

Minnesota Association of Farm Mutual Insurance Companies

Mutual LINK

When should you include the Mortgagee (Bank) on a Loss-Payment Check?

John J. Neal, Attorney, Willenbring, Dahl, Wocken & Zimmerman, Attorneys at Law, Cold Spring, MN

Companies and insurance agents often ask, "Must we include as a payee on our checks the name of the bank (mortgagee), along with the insured owner, when paying a loss?" Since most insured properties have a mortgage, this question occurs with much frequency. The general answer—and to err on the safe side—is "yes."

Pursuant to Minnesota law, all fire insurance policies must contain a standard mortgage clause, which, in essence, ensures that the bank is compensated for any loss that could otherwise be excluded as a result of the insured's actions. To that end, every fire policy must contain, whether explicitly or by default, language in line with the following:

Notwithstanding any other provisions of this policy, if this policy shall be made payable to a mortgagee or contract for deed vendor of the covered real estate, no act or default of any person other than such mortgagee or vendor or the mortgagee's or vendor's agent or those claiming under the mortgagee or vendor, whether the same occurs before or during the term of this policy, shall render this policy void as to such mortgagee or vendor nor affect such mortgagee's or vendor's right to recover in case of loss on such real estate. Minn. Stat. § 65A.01.

This language is often referred to as the "standard mortgage clause."

In today's economy, where insured properties are commonly worth less than the mortgage, this clause becomes very important. For example, if an insured property sustains a 50% loss, the insured, who owes more than the property is worth, may elect to not repair the property or to walk away from the insured property and keep the insurance proceeds. The bank, having the benefit of the standard mortgage clause, will then likely turn to the insurance company for payment. The company may have to pay the loss twice (once already to the insured, and once again to the bank) if it failed to include the bank on the insurance check.

In *Capital Fire Ins. Co. v. Langhorne*, 146 F.2d 237 (8th Cir. 1945), the Court held that a bank can maintain an action against an insurance company even though no independent contract (policy of insurance) directly exists between the two. Similarly, in *First Nat. Bank v. Nat. Liberty Ins. Co. of Am.*, 194 N.W. 6 (Minn. 1923), the Minnesota Supreme Court held that if a loss is payable to the bank—which is the case under the standard mortgage clause—then the bank is not bound by any actions of the mortgagor (property owner) or agreements reached between the

insurance company and property owner. These cases, coupled with Minnesota's standard mortgage clause, indicate that a mortgagor (property owner) cannot bind the mortgagee (bank) through his or her actions. Rather, if there is going to be any final settlement on a loss, the bank holding the mortgage should be included on any loss payment or check.

In fact, Minnesota Chapter 65A, relating to fire insurance, states that an insurance company, before issuing payment for a loss, must first determine the order of priority between the mortgagee (bank) and homeowner (mortgagor). Minn. Stat. § 65A.11. While Minnesota Chapter 65A does not apply to township mutuals, except on "Homeowners" Policies, it still is a matter of good practice to follow this procedure and ensure that any mortgagee (bank) is included on the loss-payment check, along with the property owner.

Also, if an insured mortgages his property and then adds structures to the property, as a matter of law the newly added structures become part of the mortgaged property (even though they were not paid for with money borrowed from the mortgagee) and the mortgagee would need to be named on any such loss-payment check.

Finally, the company may elect to repair the damaged property and thus avoid naming the mortgagee on any loss payment by paying the contractor directly, however this alternative is not recommended.

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Test burns reveal building material safety

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Grinnell Mutual Reinsurance Company

Policyholder safety and loss prevention are hallmarks of the farm mutual industry. That's why when destructive patterns are noted in losses, it's imperative to follow up on them to better protect our customers.

One resource MAFMIC members have drawn upon to promote farm safety and prevent losses in large confinement buildings is Grinnell Mutual Reinsurance Company.

Following the request of Fairmont Farmers Mutual Manager, Paul Stueven, Grinnell Mutual's Special Investigations Unit (SIU), Reinsurance division, and Corporate Loss Control collaborated to conduct test burns on a variety of confinement building materials.

The test burns, which were held in Grinnell, Iowa, tested four types of finish paneling used for the inside walls of confinement units. The types of materials tested were Class A fire-rated panels, including one which was aluminum based and Class C fire-rated panels, including less expensive fiberglass-reinforced plastic (FRP) and high density polyethylene (HDPE).

The tests were conducted in 8 x10 foot cells enclosed on three sides. After setting a fire in the corner of each unit using a garbage bag filled with wax



paper cups and napkins, the cell built with Class C FRP materials reached flashover in about four minutes with temperatures rising as high as 3,000 degrees. The HDPE cell burned to flashover in about seven minutes with temperatures as high as 1,500 degrees. In comparison, the Class A fire-rated panels, both with and without aluminum, did not sustain fire damage. After the garbage bag and its contents were consumed, the fires self extinguished within about three minutes. Temperatures remained under 200 degrees.

"The testing showed us what we expected," said Grinnell Mutual Special Investigations Manager David Miller. "This data shows that buildings constructed with fire-rated materials and aluminum are less likely to experience destruction than those

built with Class C and HDPE materials. The burn cell testing and information we gained can demonstrate to mutuals, agents, and policyholders why certain materials are not acceptable in terms of fire spread rating."

As National Farm Safety and Health Week (September 19-25) and Fire Prevention Week (October 3-9) approach, take a moment to learn more about safe construction practices. Contact Grinnell Mutual's Forms Distribution at (800)-362-2041 ext. 8476 to get a DVD of the test burn.



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Stark Farmers Mutual

Stark Farmers Mutual was started in 1884 by a small group of interested and concerned property owners wanting to help each other during any event like fire destroying or damaging their property. The help came in the form of labor and monetary reimbursement. This was a way of protecting each other from financial hardship that would leave them with nothing.

The company writes all the perils permitted under MN Statute 67A.13 under authorized lines of business and is located in Sleepy Eye.

Stark Farmers Mutual has two full time employees, one part time employee, one part time inspector and twelve agents.

Manager and MAFMIC Chairman Greg Gangelhoff said "It is our goal to provide a competitive insurance product for the people in South Central Minnesota with sound investments, a strong reinsurance program and to give our policyholders the protection and peace of mind they deserve for their premium dollar.

Manager Gangelhoff stated the goals for the next five years for Stark Farmers Mutual are to focus on technology and how we can become a green friendly company.

The company's biggest challenge is that the rural community



Stark Farmers Mutual, Sleepy Eye, Minnesota

is shrinking. We need to do things better, smarter and more efficient than the competition to be able to write the business that remains in rural Minnesota said Gangelhoff.

Greg is a Sleepy Eye Area Chamber of Commerce Ambassador. They are the group of people from the area business community that welcomes new businesses as well as attend business open houses, anniversaries or any kind of milestone. Greg also coaches 5 and 6 grade football and is a basketball official.

To describe Stark Farmers Mutual in one word according to Manager Greg Gangelhoff it would be "caring."

Everything we do is designed to help our member mutuals be successful.



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New Manager's Workshop

On Tuesday, July 13th a New Managers Workshop was held in the MAFMIC office.

MAFMIC has seen a number of retirements and several new managers join the ranks of our association.

The program included several speakers, Dan Rupp, RAM Mutual giving the history of the Mutual's and the many committees and what their responsibilities include. The MAFMIC Staff gave an overview of their duties with the association. Mike Kaufman, Unity Mutual and Paul Larson, Leenthrop Farmers Mutual covered the Mutual Assistance Manual. Pete Hellie, North Star provided NAMIC Services and Investments. Jim Barta, CPA and Mike Kuefler, CPA discussed accounting, financial analysis and the Department of Commerce. Gwen Batalden, Redwood County Mutual give an in depth presentation on managing a mutual company.

A special thank you to all the presenters.

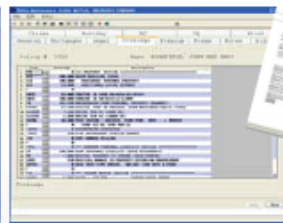
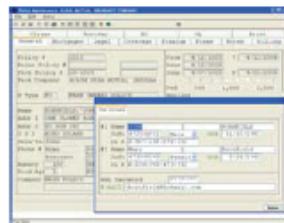
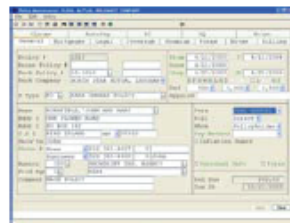
Some of the responses from new managers included: "The information that was provided was by far the most valuable I have received." and "A great way for new managers to become acquainted with other managers."



Picture – left to right – Mark Schaefer, New Sweden Mutual, Michelle Vigeland, Vernon Edda Mutual, Mark Nelson, Norwegian Mutual, Karla Bauer, Kenyon-Holden-Warsaw Mutual, Jenny Eiyndck, St. Joseph, Mutual, Susan Cebulla, North Fork Mutual, Jane Dreyer, Chisago Lake Mutual, Peter Strand, Lac Qui Parle Mutual, Denise Lee, Beaver Creek Mutual, Kelly Knutson, Gillford Mutual, Michael Cowan, Itasca Mutual and Aaron Grove, Sverdrup Mutual.

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The 2010 MAFMIC Scholarship Golf Outing

The 2010 MAFMIC Scholarship Golf Outing took place once again at the Little Crow Country Club in Spicer, Minn. The event hosted 88 golfers and 20 teams! The sales for the putting contest, hit-the-circle contest, raffle tickets and mulligans for the day totaled over \$1,600!

The first place winners are Steve Storm, Tim Iverson, Bruce Kinnunen and Dan Meier from Prairie Pine Mutual. The second place winners are Jim Dauphinais, Grinnell Mutual, Laurie Wellnitz, Agassiz & Odessa Mutual, Ruth Rothstein, Paynesville Mutual, Greg Gangelhoff, Stark Farmers Mutual. The third place winners are Mark Nelson, Norwegian Mutual, Wade Boerboom, Norwegian Mutual, Mark Noack, W.J. Lehrke and Dave Geihl, Norwegian Mutual.

Other winners include: 'Longest drive' went to Mike Sagedahl of Grinnell Mutual; 'shortest drive' went to Norma Monson, Flora Mutual; 'longest putt' went to Mike Lund, Leenthrop Mutual; and 'closest to the pin' went to Mark Stangler, from Allied Adjusters. Lastly, the winner of the Complimentary Golf Registration for 2011 went to Pat Reynolds of Stark Farmers Mutual.

MAFMIC would like to thank everyone for their generosity and making the day fun to be apart of! Please visit www.mafmic.org to view more photos from the Annual Golf Outing.



Second Place – left to right – Jim Dauphinais, Grinnell Mutual, Laurie Wellnitz, Agassiz & Odessa Mutual, Ruth Rothstein, Paynesville Mutual, Greg Gangelhoff, Stark Farmers Mutual.



Third Place – left to right – Mark Nelson, Norwegian Mutual, Wade Boerboom, Norwegian Mutual, Mark Noack, W.J. Lehrke and Dave Geihl, Norwegian Mutual.



First Place – left to right – Steve Storm, Tim Iverson, Bruce Kinnunen and Dan Meier from Prairie Pine Mutual.

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Seipp Service Award Nominations

Last February, Thomas Mroska joined a distinguished list of honorees when he was presented with the prestigious Robert C. Seipp Service Award at the MAFMIC Annual Convention. Established in 1986 to honor past MAFMIC President Robert Seipp, this award recognizes professionalism and service to the Minnesota mutual insurance industry.

A successful nominee will have provided service and generously given of his or her time and expertise to promote a professional image for MAFMIC and the mutual insurance industry; be a current or past employee, director, officer or agent of MAFMIC or a MAFMIC member company; and provided ten (10) or more years of service to MAFMIC and/or a MAFMIC member company.

If you know someone who is deserving of consideration, please submit a Seipp Service Award Application to the MAFMIC Office no later than Friday, October 29th. The nomination should include:

- Nominee's name, organization and contact information
- History of nominee's employment and/or offices held within MAFMIC
- Education (industry and other) and professional designations
- Awards and other recognitions
- Participation in MAFMIC and/or NAMIC
- How has the nominee served and enhanced the mutual insurance industry? Why is the nominee deserving of this award?
- Contact information and position of person making nomination

Applications are available on the MAFMIC Website at (www.mafmic.org).

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- Item 17 must be signed.

Failure to file or publish a statement of ownership may lead to suspension of Periodicals authorization.

PS Form 3526, October 1999 (Reverse)

Concerns in complying with the 2010 Health Care Act requirements

Jim Barta CPA, PA North Mankato, MN

Those of us who are managers or have owned a business should be aware of the current requirement to issue 1099's to your service providers. When you pay them \$600 or more in any one calendar year, a 1099 is required to be issued at year end. With a few exceptions, corporations were generally exempt from the 1099 requirement. Did you ever get one of those friendly letters from the IRS saying that there was an error on the 1099-MISC? You verify the 1099, match it to the information the IRS gave you, and confirm with the service provider that all the information is correct. You already have a valid W-9 on file and all the information matches. You are a little confused, but your CPA or accountant says, "That's life," and we will deal with it in the future if it comes up again. If there is an error, and you do not correct the 1099 information, you may be required to withhold part of the payments to that vendor or agent. Remember, the friendly reminder says, "No response is required." Beginning in 2012 - just a little over a year away - your life will change! You will now have to get and keep current W-9's for WalMart, Office Max, and any other vendor. What if things do not match? Do you now withhold 20% of your next payment to WalMart? The following is a link to, and direct quote from, an article in the Washington Post:

<http://www.washingtonpost.com/wp-dyn/content/article/2010/07/07/AR2010070702826.html>

"Beginning in 2012, the health-care legislation enacted in March will require all businesses and tax-exempt organizations to issue an IRS form called a 1099 to vendors from whom they buy goods totaling \$600 or more annually -- and to file a copy to the IRS. The requirement is intended to reduce the under-reporting of business income, but it will demand thorough record-keeping on the part of buyers."

"For example, if a self-employed individual makes numerous small purchases from an office supply store during a calendar year that total at least \$600, the individual must issue a Form 1099 to the vendor and the IRS showing the exact amount of total purchases," the IRS release said.

Below is a statement from the taxpayer advocate service:

"Taxpayer Advocate Service report. According to a Taxpayer Advocate Service (TAS) analysis of 2009 IRS data, about 40 million businesses and other entities will be subject to the new information reporting requirements. TAS recently issued a report which expressed concern that the burdens of the new information reporting requirements "may turn out to be disproportionate as compared with any resulting improvement in tax compliance." During

fiscal year 2011, TAS will study the impact of the new reporting requirements more closely and, depending on what its study finds, may propose administrative or legislative recommendations to modify the provision or suggest that Congress consider less burdensome tax gap proposals [IR 2010-83]."

There is already a proposal to exempt credit card purchases, but what if half of your purchases are made by credit card and half by check or cash?

On July 1, 2010, the IRS asked for the public's comments for drafting guidance on this provision. Many comments have been provided, and comments will be accepted by the IRS up to September 29, 2010.

As a side note, many vendors are happy with this new legislation. For example credit card issuers, payroll/1099 processors, software vendors, and some accountants and CPA's will benefit from increased business.

No, the sky is not falling. Hopefully these requirements will be reviewed and changed somewhat, but for now, be aware that there are changes coming!

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2010-11 Calendar of Events

Sept. 9	PIA Education Days & Trade Show, Mystic Lake Casino/Hotel, Prior Lake
Sept. 14-16	Big Iron Farm Show West Fargo, ND
Sept. 19-22	NAMIC Convention San Diego, CA
Feb.6-8	MAFMIC Convention Sheraton – Bloomington
March 16-17	Short Course Arrowwood Resort - Alesandria

In Sympathy

Mavis Johnsen, 87 of Underwood passed away on July 6, 2010. Mavis is the mother of Bricker Johnsen retired manager of Sverdrup Mutual and Sandy Gamber underwriter.



MAFMIC wishes to express its sympathy to the friends and family of Jean and Henry.

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