

## *Chimney Fires - Causes, Effects & Evaluation*

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### 5.2 COVERAGE UNDER FIRE PERIL

Since the homeowners program was formed around the core of the old Standard Fire policy, it is not surprising that fire is the primary and least ambiguous of the perils covered by both HO-2 and HO-3 policies. "Fire or Lightning" is the first peril mentioned in the HO-2 list of those covered, and no form or type of fire is excluded by HO-3 policies. There is no qualifying language attached to the fire peril. Property damaged by fire appears to be simply covered without exception.

However, the concept of "fire" as a physical phenomenon is not necessarily the same as its meaning as an insurable peril, so some discussion of its practical application is warranted. In Chapter 2, a definition of fire was offered. Fire essentially means rapid oxidation accompanied by the generation of heat and light in the form of flame or glow. For some insurance purposes, a third qualification needs to be added: the fire must be hostile in nature.

Fire is used for a wide variety of civilized purposes, and when it is simply doing its normal proper job, it is not considered a hostile element. A fire that is accidental in nature or is not located in a place that is normally expected to contain fire is no longer a civilized force and has become the subject of all policies that insure against fire. The same principle applies to the products of combustion- heat and smoke. When given off by a "friendly" fire, these products are considered the inevitable result of the proper use of fire, but damage caused by heat or smoke from a hostile fire is covered by the fire peril. (However, smoke damage from most sources is covered separately under the smoke peril.)

The easiest way to define "hostile" fire is by fixing the essential characteristics of a fire that is not hostile. A "friendly fire" is one that has been intentionally kindled and has remained confined to the place where it was intended to be. Both of these qualifications must be met in order for a fire to be considered friendly. If either ceases to be true, the fire has become hostile. Even a fire started initially

for a friendly purpose is hostile if it spreads to a place not intended to contain fire.

Despite the importance of the location of the fire, the courts are increasingly willing to construe an excessive fire as hostile even if the combustion process never actually leaves the place where it was kindled. Numerous cases involving the malfunction of automatic controls, and thus allowing a heating device to overheat or not shut off, have been decided in favor of a more liberal interpretation of hostile fire. Under this extension, even objects that are intended to be in contact with a normal fire or the heat given off by that fire are covered by the fire peril if they become damaged by an unusually hot or otherwise abnormal fire. In other words, the location of the fire Application of Insurance to Chimney Fire cannot be considered apart from its nature. If the fire contains the essential element of accident in its kindling, its spread, or its intensity, it is the proper subject of insurance.

It should also be noted that if a fire does escape its intended confines its degree or intensity becomes irrelevant. A fire cannot be a little hostile or merely grumpy. It does not have to reach a particular temperature in order to be considered a hostile force. Any damage resulting from an escaped fire is fire damage, whether the damage is widespread or merely "cosmetic". This is true even if the damaged object can theoretically withstand some degree of fire- if it is not intended to contact fire, any fire which reaches it is hostile. The test of fire insurance coverage is the nature of the peril as an accidental unintentional occurrence, not its severity or theoretical potential for damage.

By the same token, insurable damage from fire is not limited to some specific set of phenomena. While fire damage is most easily recognized as scorched or "burned up" combustible material, fire can also cause warping, cracking, spalling, blistering, melting, boiling rupture, etc., even to objects which are not themselves combustible. The damaged objects need not have come in contact with actual combustion- if the fire meets the definition of hostile, its entire range of effects are eligible for coverage as fire damage. In addition, any damage caused by efforts to extinguish a fire is covered under the fire peril. Neither the degree of damage nor its theoretical effect on the serviceability of the property are relevant- if property is physically damaged, a loss has been suffered.

While the distinction between hostile and friendly fire is important for named perils policies such as the HO-2, the concept has no application to insurance written on an open perils basis, such as HO-3. As pointed out by FC&S Bulletins, "since these policies are not restricted to damage by 'fire', it is obvious that- unless some specific exclusion reaches a loss- it makes no difference whether a fire that damages insured property is 'friendly' or 'hostile". However, it is still

true that the fire must contain some element of accident. As discussed in the previous section, open perils policies contain an exclusion for "wear and tear, marring, deterioration". Normal continual use of fire over time may result in the gradual degradation of some materials which is not covered by any policy. If some specific fire occurs which can be reasonably linked with the development of damage, it is not necessary to determine the hostility of the fire. The sudden and accidental nature of the damage from a no excluded source is sufficient to bring it within the realm of open peril~ coverage.

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