

INSURANCE ISSUES FOR DRILLING AND FRACKING



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Fracking: Friend or Foe for Homeowners? – By Desiree Baughman

...Homeowners are finding out that they can't always depend on their homeowners insurance when experiencing losses that occur as a result of hydraulic fracturing – aka fracking – on their property. Worst of all though, some homeowners can find themselves liable for any unwanted aftermath of fracking, such as water contamination.

...Fracking can lead to homeowners suffering major losses, both in property damage, property value, and perhaps most frightening, becoming liable for any negative results that occur from fracking on a homeowner's property. The list of losses and risks associated with fracking continues growing, and...most insurance policies – and the law – don't offer coverage that's evolved to keep up with this increasingly common trend – so whether or not a homeowner is covered by homeowners insurance for related losses and liability claims against a homeowner is a huge question. ...

The Possible Dangers and Risks of Fracking

...Many worry that we're sacrificing future environmental health and natural landscapes for immediate gain. One of the major concerns stems from the chemicals within the fracking cocktail. Nearly 600 chemicals can be used in the cocktail, some of which are considered highly toxic. Lead, uranium, methanol, hydrochloric acid, and formaldehyde are common ingredients pumped into the ground, and there have already been cases of these toxic chemicals contaminating drinking water, but the side effects of fracking don't stop there. ...

Most homeowners or land owners rely upon their homeowners insurance policies for protection against lawsuits and liability for damage or losses that occur on their property or those that occur as a result of something they did. This is where one of the biggest problems of fracking and insurance coverage is. ...

There are risks homeowners face that could damage just their property from fracking, such as damage to their home from a fracking-induced earthquake, or just a run of the mill accident where a bulldozer runs over a shed or detached garage. But...what happens if a homeowner consents to fracking on their property, which leads to an area's water contamination, and the homeowner is subsequently sued for it though? ... Since the homeowner consents to the fracking operations on the property they own, it's possible for the property owner to be sued for any negative results that brings harm to others, such as water contamination, property damage to neighboring properties from things like earthquakes or tremors that can occur from fracking, or well blow-outs, which can release up to millions of gallons of toxic material.

It's no surprise that when a property owner is approached about fracking that the fracking company doesn't inform the homeowner of the possible liability the homeowner can be stuck long after the fracking company is either long gone, or in many situations, dissolved. First of all, many fracking companies will set up what could be called a 'temporary' LLC or LLP for each operation and location a company uses. ...These LLCs and LLPs often conveniently dissolve after operations are done, leaving a homeowner with any indemnity and liability. Unfortunately, the property owner usually doesn't realize they could be left with quite a hefty bill for any unwanted 'side-effects' of the operation that just occurred on the property they own and are responsible for maintaining safety on.

Additionally, many drilling companies lease 'mineral rights' from the owner, but **the 'lessor' is rarely told about the risks, dangers, and possible liability they'll assume once the fracking operation is done with or when the mineral rights lease is over.** The technicality legally is that these leases typically just pertain to the area below ground, meaning no matter what, or when, the fracking company could still be indemnified because they're working *underneath* the owner's property [and the surface owner, who did not lease the *surface*, held liable]. ...

What's worse is that depending on the state and laws – which are still developing regarding this trend – federal or state government may pay for the cleanup of things like water contamination, but the sting is that the homeowner could then be held liable for the costs their state or the federal government spent doing so. And you thought tax paying time was bad.

What Insurers Say – Or Don't

Since this is a new issue, insurance industries are approaching with caution. So far, most issues have surrounded water contamination, but the main issue has been proving liability, which takes place in court. ...Some insurers are taking a stand before the issue even arises, and are trying to take some pre-emptive strikes to inevitable claims – or worse – litigation.

...Nationwide Insurance...issued a statement [in 2012] saying “...Fracking-related losses have never been a covered loss under personal or commercial lines policies...” ...Your insurance company may feel the same way and may just be playing the ‘quiet game.’ ...Insurers may operate under a ‘don’t ask, don’t tell’ policy instead of offering *you* a policy covering possible losses resulting from fracking. [Other insurers are excluding induced earthquakes.]

Insurance Coverage for Fracking

Homeowner policies rarely cover land or property damage related to indirect causes, so it’s really not surprising that fracking is included as an exclusion. But what if fracking provokes an earthquake – just one fracking related loss possibility – that damages your home? Are you covered under earthquake insurance? Do you even have earthquake insurance? It may be offered in all states, but that doesn’t mean policyholders opt for it. ...

The real coverage deficiency is most likely liability though. Homeowners often mistakenly think that they’re only liable for damages that occur on their property, and that liability is restricted to damage or injury occurring in their home or on their property. In fact, there is not a restriction on where the damage or injury occurs, icing on the cake considering that the amount of liability many homeowners carry is grossly insufficient when up against a huge lawsuit from something like water contamination or environmental clean-ups.

The best thing any property owner could do is buy an umbrella liability insurance policy, extending liability coverage from claims placed against their home or auto insurance policies. At the very least, they should opt for the highest possible liability limits an insurer offers. The other hope is that *some* homeowners insurance policies don’t have pollution exclusions, which could possibly aid in an environmental cleanup...

Unfortunately though, **even with all the liability in the world, there’s still a way for insurers to get off the hook from paying out.** Most personal lines of insurance exclude coverage for any claims made due to a business venture. When the fracking salesman shows up at the front door and the homeowner leases what’s underneath their precious ‘sub-surface,’ it becomes classified as either a business venture or voids a homeowners insurance claim because the fracking was done for monetary gain. This is true even if the homeowner hasn’t received payment yet and is only expecting payment.

In any state, whether you’d be covered for fracking related losses really just depends on your policy and insurer. **Some exclude man-made earthquakes** [especially now that data on fracking and wastewater injection is solid].

...If you live in an area where fracking often occurs, or live in an area that may seem promising to fracking companies, it’s worth it for you to do the same thing insurers like Nationwide have – take a pre-emptive strike and check your policy for exclusions regarding earthquake damage and water contamination, as well as finding out on your own if there may be some loopholes in a policy that would deny a fracking related loss. ...**And it’s not just homeowners who should be concerned. Farmers of plants and livestock could potentially be affected.** ...**Even if you take legal action, insurance won’t cover the legal fees involved.** It could also depend on which state you live in. If your state of residence has specific requirements of fracking companies to protect surrounding property and mitigate any damage, your basis for a claim might be recognized. And then again, it may not. ...

As a homeowner, the first step to protection is always purchasing the right coverage amounts. When it comes to fracking and potential damages, be aware of exclusions. ... Ask specific questions and voice your concerns: If your well water is contaminated and you go to court, does insurance pay for anything? If your breeding bull dies as a result of toxic poisoning, can you collect damages? Addressing potential problems before there are any is much easier... Similarly, if you’re ever approached by a fracking company, drill them before they start drilling you.

...When homeowners answer the door and find a fracking rep on their doorsteps, they need to ask themselves just how much risk is worth.