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ILLINOIS LAW MANUAL

CHAPTER XII EXCLUSIONS TO COVERAGE

L. FAMILY OR HOUSEHOLD EXCLUSION

1. Applies Both in Direct Actions between Insureds and in Contribution Actions Based on Bodily Injury to an Insured

The homeowners policy provides that liability coverage is excluded for bodily injury to the named insured or any insured within the meaning of the definition of insured, including any claim or suit brought against an insured to share damages with or repay someone else who may be obligated to pay damages because of the bodily injury. Since an "insured" is defined in the policy as including resident relatives of the named insured's household, this is sometimes referred to as the family or household exclusion.

The purpose of the exclusion is to avoid the possibility of collusive claims in a close, overly friendly and intimate relationship between family members. Safeco Ins. Co. v. Seck, 225 Ill. App. 3d 397, 399-400 (1992). The exclusion is not void even after the abrogation of interspousal tort immunity has permitted a wife to pursue a tort action against her husband for which there may be no liability coverage. Safeco Ins. Co. v. Seck, 225 Ill. App. 3d 397, 403 (1992). Although many cases interpreting this exclusion involve auto policies, the exclusion has also been upheld under homeowners policies.

For example, in State Farm Fire & Cas. Co. v. Guccione, 171 Ill. App. 3d 404, 406-7 (1988), the Appellate Court held that the company did not owe liability coverage with respect to the insured's negligent shooting of his spouse's child, who was a resident of the same household. However, in Country Mut. Ins. Co. v. Watson, 1 Ill. App. 3d 667, 669-70 (1971), a foster child

placed by the Department of Children and Family Services was not deemed to be a "resident of the household" because the word "resident" was generally understood to mean more than mere physical presence but, additionally, "intention and permanency of abode." The court held that, because the foster child's stay lacked the critical element of intention to make the foster home a permanent abode, the child was not a "resident" of the household. Again, in MFA Mutual Ins. Co. v. Harden, 26 Ill. App. 3d 360, 363 (1975), and Country Mut. Ins. Co. v. Mooney, 59 Ill. App. 3d 946, 948-49 (1978), the Appellate Court held that temporary stays in the policyholder's household while the relative was looking for a job or in need of a place to stay did not make the relative anything other than a temporary guest.

A household exclusion may also bar coverage for third-party contribution actions based on bodily injury to an insured's family member. American Family Mutual Ins. Co. v. Niebuhr, 369 Ill. App. 3d 517 (1st Dist. 2006).

2. A Homeowners Policy is not a "Vehicle" Insurance Policy to Which Insurance Code Applies in Voiding Household Exclusion Where Third-Party Acquires Right of Contribution Against Member of Insured Person's Household and Exclusion Will Continue to Apply

Section 143.01 of the Insurance Code, 215 ILCS 5/143.01, negates the family or household exclusion in a policy of "vehicle" insurance whenever a third party acquires a right of contribution against a member of the injured person's family. The homeowners policy,

however, is not a policy of “vehicle” insurance to which Section 143.01 applies. State Farm Fire & Cas. Co. v. Holeczy, 152 Ill. App. 3d 448, 451-2 (1987) (homeowners policy did not cover manufacturer’s contribution claim against plaintiff’s brother who was operating riding lawn mower when its blade injured three-year-old child); State Farm Fire & Cas. Co. v. Ondracek, 173 Ill. App. 3d 581, 584 (1988) (section 143.01 was inapplicable in a motorist's contribution claim for injuries sustained by the insured's daughter, who was a passenger on the insured's bicycle at time of the collision with the automobile driven by the motorist, as section 143.01 applies to policies of vehicle insurance and the policy in question was a homeowner’s policy).

Further, Allstate Ins. Co. v. Brettman, 275 Ill.App.3d 1040 (1st Dist. 1995), held that section 143.01 does not apply only to automobile insurance, but to all coverages insuring losses arising from use of a “vehicle” as defined in section 4 of the Insurance Code. Section 143.01(a) refers to section 4 for the description of vehicle insurance policies within its domain and section 4 describes vehicle insurance as insurance for loss arising from the use of a vehicle (motor or

otherwise), draft animal or aircraft. Brettman, 275 Ill.App.3d at 1050. See 215 ILCS 5/4. In contrast to the policy at issue in Holeczy, Brettman's policy indisputably provided coverage for physical injuries arising from the use of motor vehicles. Id. at 1049. Also, the parties in Brettman agreed that the bicycle at issue in the accident was a vehicle within the section 4 definition. Id. at 1043. Therefore, the homeowner's policy was actually a “policy of vehicle insurance” and section 143.01 applied to bar the household exclusion. Id. at 1051.

3. A Household Exclusion Will Be Applied Separately as to Each of Multiple Insureds Under a Policy.

A household exclusion will be applied separately to each insured in the event that there are multiple insureds under one policy. State Farm Fire & Casualty Co. v. Hooks, 366 Ill. App. 3d 819 (1st Dist. 2006). In that case, the court determined that where one of two named insureds was a resident of the insured premises, the household exclusion barred coverage for the resident’s spouse’s claim against the resident, but did not bar coverage for the spouse’s claim against the non-resident.



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