COMMISSIONER OF SECURITIES & INSURANCE

MONICA J. LINDEEN
COMMISSIONER

OFFICE OF THE MONTANA
STATE AUDITOR

ADVISORY MEMORANDUM

TO: All Property and Casualty Insurers Licensed in Montana

FROM: MONICA J. LINDEEN
Commissioner of Securities and Insurance
Montana State Auditor

DATE: October 31, 2011

DEFINITION OF TOTAL LOSS
MONTANA CODE ANNOTATED § 33-24-102

The Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), has recently been asked to clarify the method for determining "total loss" under Montana's valued policy statute. The valued policy statute sets forth the calculation used to determine damages when an insurable event results in a total loss of an improvement to real property. Under Mont. Code Ann. § 33-24-102, when an insured improvement is so adversely affected as to be considered a total loss, the value of the insured property lost is conclusively presumed to be the full value of the insurance policy.

The term "improvement" includes all buildings and structures situated upon or affixed to the land. This definition encompasses mobile and manufactured homes considered "permanently located" under the statute. *Meccage v. Spartan Ins. Co.* (1970), 156 Mont. 135, 138-139, 477 P.2d 115, 117; Mont. Code Ann. § 15-1-101(1)(i) (2009).

For the purposes of the valued policy statute, a total loss occurs when an improvement to real property is so significantly damaged that it no longer retains its "'identity and specific character as a building.'" *Meccage*, 156 Mont. at 140, 477 P.2d at 117 (quoting *Oshkosh Packing & Provision Co. v. Mercantile Ins. Co.*, 31 F. 200, 204 (E.D. Wis. 1887). It is not necessary that the improvement or its component materials be totally destroyed for a total loss to arise. Nevertheless, the damage incurred typically must be grave to characterize the improvement as a total loss. *Meccage*, 156 Mont. 135, 477

P.2d 115; *Group Von Graupen v. Employers Mut. Fire Ins. Co.*, 259 F. Supp. 934 (D.P.R. 1966); *Oshkosh*, 31 F. 200; *Hinkle v. N. River Ins. Co.*, 70 W. Va. 681, 75 S.E. 54 (W. Va. 1912); *O'Keefe v. Liverpool, London & Globe Ins. Co.*, 140 Mo. 558, 41 S.W. 922 (Mo. 1897).

This test for determining whether a total loss has occurred applies to all improvements, regardless of type.

If you have questions, please call the CSI Legal Bureau at (406) 444-2040.