

Home Repair Liability Concerns

By Basil Housewright, Jr.

Frequently, we receive phone calls from clients questioning what personal liability coverage problems could arise from homeowners having repairs or other work done by others on their home. These questions are understandable considering that liability claims on homeowner's policies are not very common and the potential liabilities of repair or construction projects are easily imagined. The traditional Texas promulgated homeowner's forms, as well as ISO homeowner's forms being more widely used in Texas now, provide surprisingly broad protections in these cases. Some of the questions that come up include: If I am having a pool installed, is there liability coverage if one of the contractor's employees gets injured and sues me? Or for a roof repair, or a kitchen remodeling, or having a fence installed. Yes, there is typically no limitation regarding such projects on the insured residence premises. Should a third party make a claim against the insured homeowner for bodily injury or property damage arising from the premises, the insured homeowner should be defended by their homeowner's Insurance Company.

What about if there were no outside contractor, but instead the person doing the work was an individual and were being paid directly by the insured homeowner? Does the situation change if they are considered an employee of the insured homeowner? Not really. If a court determined that the injured person were an employee and not an independent contractor working for a company, that person would in all likelihood fit the definition of "residence employee" found in most homeowners policies. A close review of that definition typically reveals that anyone performing "duties related to the ownership, maintenance or use of the residence premises" fits. This kind of broad statement provides wide latitude in who could be an employee. The typical home insurance policy also takes great pains to make exceptions in the exclusions for injury to residence employees. However residence employee does not include an employee of a "business of the insured homeowner." The policy also excludes liability arising from "professional services" and property damage to property in the care, custody or control of the insured. So if the homeowner is the Contractor with his employee's working on his own home they most likely would not be covered because this would be excluded by these exclusions and limitations.

The next question often is, "What about the contractual liability (hold harmless and defense provisions) created by the contract I signed with the contractor?" Again, the homeowner policy form typically takes care of this. While an exclusion deletes contractual liability, it typically gives it back in an exception for contracts related to an "insured location," which conveniently includes residence premises, or other assumptions of liability, unless elsewhere excluded, which it typically never is. So the answer in most cases is yes, you as an insured homeowner on a standard homeowners package policy are protected. There are many Insurance Company's selling many different types of home policies in Texas these days. If you are facing this situation it is best to consult your Insurance Agent to make sure you are covered. Spring is almost here and it is time for home improvement projects. It is also in your best interest to make sure your home repair contractor carries Commercial General Liability Insurance. Stay tuned and we will discuss this subject next time.

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