



## Property Coverage Document Changes Background

Several changes to the property coverage document will become effective October 1, 2017. These changes are being made to improve the claims process, particularly when the claim is in dispute as to the amount, and to improve reporting of property locations and their value. Below is a summary of those changes. In addition, we have also provided answers to commonly asked questions and explanations of these changes.

Over the past few years some members have been influenced by outside parties seeking to inflate the value of claims. In the claims that resulted in litigation, the Pool incurred significant attorney fees defending the suits. In each instance where this has occurred the member ultimately received **less** than what would have otherwise been paid (based on the original estimate of the claim established by the Pool as compared to the final payment that is reduced to pay fees to outside parties). Additionally, we have had claims where property is not listed on the schedule of covered items or the replacement cost is significantly understated. Thus, these changes are intended to improve the accuracy in reporting of property and the replacement cost prior to a claim, reporting of damages following a claim, clarify the process should there be a dispute, and ultimately prevent abuses.

The Pool is a self-insurance program created by its governmental members, and is not an insurance company. Rather than governmental entities self-insuring individually, the Pool is a program that allows the members to self-insure together. The Pool is governed by a Board of Trustees that are elected by the governmental entities that are members of the Pool. The philosophy of the Pool as a risk sharing pool is to develop the partnership between all of the members to provide stability in rates and coverage. Stability is partially dependent upon collecting accurate replacement cost values and then expeditiously and equitably adjudicating any losses that occur. This benefits the member and the membership as a whole. Our goal is for members to see us as a resource and a partner in the event of a loss.

With this in mind, we are adding language at the beginning of the property coverage document to clarify the Pool is not insurance, therefore not subject to the insurance code. This language reads as follows:

*The Texas Municipal League Intergovernmental Risk Pool is an administrative agency created under the provisions of the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and Chapter 2259, Texas Government Code, that allows local governmental entities to jointly self-insure. The Texas Municipal League Intergovernmental Risk Pool administers the self-insurance program created jointly by the member governmental entities. The Texas Municipal League Intergovernmental Risk Pool is not subject to the Texas Insurance Code as stated in Chapter 2259, Texas Government Code.*



## Summary of Property Coverage Document Changes Effective October 1, 2017

1. **Legal Status:** The legal status of the Fund is set forth after the Table of Contents and states how the pool was organized, that it is not insurance, but rather self-insurance under Chapter 2259, Texas Government Code, and not subject to the Texas Insurance Code.
2. **Notice of Loss:** Members are required to discover and report a loss in writing within two years of the event and include the "ID" number from the Member's Property Schedule of each damaged property. See paragraph A., Section IV., of the General Conditions on page 5.
3. **Proof of Loss:** A proof of loss is to be submitted 90 days after receiving a request for such from the Pool. When requested, each damaged property must be identified, along with specific information about the damage sustained. See paragraph D., Section IV., of the General Conditions on page 5.
4. **Amend the Appraisal Process:** Previous language did not provide necessary detail as to how the appraisal would be conducted. The new provision delineates how the process is begun, requires identification of items in dispute, outlines qualifications for individuals that may serve as appraisers or an umpire, provides how the umpire is selected, provides how appraisal reports are submitted and the contents of the reports, and specifically provides the appraisal process is only to determine amount of the loss in dispute. See paragraph E., Section IV., of the General Conditions on page 6.
5. **Suit against the Fund:** Must be brought not more than two years after the cause of action accrues. See paragraph I., Section IV., of the General Conditions on page 7.
6. **Limit for Replacement Cost:** Coverage is limited to no more than 150% of the value of the individual damaged property as reported on the Member's Property Schedule. Members will need to accurately state the value of the property listed in the Property Schedule. See paragraph J., Section IV., of the Replacement Cost Option on page 27.
7. **Limit for Actual Cash Value:** Limit coverage to no more than 150% of the value of each damaged property as reported on the Member's Property Schedule. See paragraph H., Section IV., of the Special Form Property Coverage on page 19.
8. **Increased Cost of Construction:** Increased cost due to new law or ordinance requirements that were not in effect when the original construction occurred are included within the 150% limit for each property loss paid by the Pool. The increased cost of construction will not be paid for code requirements enacted post loss, or codes the Member was required to comply with before the loss occurred and failed to do such. See paragraph C., Section V., of the Special Form Property Coverage on page 19.
9. **Prohibiting the Transfer of Interest:** Members are prohibited to transfer an interest in a loss. See Section XI. of the General Conditions on page 8.
10. **Other Minor Property Changes:** Since Cyber Liability and Data Breach Coverage is provided in a separate document, appropriate exclusions have been included in the Property Coverage Document concerning Cyber Liability and Data Breach Coverage. See paragraph H. of the General Exclusions on page 4; paragraph C.2., Section III., of the Special Form Property Coverage on page 13; and, paragraph A.3., Section I., of the Crime Coverage Option on page 29.



## FAQ Regarding Changes to the 2017-2018 Property Coverage Document

### **What is the impact on members of the 150% limit for Replacement Value?**

*The Pool's Board has implemented a margin clause of 150% on all structures on a member's Real and Personal Property Schedule. In the past, there was no margin clause and "replacement cost" was only limited to the total value of covered property, even if replacement costs far exceeded the scheduled value of a specific structure.*

### **How will the 150% margin clause impact a partial loss?**

*The coverage document has been revised to state that the Pool shall not pay more for replacement cost than 150% of the replacement cost of the damaged portion of such structure, not to exceed 150% of the total value of the damaged structure reported and shown on the property schedule.*

### **What is the benefit to members for implementing a 150% limit for Replacement Value?**

*This change will benefit all members of the Pool as members will have greater incentive to maintain accurate values and pay their fair share in contributions. For those instances where values are grossly understated, claims will be limited to 150% of the scheduled value. This in no way means that members in the past tried to defraud the Pool by providing values that were markedly below actual replacement costs, but in most cases it was a result of not keeping values updated, not understanding the actual cost of replacement, or not understanding the difference between actual cash value and replacement value.*

*This change will also benefit members by preventing attempts to seek replacement costs that in some instances are many times more than the value placed on the property schedule. This also should help prevent circumstances where associated fees by outside vendors actually decrease the net payment to the member, affecting the member's ability to restore the damaged property to pre-loss condition.*

### **Who is responsible for values on the property schedule?**

*Members have always been responsible for providing 100% values for items covered by the Pool (ref. General Conditions, paragraph VIII).*

*Implementation of the 150% margin clause will require members to be more accurate when reporting the value of each property placed on the property schedule.*

### **Why is TMLIRP implementing a 150% limit?**

*The lack of updated values or incorrect values when originally submitted to the Pool has resulted in situations where the replacement cost has been many times more than the value on the schedule. This is a great benefit to the member collecting for a damaged item, but a tremendous drain on the Pool and its other members.*

*In addition, the lack of a margin clause has made the Pool ripe for outside parties who have a secondary intention of inflating the cost of the claim to create their own financial benefit. The use of these types of services has expanded dramatically since 2008, and there have been several instances where involvement of these types of firms has been detrimental to members and the Pool.*

**What property or types of property are subject to the 150% limit for replacement value?**

*All structures on a member's Real and Personal Property Schedule will be subject to the 150% margin clause.*

**Do other coverages, such as contents, debris removal or coverage extensions, contribute to the 150%?**

*No. The 150% is limited to the cost of the building and associated increased cost of construction.*

**What about historical buildings, specialized architecture or other structures that may incur much higher replacement costs than expected?**

*It will be the members' responsibility to ensure assigned values on the property schedule are adequate for replacement value of the structure. In some instances, these types of structures cannot be valued accurately using appraisal tools such as Marshall & Swift; therefore, the member must make certain the value provided is adequate.*

*Some of the challenges associated with these types of structures include: complex, elaborate or ornate design; unique craftsmanship that may no longer be available; built-in fine arts features (stained glass, murals, etc.); and high-value built in features such as organs, clocks, chandeliers, etc.*

**How does this impact lift stations, pump buildings, water treatment plants, wastewater plants, ballfield lighting, ballfields, playground equipment, etc. that are placed on the property schedule and assigned a "stated value" by the member?**

*These types of structures will also be subject to the 150% margin clause. Similar to above, the Pool is not currently capable of establishing replacement values for these types of structures due to differences in design, quality, capacity or usage. However, the Pool is pursuing additional resources to assist members with valuations for water and wastewater treatment plants. In the interim, members may want to utilize engineers, construction firms, bid proposals, and consultants to establish accurate replacement values.*

**Will TMLIRP provide assistance in ensuring all values on the schedule are accurate?**

*The Pool will continue to conduct valuations for buildings that can be valued using Marshall and Swift. The member will still have a responsibility to ensure these valuations are adequate for replacement value following any renovations or significant changes to the scheduled structure. The Pool does not provide any valuations for contents.*

**Will property valuations that are completed by TMLIRP be honored?**

*Yes. The 150% requirement will be waived if the reason for the discrepancy in value is due to an error made by TMLIRP in preparing a property valuation.*

**Will the new 150% limit affect Actual Cash Value coverage?**

*Yes. This will apply to replacement value or actual cash value listings.*

**Will the 150% limit impact Increased Cost of Construction related issues?**

*The Property Coverage Document currently allows payment from the Pool for increases in the cost of construction due to new law or ordinance requirements that were not in effect at the time the property was originally constructed. Most property insurance policies have a limit on the amount that will be paid.*

*Rather than placing a supplemental limit on the amount to be paid by the Pool for such code compliance, it shall include these increased costs within the 150% limit for each property loss paid by the Pool. The Pool will only pay for code compliance that was in force at the time of the loss. The Pool will not pay for any costs due to an ordinance or law the member failed to comply with before the loss occurred.*

**Why is a two-year time period for Notice of Loss being implemented?**

*The Pool has implemented a two-year time period for notification of loss in order to ensure Members make repairs in a timely manner.*

**What is necessary to ensure a Notice of Loss is reported accurately?**

*The notice of loss should be in writing and identify each property by the "ID" number from the Real and Personal Property Schedule. We need this specificity to adjust the claim accurately. Forms for submitting claims are available at TMLIRP's website.*

**There are several changes to Proof of Loss requirements, all of which should benefit members.**

*A Proof of Loss will only be required when requested by the Pool. Additionally, when required the time period is extended from 60 days to 90 days.*

**What is the Appraisal Process?**

*"Appraisal" is a right granted by the Property Coverage Document and serves as an alternative dispute resolution process when agreement cannot be reached on the value of the loss. Appraisal can be invoked by either party. Changes are being implemented to provide more clarity in how the process is conducted. The amended information in the Property Coverage Document provides:*

- how the process is begun*
- parties must specifically identify each item in dispute*
- qualifications for individuals that may serve as appraisers or the umpire*
- how the umpire is selected*
- how appraisers submit reports and contents of reports*
- that the appraisal process only determines the amount of the loss in dispute (not whether coverage is in place nor cause of loss)*

**What is the intended use of the Appraisal Process?**

*The appraisal process only determines the amount of loss in dispute. It is not the intent of the Pool for the appraisal process to determine the cause of a loss or whether the loss is covered.*

**Bringing suit against the Pool.**

*The current coverage document allows the Pool to be sued if the lawsuit is commenced within the time prescribed in the statutes of the State of Texas. For cities, most statutes of limitations are not applicable.*

*The coverage document is being changed to require members to fully comply with all requirements of the coverage document prior to commencing suit **and** the suit may not be commenced more than two years after the cause of action accrues.*