

## Vacant Land

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When I started in the insurance business, I was blessed to have a wonderful mentor, Lloyd Coleman. He would watch me walk and trip over the proverbial insurance rock and laugh. Lloyd understood insurance and policy forms. He said two things often:

If insureds can protect themselves from financial loss by spending a small amount of money they will; coverage can be sold. I watched him do it every day.

RTPF! Read the Full Policy, Read the Fine Print. If you aren't 100% sure coverage exists, get it in writing so the insured has a piece of paper to wave high in the air showing the judge. Lloyd would stand up at his desk pointing to the policy and ask how I was getting coverage. I was newly licensed, had a few carrier classes under my belt, so I thought with broad policies, broad endorsements, and automatic coverage grants, everything is covered, right?

Lloyd was correct in that coverage can be sold. I do it every day with personal and commercial lines. Insureds don't mind spending money for protection, so many times it's a no-brainer.

On reading the policy, he was right about that too. He taught me to be careful with the vacant land coverage grant under the homeowners policy. He would ask me how many parcels of land are vacant and then raise his voice and say, "Hardly any; get the coverage grant in writing." Many insureds think they have automatic coverage for what they consider vacant land but they don't!

The ISO homeowners policy defines an insured location to include:

***Vacant Land***, other than farmland, owned by or rented to an "insured"

A popular independent agent carrier wanting to "one-up" ISO defines an insured location to include:

***Vacant land***, including that which is vacant except for a fence, owned by or rented to any insured other than farmland. (You get ISO wording plus coverage if there is ONLY a fence. Typically, the insured has more than a fence).

Most homeowners policies don't define vacant land so courts resort to the dictionary. The majority of the court decisions are like those found in *Dawson v. Dawson*, *Travelers Indemnity Co. v. Holman* and *O'Conner v. Safeco Insurance Co.* in that they use the dictionary definition of the word "vacant," which usually means "containing nothing, empty" or "land 'in the natural state.'"

My research showed 95-plus percent of courts rule that vacant land has no material improvements. If the land has a building, structure, culvert, electric pole, water line, gravel driveway, birdhouse or no trespassing sign, there is NO automatic liability coverage under the homeowners policy.

There are a few cases where the court found coverage when land improvements were made but they tended to be cases that were unusual or where the insured got lucky.

*Delisa v. Amica Mutual Insurance Co.*: The property owner's land had a cave. The owner gave a local group of cave explorers permission to explore the cave. Someone was injured entering the cave and sued the landowner. Unbeknownst to the owner, the group installed an iron gate and

a steel ladder. The court determined because the landowner did not know about the improvements and the use was in no way beneficial to them the land was vacant.

*American Motorist Insurance Co. v. Virgil R. Steffens*: The insured excavated a canal to join an interior lake to the intercoastal waterway. They developed land around the lake. Seven years after the last lot was sold someone jumping into the canal was injured and sued the landowners. Neither owner realized they still owned the land under the canal. The courts determined the land was vacant even though used by vessels and marine life on the premise that vacant land above ground wouldn't be considered not vacant simply because an automobile drove over it or a wild animal lived on it.

*Fort Worth Lloyds v Garza*: Garza hired J.L. Reasonover to help Garza start an irrigation pump, and Reasonover was injured when a guard came apart. Garza had taken the pump apart, lost screws to the guard, and secured it with a wire coat hanger. Lloyds didn't want to defend Garza because the land wasn't vacant due to one irrigation pump and Garza/Reasonover had a contract that stated there would be no coverage for such an occurrence. While the court utilized a broad meaning of the word vacant (meaning unoccupied), this was a Texas appeals court case about the defense of a claim. Especially in Texas, the obligation to defend is broader than the obligation to indemnify. The court even acknowledged that there was still a question as to whether the land was vacant. It's a case quoted often in Texas for defense but it's a weak case for coverage to pay a judgment for a vacant land claim.

Don't count on the insured's homeowners policy for the automatic vacant land liability coverage grant. It appears that there is coverage but many times there isn't. Be sure to specifically list the land location on the homeowners policy as an additional insured location or purchase a policy that specifically provides liability coverage for the land. Talk to the insured and explain the importance of keeping the agent in the loop about future use of the land or any changes to the land. Add questions about vacant land to quote sheets and renewal questionnaires.

If a homeowner bought their coverage online direct with a carrier in 10 minutes, do you think they would have any automatic coverage for vacant land? This is where we as independent agents stand out. Go forward and SHINE.