



## Understanding—and Avoiding—the Vacancy Clause

When property is vacant, it is subject to a greater chance of vandalism, undiscovered damage or increased severity of loss. Therefore, insurance carriers rely upon vacancy clauses in their policies to avoid coverage for unintended risk due to damage to property that is vacant or has become vacant after the issuance of the policy. It is important to be mindful of vacancy provisions in policies and be aware of situations where these might affect coverage with your customers.

The term “vacancy,” when referring to a home, is defined by courts and in individual insurance policies based upon the amount of furniture and personal property that is left in the home, or on the length of time it has been unoccupied. Vacant homes, which lack people and furnishings, are not routinely checked upon or maintained with the same level of care as occupied homes. Therefore, if pipes have broken or other damage has occurred, there may be a significant amount of time that lapses before the damage is discovered, leading to increased repair costs.

The downturn in the real estate market has left homes for sale and unsold for extended periods. When an owner moves from their home while it is on the market and takes their personal property with them, the time requirement to determine vacancy will begin to run. If rental properties remain unoccupied for an extended period, coverage may also be affected.


Commercial property with empty units can also lead to the application of the vacancy exclusion. According to most commercial property policy forms, if the insured is a building owner, the building is “vacant” unless at least 31% of its total square footage is either rented and used to conduct customary operations, or is used by the building owner to conduct customary operations.

If a loss occurs and the structure is deemed to meet the definition of “vacant,” certain types of coverage are completely eliminated during the vacancy while others are reduced. The gap in coverage experienced when a loss occurs to a vacant structure can stretch to a total loss. Most policies eliminate coverage if the property loss to the vacant building is caused by vandalism, sprinkler leakage, building glass breakage, water damage, theft or attempted theft. If something else causes the damage to the vacant building, such as a fire or windstorm, most policies automatically reduce the loss payment by 15%. This reduction is in addition to the policy deductible.

Given the current economic environment and the current price of some metals, thefts of air conditioning units and copper piping are becoming more frequent, and vacant buildings and houses are common targets. These types of losses are perfect examples of the kind of damage that can be the cause of uncovered loss. Additionally, vandalism can expose a homeowner to uncovered losses, ranging from small damage amounts to a total loss. For example, if a vacant house has windows broken by thrown rocks or burns due to vandalism, it may not be covered.

Vacancy permission endorsements or the purchase of a policy which provides coverage for vacant property are two options available to owners of vacant property to obtain coverage. These endorsements or policies themselves often offer reduced coverage including actual cash value or limited perils coverage. Vacant home coverage is often available for purchase on a short-term basis.

Failure to properly handle these types of coverages can lead to errors and omissions claims against the agent. An agent should be careful when completing questions on an application that ask about occupancy, especially if the agent has reason to believe that the statement might not be entirely accurate. If the agent is aware of a vacancy situation, a best practice would be to advise the customer of a potential need for additional coverage and document any rejection of the offered coverage. Finally, if an agent becomes aware of a vacancy on one of their customer's properties, even if that comes about in a social setting, it would be a best practice to offer a vacancy endorsement.

While errors and omissions claims relating to vacancy issues have been around for a long time, they are becoming more prevalent and can be more expensive. Awareness of the tangent issues can help an agent avoid this exposure. 

## Differentiating Between Unoccupied and Vacant

The distinction between unoccupied and vacant is important. Unoccupied can include a routine, temporary lack of occupancy, such as a short-term vacation away from the home. During this time period, although the house is unoccupied, it is not vacant. However, if the definition of “vacancy” is tied to the length of time the house has been unoccupied, it could mean that an extended period away (such as a lengthy vacation or stay at a seasonal OR vacation house) could leave the primary residence “vacant.”

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**Nicole Yarbrough** is vice president of claims and liabilities with Swiss Re Corporate Solutions and manages a team that handles claims against insurance agents and attorneys.