

# TECH TALK

## Ice Dam and Roof Collapse ... Covered or Not ... For Building and Contents ... Business and Personal Policies

By **Irene Morrill**, CPCU, CIC, ARM, CRM, CRIS, LIA, CPIW  
Vice President of Technical Affairs

February 2011

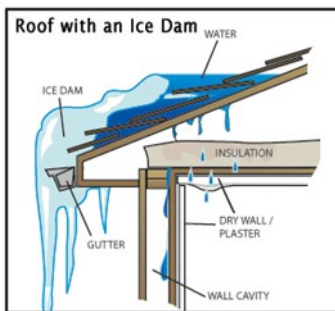
First ... while I have your attention ... Spring IS coming ... yes ... chronologically ... it MUST come! Just think ... if we get more snow ... I shudder to think ... and then we get rain ... oh oh ... there might be major flooding ... so ... think Preferred Risk Flood policies ... and start selling them NOW ... because if it is NOT a bank requirement or a map change (which will be happening to more counties in MA this year) there is a 30 day waiting period ... so ... MARKET THE COVERAGE TODAY!!!!

Now ...back to the topic at hand. First we'll look at personal lines and then commercial lines.

### HO and DP policies - ice dam and roof collapse

*Ice dam losses - building - personal lines*

Ice dam is a "special form" peril. We know with "special form" the loss is covered if it is NOT excluded.



Like the name suggests, an ice dam is a dam made of ice along the edge of the roof line, and as most dams do, an ice dam prevents melting snow from finding its way to the gutters and downspouts. Instead, the snow melting into water finds the dam of ice and refreezes forming even more ice. Sometimes the water backs up behind the dam and will leak into the house and cause damage to walls, ceilings, insulation, and other areas.

They occur when heavy snow buildup melts during the day and then refreezes when temperatures drop overnight.

After several days of melting-freezing cycles, it's common for the melted water and ice to work up under the shingles until water enters the attic and eventually does damage to the ceilings, wall and contents. In cases where the ice dam goes unnoticed for an extended period of time, it can do significant damage to the building and its contents.

If one has the ISO HO-3 or the ISO DP-3 then the ice dam loss to the building is covered because there IS no exclusion. The only two freezing exclusions found in the Special Form Policy would NOT apply. The following is from the HO-2000 but the HO-91 wording is essentially the same and so too the DP forms. The exclusion regarding freezing of plumbing ...CERTAINLY not what is going on here. The other freezing exclusion does mention freezing and thawing but does NOT apply to things happening on the roof or top of the structure! This other freezing exclusion applies to items in the ground, on the ground or in the water.

- (2) Freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a:
  - (a) Fence, pavement, patio or swimming pool;
  - (b) Footing, foundation, bulkhead, wall, or any other structure or device that supports all or part of a building, or other structure;
  - (c) Retaining wall or bulkhead that does not support all or part of a building or other structure; or
  - (d) Pier, wharf or dock;

Massachusetts Association of Insurance Agents  
91 Cedar Street—Milford, MA 01757

TECH HOTLINE 800-870-7091 · 800-972-9312 · 508-634-2900 · 508-634-2929 (Fax)

So ... as the HO-3 states ...if it ain't excluded ... you gotta pay!

Under 2.b. and c. above, any ensuing loss to property described in Coverages A and B not precluded by any other provision in this policy is covered.

But ...SPECIAL form in personal lines ...is ONLY special in regards to building. Open perils or "covered unless excluded" ONLY applies to the dwelling and other structures in the HO-3 or DP-3. The Special Form DP-3 and HO-3 covers all that is not excluded. The language below applies to the HO-2000 program but the HO-91 and DP forms and editions are similar:

## SECTION I – PERILS INSURED AGAINST

### A. Coverage A – Dwelling And Coverage B – Other Structures

1. We insure against risk of direct physical loss to property described in Coverages **A** and **B**.
2. We do not insure, however, for loss:
  - a. Excluded under Section I – Exclusions;
  - b. Involving collapse, except as provided in E.8. Collapse under Section I – Property Coverages; or
  - c. Caused by:

.....

### Ice Dam and Contents Losses - Personal Lines

If the ice dam situation is BAD enough - contents in storage or in closets can be damaged also. Oh oh ... The HO-3 and DP-3 only provide NAMED perils to contents. The following is from the ISO HO-2000 but the ISO HO-91 and DP forms language is similar. The peril must be listed in order for contents to be covered. Weight of ice and snow is NOT ice dam ... nice try though.

### B. Coverage C – Personal Property

We insure for direct physical loss to the property described in Coverage C caused by any of the following perils unless the loss is excluded in Section I – Exclusions.

#### 11. Weight Of Ice, Snow Or Sleet

This peril means weight of ice, snow or sleet which causes damage to property contained in a building.

Weight does NOT cause the loss in an ice dam situation. It is the thawing and freezing and the leakage of thawed snow into the home that causes the loss. Weight has nothing to do with it!

You need open perils for contents to cover ice dam losses. Under the HO-91 program you must add the HO 00 15 Special Personal Property Coverage Endorsement to the HO-3. Under the HO-2000 program you would sell the HO-5 Comprehensive policy. In both cases contents would then be covered unless excluded and the language is as stated above.

If one is a tenant and has an HO-4 under the HO-2000 program one can add the HO05 24 Special Personal Property endorsement for "open perils".

### What about the personal condo unit??

As I am writing this I just got an email regarding ice dam in a condo unit. WHO pays??? My response is ... what does the insurance section of the bylaws state? Whether the interior building loss must be paid under the Association Master policy or the individual unitowner HO-6 policy will depend on how the insurance section of the association bylaws read.

Is the association responsible for insuring the insides of the individual condo unit? If so, read on for how the commercial policy addresses ice dam or collapse.

If the association is NOT responsible for insuring the individual unit then for ice dam loss the unitowner needs the HO 17 32 Unitowner Coverage A Special Form endorsement for ice dam loss to building items. The unitowner needs HO 17 31 Unitowner Coverage C Special Form endorsement for ice dam loss to contents. Remember the ISO HO-6 - whether HO-91 or HO-2000 is a broad form NAMED peril policy ... ice dam is NOT a broad form peril.

If the master policy is SUPPOSED to cover the individual unitowner building loss BUT has taken a large deductible ... then go to the association website [www.massagent.com](http://www.massagent.com) and refer to an older Tech Talk on Personal Condo policy v. Master Policy deductible. That discussion is MUCH too long for THIS article!

### Ice Dam and Contents under the DP Policy ...

There is NO endorsement to make contents "open perils" under the ISO DP form. Contents will ALWAYS be named perils. But ... this should probably not be an issue ...since most DP forms are for tenant-occupied structures and don't involve contents owned by the building owner.

### Collapse and the ISO HO and DP policies

Collapse is an "additional coverage". It was taken out of "perildom" years ago and included in the additional or other coverage section of the policy so that the "all risk" nature of special form wouldn't require coverage when none was intended.

Whether the ISO HO-91 or HO-2000 or DP 2002 the language is similar and first requires that there be a "caving in" or falling down of some part, if not all, of the building. So we are talking about a building collapse not collapse of a piece of furniture. This additional or other coverage will ONLY be found in a special form or broad form peril policy. The basic form DP does NOT provide collapse.

HO-2000 reads (HO-91 and DP forms are similar)

#### 8. Collapse

##### a. With respect to this Additional Coverage:

- (1) Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its current intended purpose.

....

**Next we discuss the situations where this will be covered. It is essentially a "named peril" coverage within the special DP or HO policy.**

##### b. We insure for direct physical loss to covered property involving collapse of a building or any part of a building if the collapse was caused by one or more of the following:

- (1) The Perils Insured Against named under Coverage C;

There are other reasons why we will respond to a building or piece of a building collapse but since we are essentially concerned with winter and weight of ice and snow, please refer to the policy for the remaining language.

For the DP-3 or the HO-3 policy one of the contents named perils includes "weight of ice and snow" as discussed above so collapse due to too much snow IS covered! (I would insert the little dancing baby here but the communications department would kill me!) Editor's note: Oh, no we wouldn't ... and here it is!



So ... personal lines ... collapse of roofs is covered due to weight of ice and snow ... and good news the damage to the contents resulting from the collapsed roof would ALSO be covered because that IS a named peril under the DP-2 and 3 or HO-2 and 3

### **HO-2000 language ...but HO-91 and DP2 and 3 similar**

#### **11.Weight Of Ice, Snow Or Sleet**

This peril means weight of ice, snow or sleet which causes damage to property contained in a building.

Ice dam on the other hand ... requires "special form perils" so with a DP-3 and HO-3 we know that the building loss is covered but contents is not.

### **Collapse and the Personal Condo Owner ...**

If there is collapse damage to the unit, again ... is the association responsible for insuring the insides of the individual unit or is the unitowner. One must read the bylaws. If the Master policy is responsible, then read on for the commercial discussion. If the unitowner is responsible for damage to his/her unit ... then the unendorsed HO-6 is sufficient as collapse is automatically provided in the HO-6 form as it was in the HO-3 as discussed above.

Collapse is a "named peril" additional coverage as written by ISO in all HO forms.

### **Personal Lines Loss Payment ...**

Under the HO forms (HO-91 or HO-2000) contents is always on an ACV basis unless the HO 04 90 Personal Property Replacement Cost endorsement has been added. In my opinion this endorsement should be added to EVERY HO client ... tenant, unitowner or homeowner!

DP policies will only EVER provide ACV loss payment on contents. There is no replacement cost endorsement for contents. But, as discussed above ... in 99% of the cases the DP form is used on tenant-occupied structures and there are little to no contents in most rental units.

Building losses on either the DP or HO policy SHOULD be on a replacement cost basis if we have been diligent insurance agents. Regardless of the edition of the DP-2,3 or HO-3,5, these policies cover building losses on a replacement cost basis IF the building limit is at least 80% of the building replacement value. If the limit of insurance is LESS than 80% of the building replacement value then the "underinsurance penalty" will apply.

### **Personal Lines Loss of Use or Loss of Rental Income**

Coverage D Loss of use is "automatic" under the ISO HO forms. The % of coverage available depends on both the coverage form and coverage edition. The limit of insurance is in addition to the building or contents limit. Loss of rental income is also included in Coverage D. As long as the loss is covered ... there will be a certain amount of loss of use coverage available.

The DP 2 and 3 provide an automatic limit of insurance under the Other Coverages section for loss of use and/or loss of rental income. Like the HO form, if the peril is covered then the corresponding loss of use/loss of rental income will be covered. Under the DP-2 and 3 this Other Coverage is in addition to the Coverage A building limit.

### **Commercial Lines and Ice Dam and Collapse Losses**

#### *ice dam loss*

Whether we are talking personal lines or commercial lines ...ice dam is an "open perils" issue. SO you MUST have the Special Form Cause of Loss CP 10 30 for the CP forms or the BP 00 03 Businessowners policy. Broad form and basic form Cause of Loss forms do NOT respond to ice dam losses.

We know or SHOULD know that special form covers all that is not excluded or limited. The CP1030 Special form Cause of loss (2002 and 2007 editions) states the following in the limitation section and make note of the EXCEPTION to the limitation:

### C. Limitations

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.

....

- c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, **unless:**
  - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
  - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

The ISO Special Form BOP covers ice dam also with similar language The 2002 and 2006 ISO BOP BP 00 03 forms read like the CP Cause of Loss Special Form CP 10 30

### 4. Limitations

- a. We will not pay for loss of or damage to:
  - (5) The interior of any building or structure caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, **unless:**
    - (a) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
    - (b) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

Good news with commercial lines ...if you use the Special Form Cause of loss on the CP policy for ALL types of property whether building or contents then contents can be covered for ice dam loss, also. Under the BOP as long as you sell special form then both building and contents will be covered for ice dam.

### Collapse and the Commercial Policy

One must have either the CP 10 20 Cause of Loss Broad form or the CP 10 30 Cause of Loss Special Form attached to the CP property form in order to receive collapse coverage. Collapse is discussed BOTH under the "Exclusions" section of the Cause of Loss Form as well as the Additional Coverage Section. For collapse due to weight of ice and snow we will be reviewing the "exclusion" section. Refer to the additional coverage section for ADDITIONAL reasons that collapse losses can be paid.

### B. Exclusions

....

2. We will not pay for loss or damage caused by or resulting from any of the following:

.....

- k. **Collapse**, including any of the following conditions of property or any part of the property:
  - (1) An abrupt falling down or caving in;
  - (2) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
  - (3) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to (1) or (2) above.

But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion, k., does not apply:

- (a) To the extent that coverage is provided under the Additional Coverage – Collapse; or
- (b) To collapse caused by one or more of the following:
  - (i) The "specified causes of loss";
  - (ii) Breakage of building glass;
  - (iii) Weight of rain that collects on a roof; or
  - (iv) Weight of people or personal property.

in the definition section of the form "specified causes of loss" are defined as:

2. "Specified causes of loss" means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
  - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
    - (1) The cost of filling sinkholes; or
    - (2) Sinking or collapse of land into man-made underground cavities.
  - b. Falling objects does not include loss or damage to:
    - (1) Personal property in the open; or
    - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
  - c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam.

So ... weight of ice and snow that cause an abrupt caving in (roof collapse) IS covered. The building loss is covered and resulting loss to contents can be covered.

The 2002 and 2006 ISO BOP Special Form BP 00 03 also cover collapse due to weight of ice and snow. You find the language under the Additional coverage section similar to how it is addressed in the HO-3

## 5. Additional Coverages

### d. Collapse

- (1) With respect to buildings:
  - (a) Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose;
- (2) We will pay for direct physical loss or damage to Covered Property, caused by collapse of a building or any part of a building that is insured under this policy or that contains Covered Property insured under this policy, if the collapse is caused by one or more of the following:
  - (a) The "specified causes of loss" or breakage of building glass, all only as insured against in this policy;

....

Like the CP Cause of loss forms "specified causes of loss" are defined as:

12. "Specified causes of loss" means the following:

- Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
- a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
    - (1) The cost of filling sinkholes; or
    - (2) Sinking or collapse of land into man-made underground cavities.
  - b. Falling objects does not include loss of or damage to:
    - (1) Personal property in the open; or
    - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
  - c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam.

Good news ...commercial policies insured on a special form basis can cover ice dam losses to BOTH building and contents if the cause of loss form applies to both types of property. In a BOP policy the perils discussed DO apply to both building and contents. Under a CP form one COULD have differing causes of loss for building v. contents.

Collapse needs only "broad form perils" ...but don't we as a general rule sell special form anyway?

### What is the loss payment basis?

*ISO CP coverage forms and loss payment basis*

CP forms "assume" ACV for both building and contents unless the optional coverage of replacement cost is activated on the declarations page. Replacement cost coverage MUST be activated for BOTH building and contents if replacement cost loss payment is desired.

Under CP forms what is paid out is always subject to the "co-insurance" condition. One must make sure that the limit of insurance on the declarations page is at a MINIMUM the stated co-insurance percent of the full value of the property. Co-insurance applies on either an ACV or a replacement cost basis depending on how one set up the declarations page. Make sure that your limit of insurance meets the co-insurance requirement or there will be a penalty at the time of loss payment.

### ISO BOP coverage forms and loss payment basis

The ISO BOP BP 00 03 coverage forms "assume" replacement cost coverage for both building and contents. The ISO 2002 and 2006 BOP forms include an "insurance to value" provision which is similar to the HO underinsurance provision. The BOP forms require that the limit of insurance for building and/or contents be 80% of the "full replacement cost of the property" or there will be a loss payment penalty.

### Loss of business income

If you have sold an ISO CPP ...then you MUST add the business income coverage form. The CP 00 30 Business Income and Extra Expense form is the most comprehensive form. You add a cause of loss form to activate WHEN business income or extra expense will be paid and my personal favorite form is the CP 10 30 Cause of Loss Special Form so that lost profits due to property damaged by collapse and ice dam will be paid! If property at a described location is damaged by a covered cause of loss and operations are suspended, then the Business Income Coverage Form can respond to the loss.

When selling the ISO BOP form, business income and extra expense is automatically included and subject to the causes of loss covered. So, if the Special Form BOP is sold then loss of business income due to a suspension of operations because covered property is damaged by a covered cause of loss will be paid.

### **Condominium master policy ...**

Whether you use the ISO CP 00 17 or the ISO BOP with the condominium endorsement both will respond to losses according to whatever the bylaws require. The Master policy will cover loss to building items owned by the individual unitowner if the condominium documents require per the following ISO policy language:

*Any of the following types of property contained within a unit, regardless of ownership, if your Condominium Association Agreement requires you to insure it:*

- (a) Fixtures, improvements and alterations that are a part of the building or structure; and
- (b) Appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping.

As long as we have the correct cause of loss form and sufficient limit of insurance all will be well. As previously stated the master policy is primary:

### **6. Unitowner's Insurance**

*A unit-owner may have other insurance covering the same property as this insurance. This insurance is intended to be primary, and not to contribute with such other insurance.*

### **Ordinance or law ...**

One last little issue ... in the last few years increased "snow load" building ordinances have been passed. There is the potential that the building inspector will enforce these codes if the roof collapses and require repair to code. The ISO HO and DP forms include 10% of the Coverage A limit for ordinance or law when a covered loss requires damaged property to be repaired to code ...or even undamaged property to be repaired to code. Hopefully this will be sufficient if repair to code is required for a collapse loss. An ordinance or law endorsement allows the purchase of a higher % of coverage.

In commercial policies there is not as much ordinance or law coverage. There is probably only a flat limit of either \$5,000 or \$10,000 depending on the form edition date. It also only applies to damaged property that must be repaired to code. It does NOT apply to undamaged property that must be repaired to code. There is an ordinance or law endorsement to buy more. Remember under a CPP policy one must buy ordinance or law PROPERTY coverage and ordinance or law for extended loss of business income - TWO endorsements would be necessary. Under the newer BOP Ordinance or Law endorsement you can purchase additional property coverage AND extend business income coverage.

### **Recap**

So ... weight of ice and snow causing roof collapse is covered under personal and commercial lines policies if broad form or special form perils. Ice dam is ONLY covered under special form perils. Is the limit of insurance sufficient? What about loss of use or loss of business income ...is that sufficient? And, could ordinance or law be an issue?

\* \* \* \*

Good luck. If I can be of service to you, please call me, Irene Morrill, Vice President of Technical Affairs at 800.870.7091 or email me at [imorrill@massagent.com](mailto:imorrill@massagent.com).

This article has been developed expressly for the members of MAIA. Reprint by other than members without the express permission of the author is not permitted.