

Oregon Division of Financial Regulation Bulletin No. DFR 2020-

TO: All Property and Casualty Insurers

DATE:

RE: Guidance on Intentional Acts Exclusions

Purpose

The purpose of this bulletin is to provide guidance on intentional acts exclusions.

Authority

- ORS 742.005

Background

Exclusions for intentional acts are common among various types of property and casualty insurance policies. These types of exclusions preclude recovery for losses purposefully caused by the insured and have long been approved by the Division of Financial Regulation (DFR). Recently, DFR has received numerous policy filings applying new, expansive language to intentional acts of exclusions.

For example, some recently filed exclusions have provided that “coverage does not apply to bodily injury or property damage, which is expected or intended by *an* insured, *even if the resulting bodily injury or property damage is of a different kind, quality or degree than initially expected or intended; or is sustained by a different person, entity or property than initially expected or intended.*” (emphasis added)

Discussion

Recently filed exclusionary language expands the scope of traditional intentional acts exclusions in two ways. First, exclusionary language that apply to losses beyond what the insured intended encompasses not only intentional acts, but also sweeps in negligent acts. Second, exclusions for intentional acts of “an insured” limit the ability of an innocent co-insured to recover for a loss.

The scope of intentional acts exclusions is limited under Oregon law. The Oregon Supreme Court has found that for an intentional acts exclusion to apply, it is insufficient for an insured to merely intend to commit the act, the insured must also have intended the specific injury or harm that resulted from the act.¹

¹ See *Ledford v. Gutoski*, 319 Or. 397, 401-02, 877 P.2d 80 (1994).

When policy language is labeled as an “intentional acts exclusion,” but also excludes negligent behavior, it misleads the insurance buying public into believing that there is broader coverage than the policy actually provides and violates ORS 742.005(2), among other portions of the Insurance Code.

Traditionally, intentional acts exclusions applied to acts committed by “the insured.” Recent filings have expanded the scope of these exclusions to acts committed by “an insured” or “any insured.” The new language limits the ability of an innocent policyholder from recovering for a loss caused by the intentional act of a co-insured. For example, if a homeowner is the named insured on a policy and is the victim of an arson committed by a resident family member, the new exclusionary language would prevent the homeowner from recovering. Policy language that prevents innocent co-insureds from recovering for losses due to crimes committed against them would be an unequitable result and prejudicial to the policyholder.

Guidance

Intentional acts exclusions may not encompass losses due to negligence. Exclusionary language that apply to losses of a different kind, quality or degree than initially expected or intended; or is sustained by a different person, entity or property than initially expected or intended will be disapproved.

Policy language must apply intentional acts exclusions to “the insured.” Intentional acts exclusions applied to “an insured” or “any insured” will be disapproved.

This bulletin is effective upon issuance.

Andrew Stolfi
Administrator/Insurance Commissioner
Division of Financial Regulation

Date