and shall take priority over any rights held by the insured, the insured's attorney, representative or any other party to any recovery. The insured agrees that the insured will**

reimburse the Board for any amounts which are later recovered from any third party, third party's insurer, or any other person, by way of settlement or in the satisfaction of any judgment of or upon any claims arising from a loss paid under this mine subsidence endorsement, irrespective of whether any such settlement or judgment may or may not provide reimbursement to the insured for all of the insured's injuries or other damages. The insured covenants to refrain from damaging, destroying or releasing the Board's right of recovery against any third party. Any breach of the conditions of this paragraph will result in the forfeiture of all rights to recover any benefits under this mine subsidence endorsement.

- (13) Nothing in this endorsement supplements, expands, increases, affects, or is affected by the coverage grants contained in the main policy to which this endorsement is affixed. The insured understands that the coverage given in this endorsement stands alone and is wholly separate and distinct from the main policy. This endorsement, therefore, shall not be construed to expand or enlarge the obligations of the company issuing the main policy for any of the coverages contained in the main policy. The language contained in the mine subsidence endorsement shall not be included by references in the body of the main policy to "other coverages" or other endorsements unless the mine subsidence endorsement is specifically named in the reference.

OH-MSI-2 (~~7/2009~~ 9/2013)