

# The Trust and Personal Insurance

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*Last week Fred and Francene attended an estate-planning seminar conducted by a local law firm. They are now in the process of setting up a trust and transferring all their property into it. What changes should be made to their personal insurance?*

Today, families are learning that they can use personal trusts to avoid probate and pass property to their heirs. Probate takes time, can cost up to 5% of the value of the estate, and means the records are open to the public. A trust provides assurance that probate will be avoided and a person can conserve the estate, avoid delays, and maintain privacy. Today, trusts are becoming increasingly popular. As a result, agents are getting requests to make adjustments in personal lines policies because property has been transferred to a trust.

## **UNDERWRITING ISSUES**

When an individual transfers the title of property to a trust, the legal ownership of that property has changed. However, most insurance professionals would agree, there has been no significant increase in underwriting hazards. Because of this, the property should still be eligible for coverage under both the auto and the homeowners policy. Insurance Services Office (ISO) has revised eligibility standards so this is possible. But, in whose name should the policy be written? There are three obvious options.

### **LISTING THE TRUST AS THE ONLY NAMED INSURED**

Traditionally, underwriters have stated that the personal lines policy should be written in the name of the person who has title to the property. If we were to follow this dictate, we would list the trust as the named insured on both the auto and homeowners policies. However, doing this may not be the best idea from a liability perspective.

The Personal Auto Policy provides broad drive other car coverage to the named insured and resident relatives of the named insured. If you list the trust as the only named insured, no one will get this coverage. The same issue is of concern with the Homeowners policy because it provides personal liability coverage only for the named insured and resident relatives. If the trust is the only named insured, the occupants of the home will not have any drive other car or personal liability coverage.

### **LISTING THE TRUST AND THE OCCUPANTS AS NAMED INSURED**

If you write the policy in both the name of the trust and the name of the individuals, you have solved the problem of broad personal coverage for the occupants. However, you are providing very broad coverage for the trust. Ideally, you would want to restrict the coverage for the trust to the premises exposures. This cannot be done if the trust is the named insured.

## **LISTING THE TRUST AS AN ADDITIONAL INSURED**

The solution would be to continue to write the policy in the name of the individuals and list the trust as an additional insured. In this case, the individuals still get the broad liability coverage everyone needs. Also, the liability provided for the trust is limited to the premises and vehicles covered by the policies.

The only real concern is other premises. If the Homeowners policy is also covering the liability exposure of vacant land or a premises rented to others, the trust would not be covered for liability in relation to those premises. This is because the additional insured endorsement only provides liability for the residence premises. If these exposures exist, the agent would have to work with the underwriter to create coverage.

Some would question the property coverage provided by these two policies. If the contract is written in the name of the individual and the property is owned by the trust, would the policy cover the property loss? This should not be a significant problem.

The auto policy provides physical damage coverage for any vehicle listed on the declarations page of the policy. Although ownership is a concern from an eligibility standpoint, it is not a coverage concern if the vehicle is actually listed on the declarations page of the policy.

With the Homeowners policy, the additional insured endorsement extends coverage for buildings. What about personal property coverage? The Homeowners policy states ‘We cover personal property owned or used by an ‘insured’.’ This is broad enough to cover the personal property owned by the trust but used by the individuals who are the named insureds. And, the insurable interest clause does not appear to be a problem because the individuals retain full use interest in the property. We should be able to pay a property claim even though the policy is written in the name of the individual and the property is titled in the name of the trust.

## **THE BOTTOM LINE**

It appears that the best solution is to leave the personal lines policies written in the name of the individuals and add the trust on as an additional insured. The interests of both the

trust and the individuals are covered. In addition you have not taken away needed liability coverage from the individuals or extended overly broad coverage to the trust.

Technically, it is not necessary to add the trust as an additional insured to the auto policy. This is because the trust is already covered under the policy; the definition of “insured,” in the liability section of the policy, is broad enough to provide the coverage. The third part of the definition of ‘insured’ extends vicarious liability. It states:

“For ‘your covered auto’, any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this part.”

The Personal Auto Policy provides vicarious liability for the trust, even if the trust is not named in the policy. It will cover if the trust is named in a suit because of an auto accident involving a vehicle owned by the trust.