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Canadian Bar Association

REPORT

OF THE

COMMITTEE ON INSURANCE

Submitting for Consideration

A MODEL FIRE INSURANCE POLICY ACT

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CANADIAN BAR ASSOCIATION

REPORT OF THE COMMITTEE ON INSURANCE.

In 1916 your Committee presented a general report dealing with insurance from a number of points of view. It outlined the conflict which exists between Dominion and Provincial authority and referred to the contests which have arisen between these jurisdictions. The report ended with an appendix containing the Report made in 1876 by the Ontario Judges appointed to settle conditions of fire insurance policies.

It is too large a task in a second report to present for consideration a Standard Statute which will cover all phases of insurance.

Your Committee, therefore, proposes to commence where they left off in last year's report, and deal in this report with the subject of a Fire Policy Act.

The decisions of the Privy Council have fairly settled that the jurisdiction in reference to insurance contracts lies largely with the provinces.

It is probably because of these decisions that "The Insurance Act, 1917," is at the time of the preparation of this report before the Dominion House.

Other branches of insurance, such as life, personal, accident and guarantee require attention, and the companies devoting themselves to these branches are considering improvement in the law.

Our Committee hope at a later stage to assist them in working out their problems.

Statutory conditions were first adopted by the Province of Ontario in 1876, when they were placed in a separate Fire Policy Act. Statutes based closely on this were enacted as follows: In Manitoba in 1888, in Nova Scotia in 1889, in British Columbia in 1893, in the North-West Territories in 1900, in Quebec in 1908, and in New Brunswick in 1913. Prince Edward Island has no fire insurance statute. Ontario has always been very prodigal in producing insurance laws. In 1887 all at that date were consolidated in one Act of 44 pages. The next consolidation, in 1897 grew to 109 pages, and in 1912, to 125 pages. In the Ontario revision of 1912, a number of important changes were made in the Statutory Fire Conditions, and new sections were added to regulate the form of fire policies. This new Ontario law was adopted in Manitoba, Saskatchewan and Alberta in 1915, almost verbatim, so that the four provinces last mentioned are practically uniform on this branch of insurance law. The other provinces, except Prince Edward Island, have

policies based on the earlier Ontario Statute. There is, therefore, a field for progress in uniformity in this important branch of Provincial laws.

In 1886 the State of New York adopted a statutory form of fire policy. A very great deal of care and time were given to its preparation, and it was considered complete enough, so that companies were not allowed to make variations in the standard conditions. This form was adopted by other States of the American Union. Recently the United States National Convention of Insurance Commissioners has prepared a revised form, and this is to replace the earlier New York policy. The Insurance Commissioner at Albany has been good enough to furnish the Committee with a copy of it.

It is doubtful whether convenience is best served by placing in one Statute all matters relating to insurance. Some of the provinces have a general Statute, and separate Acts for fire, life, mutual and other branches of insurance. When analyzed in this way, it is found that British Columbia, Manitoba, Nova Scotia, and New Brunswick have separate Fire Policy Acts. In the other provinces all matters relating to fire insurance are placed in one general Statute. Ontario, Quebec, Saskatchewan and Alberta all have Omnibus Insurance Acts. It seems that the underwriters and some of the insurance departments favour a return to the separate Statutes. It is in deference to this expression of opinion that the Committee suggest a model Fire Insurance Policy Act to be complete in itself, except as to general matters which affect all companies and which will be found in a separate Act.

When the original Ontario conditions were prepared, provision was made for changes or additions or omissions, subject to the approval of the Courts. The companies took advantage of this and many alterations were made and passed upon by the Courts. The Revised Ontario Conditions now in force, and which have been copied by Manitoba, Saskatchewan and Alberta, are considered fair enough by many of the companies, and accordingly they now print their policies without any additions. Having in view the history of the New York policy and this action of Canadian Companies, your Committee suggest that Canadian conditions should now be made the last word. The Model Act appended is, therefore, drafted on the basis that no addition or variations will be allowed.

In preparing the Model Act submitted, your Committee has endeavoured to make the wording simple and clear, to place in one clause all matters relating to the same or similar subject, also to place in the conditions certain matters relating to procedure after a loss instead of leaving them as sections in the Act, and as far as possible to arrange the whole in a logical order. So that the draft may be properly understood, the fol-

lowing remarks are offered, taking the sections of the Act and the appended conditions in the order in which they appear. For the purpose of reference and comparison, the number of the corresponding Ontario condition is given.

M. H. LUDWIG,
Chairman.

REMARKS ON SECTIONS OF THE ACT.

Sec. 1. The words "Fire Insurance Policy Act" appear in several of the Provincial Statutes, and make a concise title for this Act.

Sec. 2. The wording of this section appears in several Provincial Statutes and outlines briefly in general terms the subject matter of fire insurance. Loss by lightning and explosion are here mentioned, but reference has to be made to new condition No. 2 for the exact hazard covered. *Ontario, sec. 191 (1).*

Sec. 3. It has become a custom in the business of fire insurance to allow fire insurance companies to cover the hazard which is caused by defective sprinklers, and this section gives authority for this practice. *Ontario, sec. 191 (1).*

Sec. 4. Here is repeated the provision found in several of the Provincial Statutes with regard to the term of the contract and to the renewal of a policy by renewal receipt. It will probably be a matter of satisfaction to all concerned if provision can be made that no fire policy shall be for a longer term than three years, even in the case of mutual companies, where in the past four and five years policies have been written. *Ontario, sec. 192.*

Sec. 5. This was a new section drafted by the Ontario revisors in 1912, and since copied into Manitoba, Saskatchewan and Alberta. It specifies the wording which is to appear on the face of the policy, provides for a co-insurance clause and for other necessary stipulations or terms of the contract with the proviso that these are not to have any force or effect if held by a Court to be unreasonable.

Sec. 6. This is the section which provides for statutory conditions and is the wording of the Ontario section with the necessary changes. The new provision is that the conditions are not to be varied. Companies will still be allowed to pay claims which are wholly or in part void by reason of some technicality in the conditions. This seems a reasonable option. Provision is made that the conditions must be printed in type of a reasonable size. *Ontario, secs. 194 and 198.*

Sec. 7. This section is founded on the provision enacted in Ontario in 1874 when the Legislature appointed a commission

to prepare statutory conditions. It provided relief against forfeiture where the assured did not strictly follow the conditions relating to proof. The original section which is rather long appears now on the statute books of all the Provinces. The committee suggest that this provision might be very well extended so as to protect the assured in any case of forfeiture giving the Courts authority to administer equitable relief, as is done in all statutes founded on the English Judication Act. It may be that in the suggested conditions, the simplification of the text may at first sight look to be a little hard on the assured, but this section, allowing relief from forfeiture, will provide adequate protection to an assured in any case where the loss has not been a dishonest one. *Ontario, sec. 199.*

Sec. 8. This is an Ontario provision which has been adopted in the other provinces, providing for an examination of the assured where the proofs are made by another party. *Ontario, sec. 201.*

REMARKS ON STATUTORY CONDITIONS.

Con. 1. This clause deals with misrepresentations and in it there is practically no change from the clause now in all the provinces. *Ontario, Number 1.*

Con. 2. This condition covers explosion and lightning hazards, and is the same in Ontario, Manitoba, Saskatchewan and Alberta, save that the words have been rearranged and somewhat simplified. *Ontario, Number 10.*

Con. 3. This enumerates the property which is not insured. The subjects mentioned are exactly the same throughout all the provinces. Prior to 1912 there was a condition which provided that such articles as clocks, musical instruments, paintings, plate glass, etc., were not to be insured unless mentioned in the policy. The Ontario revisers of 1912 considered it wise to eliminate this condition, and to allow the companies to make their exceptions on the face of the policy rather than in a condition. This provision has been dropped by Ontario, Manitoba, Saskatchewan, and Alberta, but still appears in British Columbia, Quebec, Nova Scotia and New Brunswick. *Ontario, Number 4.*

Con. 4. Here are set out hazards which are not covered. The new items in it are losses caused by the order of some civil authority or from theft. These suggestions are taken from the new American form and the British Columbia Statute. *Ontario, 6 (b), (c), (d).*

Con. 5. This is a composite condition and gathers under one heading all losses which are excepted unless the company gives

permission in writing endorsed on the policy. It enables the assured to see at a glance all matters about which he should consult his company.

Con. 5 (a) This deals with change of title, which has been held to mean a transfer of the whole interest. A mortgage on chattels has been added. This has always been considered a matter which should be notified to the company. The American policy has it. *Ontario, Number 3.*

Con. 5 (b). The wording relating to other insurance is taken from the new American form, and placed with it is the provision that when there is more than one policy all the companies interested must share in paying the loss. The early provision was that prior or subsequent insurance without notice voided the policy unless within 14 days after notice the company did not object. Manitoba changed this practice and penalized the assured by allowing him to collect only part of his loss if he had other insurance without permission. This was adopted in Ontario in 1912, and the proportion to be collected was made 60 per cent. As companies universally grant permission for concurrent insurance, the simpler form of the new condition seems desirable. The assured who has neglected to obtain permission can get all the protection he requires under section 7 if his loss is honest. If not honest, the company should have safeguard. *Ontario, Numbers 5 and 9.*

Con. 5 (c). Covering material changes this is a very important clause, and is here made quite simple. Under the old conditions, provision is made for the assured notifying the company of an increase in hazard, and following this, the company may do two things, it may cancel the policy on seven days' notice under the provision for cancellation, or it may demand an increased premium, and, if this is not paid immediately, the policy lapses immediately. These two courses are not consistent. The American form is followed. The relief provided in section 7 of the new statute amply protects an assured who does not take the trouble to obtain permission before making a material change. *Ontario, Number 2.*

Con. 5 (d). The Workmen's permit condition is taken from the American Form. *Ontario, Number 6 (e).*

Con. 5 (e). This condition dealing with dangerous substances is also taken from the new American form, and is a well worded clause. *Ontario 6 (f).*

Con. 5 (f). This regulates factory risks and is taken from the new American form. If there are to be no variations in the conditions, it seems reasonable to make the provision which is here given. (*New.*)

Con. 5 (g). This covers the risk when a building is left unoccupied for thirty days. Beyond this period, it seems only reasonable that the company's consent should be obtained. The Courts have held that such a provision is reasonable. (*New.*)

Con. 6. Making the contract follow the application is a well known Canadian condition. It does not appear in the American form. *Ontario, Number 8.*

Con. 7. The waiver condition is somewhat more extended than the old form, by reason of the conditions having no changes. It is to be read with section five. The new American form is drawn on for part of the wording. *Ontario, Number 13.*

Con. 8. The cancellation provisions are embodied in one clause. The wording is simplified and follows the new American form. The only addition is that if a company cancels a policy, it must give notice to any party to whom the loss is payable, such as a mortgagee, as well as to the assured. Both British Columbia and Saskatchewan have adopted such a provision in their insurance statutes. *Ontario, Numbers 11 and 12.*

Con. 9. This clause, dealing with agency is in substance the same as the present Canadian conditions. It makes the company accept the application so far as the quantum of the information is concerned when the agent fills it up. This provision is in the Quebec Condition Number 1. *Ontario, Number 14.*

Con. 10. This condition gathers in one paragraph all matters relating to notice, whether given to the company or to the assured. It obviates the necessity of specifying in other conditions the manner in which notice can be given. *Ontario, Numbers 7 and 15.*

Con. 11. The question of mortgage interests is now such an important one, and so closely associated with fire insurance, that it seems only reasonable that some condition should be put in the policy on the subject. The wording is taken from the new American conditions, with some slight modifications. It seems only reasonable that, if the holder of a policy has turned it over to a creditor, that the company should have some chance of dealing with the matter, and also that the creditor should have some protection as well, and be given an opportunity to insure with another company if the holding company does not want to continue the risk. (*New.*)

Con. 12. The requirements after loss, on the part of the assured, are practically the same as at present, except that under clause C., the assured must state his own interest in the property. This is not required at present. Prior to 1912, in Ontario, there was a sub-section of this condition which required the assured to produce a certificate from a magistrate or com-

missioner, that he had examined the circumstances attending the loss and certifying that he believed the loss was through misfortune and not from any evil practice. This clause was practically a dead letter and was left out by the Ontario Revisers, and does not now appear in Ontario, Manitoba, Saskatchewan or Alberta. It does appear, however, in British Columbia, Quebec, Nova Scotia, and New Brunswick. *Ontario, Number 19.*

Con. 13. This condition specifying the person who must make proof gathers in one clause the provisions now found in two. *Ontario, Numbers 17 and 19.*

Con. 14. Fraud in a statutory declaration has the same cancelling effect on insurance in all the provinces. *Ontario, Number 20.*

Con. 15. This embodies a clause which is found in the Ontario and other Insurance Acts and deals with the duty of the assured to secure his property from damages and to make an inventory and to notify the company. It seems more logical to put in the conditions of the policy all matters which require action by the assured or give him rights so that he may be aware of his obligations and the benefit which comes to him. *Ontario Statute, section 200 (2).*

Con. 16. This clause dealing with a continuance of the insurance for a limited time on goods necessarily moved, also covers the obligations of the company to contribute to the expense of salvage. *Ontario, Number 16 part.*

Con. 17. The rights of the company to make entry on the damaged premises are at present in the statute and not in the conditions of the policy. These matters are now placed in a new condition and incorporated with them is the clause from another condition dealing with the question of abandonment. *Ontario, Statute section 200 (1) and part of Condition 16.*

Con. 18. The Canadian Statutory Conditions have always contained an arbitration clause, while the United States form provides for appraisal. It is rather significant that the Canadian Statutes give appraisal as an additional method which the parties may adopt, although it is not made compulsory. As a matter of fact, very few arbitrations take place. An arbitration is not a practical method of settling a fire loss. The damage can only be intelligently adjusted by those who go to the premises and inspect either the building or the goods. Arbitrators sitting hearing witnesses and listening to legal argument is too cumbersome as well as expensive and frequently too slow. In most cases of importance the dispute usually reaches a Judge who is perhaps better able to deal with it as a matter of legal procedure than are arbitrators. The committee therefore suggest an appraisal clause in lieu of arbitration. Saskatchewan

in 1917 enacted a statutory policy for Hail Insurance, taking the clauses largely from the fire conditions, and it is significant that they have substituted appraisal for arbitration. *Ontario, Number 200 (3) of the Statute.*

Con. 19.—This replacement clause is in substance the same as the present one. There is added the requirement that the company's notice must be in writing. *Ontario, Number 23.*

Con. 20. The condition providing for payment follows the present form except that the reference to a shorter period than sixty days is left out as unnecessary. *Ontario, Number 22.*

Con. 21. The condition regulating the commencement of legal proceedings is the same as the present condition. *Ontario, Number 24.*

Con. 22. The subrogation clause suggested is a new condition. It merely codifies in the conditions the present rights of the parties. It has always been in the United States Standard policy. The wording is taken from the revised American Conditions. (*New.*)

In Nova Scotia and New Brunswick a Statutory Condition provides that questions of materiality of representations in the application for insurance shall be decided by the Court and not by a jury. This is a question which should be regulated by a section in a general Act, and not in the policy. It is in section 156 (6) of the Ontario Act, but the rule in Ontario and other provinces is that materiality is a question of fact for a jury.

CHAPTER

An Act to Secure Uniform Conditions in Fire Insurance Policies.

Assented to

His Majesty, by and with the advice and consent of the Legislative Assembly of the province of _____, enacts as follows:

1. This Act may be cited as *The Fire Insurance Policy Act.*

SUBJECT OF INSURANCE.

2. Every company licensed and registered for the transaction of fire insurance may within the limits, and subject to the restrictions prescribed by the license and registry, insure or reinsure any property in this province or in transit therefrom or thereto, in which the assured has an insurable interest, against damage or loss by fire, lightning or explosion, whether the same happens by accident or any other means, except that of design on the part of the assured.

SPRINKLER RISKS.

3. When any mercantile or manufacturing risk is insured, the insurer either by the same or a separate contract may insure the same property against loss or damage arising from defects in, or injuries to sprinklers or other fire extinguishing appliances.

TERM OF CONTRACT.

4 (1) Contracts of fire insurance shall not exceed the term of three years, except that the insurance of mercantile or manufacturing risks shall be for a term not exceeding one year.

RENEWAL RECEIPT.

(2) Any contract may be renewed at the discretion of the insurer by renewal receipt instead of by a new policy.

WORDING OF POLICY.

5 (1) On the face of every fire insurance policy there shall appear the name of the insurer, the name of the assured, the name of the person or persons to whom the insurance money is payable, the premium or other consideration for the insurance, the subject matter of the insurance, the maximum amount or amounts which the insurer contracts to pay, the event on the happening of which payment is to be made and the term of the insurance.

CO-INSURANCE.

(2) A policy may contain on its face a co-insurance clause, in which event it shall have printed or stamped on its face in large type, and in red ink the words "This policy contains a co-insurance clause," and if these words do not so appear such clause shall not be binding on the assured.

OTHER TERMS.

(3) Subject to the provision for statutory conditions contained in paragraph 6 hereof, the policy may also contain on its face other necessary provisions and conditions, but each of these, including the co-insurance clause shall not have any force or effect if held by a Court or a Judge, before whom a question relating thereto is tried, to be not just and reasonable to be exacted by the insurer.

STATUTORY CONDITIONS.

6 (1) The conditions set forth in the schedule to this Act shall be deemed to be part of every fire insurance contract, and shall be printed without any other matter on a separate page of every policy in type not less in size than ten point with the heading *Statutory Conditions*, and no stipulation to the contrary or providing for any variation or omission therefrom or addition thereto shall have any force or effect.

WHEN WAIVER ALLOWED.

(2) It shall be optional with the insurer to pay or allow claims, wholly, or in part, which are void under any statutory condition.

RELIEF FROM FORFEITURE.

7. Where by reason of necessity, accident or mistake any statutory condition as to the proof to be given to the insurer has not been strictly complied with, or where for any other cause it is held to be inequitable that the insurance should be deemed void or forfeited, the Court shall have power to relieve against the forfeiture or voidance and in granting such relief to impose such terms as to damages, compensation, costs and expenses and all other matters as may be deemed just.

EXAMINATION OF ASSURED.

8. Where proofs of loss are made by any person other than the assured, the insurer shall be entitled to have the assured examined under oath touching the loss or damage before a Judge of the County or District Court of the County or District in which the assured resides, and the procedure shall be the same as that upon an examination for discovery in an action.

STATUTORY CONDITIONS.

1. *Misrepresentation.*—If any person insures property and causes the same to be described otherwise than as it really is to the prejudice of the company, or misrepresents or omits to communicate any circumstance which is material to be made known to the company, in order to enable it to judge of the risk it undertakes, such insurance shall be of no force in respect to the property in regard to which the misrepresentation or omission is made.

2. *Explosion and Lightning.*—The company will make good loss or damage caused by lightning or by the explosion of coal or natural gas in a building not forming part of gas works whether fire ensues therefrom or not; and loss or damage by fire caused by any other explosion; but if electrical appliances or devices are insured any loss or damage to them caused by lightning or other electrical currents is excluded and the company is liable only for such loss or damage to them as may occur from fire originating outside the articles themselves.

3. *Property not Insured.*—This policy shall not cover money, books of account, securities for money and evidences of debt or title; nor the property of any third person, unless the interest of the assured therein is stated on the policy.

4. *Hazards not Covered.*—The company is not liable for loss or damage caused by invasion, insurrection, riot, civil commotion, military or usurped power; or by order of any civil authority; or by theft; or for loss or damage to goods while undergoing any process by which the application of fire heat is necessary; or for loss or damage caused by the want of good and substantial brick, stone or cement chimneys; or if with the

knowledge or consent of the assured ashes or embers are deposited in wooden vessels; or if stoves or stovepipes are placed in an unsafe condition or improperly secured.

5. *Losses Excepted Unless Permission Given.*—Unless permission in writing is added to the policy, the company shall not be liable for loss or damage occurring:

(a) *Change of Title.*—If the property insured be assigned or being chattels, is mortgaged as to the part affected; but this does not apply to change of title by succession or by operation of law or by reason of death; or

(b) *Other Insurance.*—While the assured shall have any other contract of insurance whether valid or not on the property covered, in whole or in part by this policy, and in any event the company shall not be liable for a greater proportion of any loss or damage than the amount hereby insured shall bear to the whole insurance covering the property, whether valid or not; or

(c) *Material Change.*—When the hazard is increased by any change material to the risk within the control or knowledge of the assured; or

(d) *Workmen.*—While mechanics or other workmen are employed in building, altering or repairing the described premises beyond a period of fifteen days; or

(e) *Dangerous Substances.*—While illuminating gas or vapor is generated on the insured premises, or while there is kept, used or allowed on the described premises fireworks, Greek fire, phosphorus, explosives, benzine, gasoline, naphtha, or any other petroleum product of greater inflammability than kerosene oil, gun-powder exceeding 25 pounds or kerosene oil exceeding five gallons; or

(f) *Factories.*—If the subject of insurance be a manufacturing establishment, or its contents, while operated in whole or in part between the hours of ten p.m. and five a.m., or while it ceased to be operated beyond a period of thirty days; or

(g) *Vacancy.*—While a described building whether intended for occupancy by owner or tenant is vacant or unoccupied beyond a period of thirty days.

6. *Form of Contract.*—After application for insurance it shall be deemed that any contract sent to the assured is intended to be in accordance with the terms of the application unless the company points out in writing the particulars wherein the policy or other contract differs from the application.

7. *Waiver.*—No one shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement added hereto, nor shall

any such provision or condition be waived unless such waiver shall be in writing; nor shall any privilege or permission affecting the insurance hereunder exist or be claimed by the assured unless granted herein or by rider added hereto.

8. *Cancellation.*—The insurance may be terminated at any time at the written request of the assured in which case the company shall upon demand and surrender of this policy refund the excess of paid premium above the customary short rates for the expired time. The insurance may also be terminated at any time before loss by the company by giving to the assured seven days written notice of cancellation with an offer to refund the excess of paid premium above the pro rata premium for the expired time, which excess if not tendered shall be refunded on demand.

9. *Agency.*—Any officer or agent of the company who assumes on behalf of the company to complete an application form or to enter into any written agreement relating to any matter connected with insurance, shall be deemed *prima facie* to be the agent of the company for the purpose.

10. *Notice.*—Any written notice to the company may be delivered or sent by registered post to the chief agency or head office of the company in this province or to any authorized agent of the company therein. Any written notice to the assured may be by letter personally delivered to him, or sent to him by registered post at his last post office address notified to the company, or where no address is notified and the address is not known, addressed to him at the post office of the agency, if any, from which the application was received.

11. *Mortgage Interests.*—If this policy be assigned before loss to a mortgagee or other creditor the assignment shall have no force unless the company be notified thereof in writing, and this policy may be cancelled by giving to such mortgagee or creditor seven days' written notice of such cancellation. On payment to any mortgagee or creditor for any loss or damage hereunder the company shall claim that as to the mortgagor or owner no liability existed, it shall to the extent of such payment be subrogated to the rights of the mortgagee or creditor, but without impairing the rights of the mortgagee or creditor to sue; or it may pay the debt in full and require an assignment of the claim or security. Other provisions relating to the interests and obligations of such mortgagee or creditor may be added hereto by written agreement.

12. *Requirements after Loss.*—Any person entitled to make a claim under this policy shall—

(a) Forthwith after loss give written notice to the company.

(b) Deliver as soon thereafter as practical, as particular an account of the loss as the nature of the case permits.

(c) Furnish therewith a statutory declaration declaring—That the account is just and true—when and how the loss occurred, and if caused by fire, that the fire was not caused through any wilful act or neglect, or the procurement, means or contrivance of the assured; the amount of all other insurances; the interest of the assured and of all others in the property and all liens and encumbrances thereon; the place where moveable property was deposited at the time of the fire.

(d) If required, and if practical, produce books of account, warehouse receipts and stock lists and furnish invoices and other vouchers verified by a statutory declaration in support of his claim, and furnish copies of the written portion of all other policies.

13. *Who shall make Proof.*—Proof of loss must be made by the assured although the loss is payable to a third person, but in case of the absence or inability of the assured to make the same, proof may be made by his agent, such absence or inability being satisfactorily accounted for, or in the like case if the assured refuses to do so, by a person to whom any part of the insurance money is payable.

14. *Fraud.*—Any fraud or false statement in any statutory declaration in relation to the proof of loss shall void the claim of the person making the declaration.

15. *Salving Goods, Inventory.*—It shall be the duty of the assured, when and as soon as it is practicable, after any loss or damage, to secure the insured property from damage or from further damage, and to separate as far as reasonably may be, the damaged from the undamaged property, and to make or cause to be made an inventory of the destroyed, damaged and undamaged property, and to notify the company of the separation and inventory.

16. *Insurance on Goods Moved.*—If any of the insured property shall necessarily be removed for preservation from fire it shall for seven days be covered in its new location by that part of the insurance under this policy which is in excess of this company's share of the loss which has already occurred, and this company will contribute to the loss and expenses attending such act of salvage proportionately to the respective interests of the company or companies and the assured.

17. *Entry, Control, Abandonment.*—After any loss to insured property the company by an accredited agent shall have a right of entry and access *first* immediately to examine and survey and to make an estimate of the loss or damage, and *second*

after the assured has secured the property, to make an appraisal or particular estimate of the loss or damage. The company shall not be entitled to the control or possession of the insured property or the salvage thereof unless it undertakes reinstatement or elects to accept any part thereof as its agreed or appraised value, but unless with the consent of the company there can be no abandonment to it of any insured property.

18. *Appraisal.*—If any difference arise as to the value of the property insured, the property saved or the amount of the loss such value and amount and the proportion thereof (if any) to be paid by the company shall, whether the right to recover on the policy is disputed or not, and independently of all other questions, be submitted to the appraisal of some disinterested person to be chosen by both parties, or if they cannot agree on one person, then to two persons, one to be chosen by the assured and the other by the company. The appraisers shall first select a competent and disinterested umpire and failing for 15 days to agree upon such umpire, then on request of the assured, or the company, such umpire shall be appointed by a Judge of a Court of Record in the county or district in which the loss has happened, and the award in writing of any two shall, if the company is in other respects liable, be conclusive as to the amount of the loss and the proportion to be paid by the company; where the full amount of the claim is awarded the costs shall follow the event, and in other cases all questions of costs shall be in the discretion of the appraisers.

19. *Replacement.*—It shall be optional with the company, instead of making payment, to repair, rebuild or replace the property lost or damaged with other of like kind and quality within a reasonable time, giving written notice of its intention within fifteen days after the receipt of the proofs of loss herein required.

20. *When Loss Payable.*—The loss or damage shall be payable within sixty days after proof of loss, as herein provided, is received by the company.

21. *Action.*—Every action or proceeding against the company for the recovery of any claim under or by virtue of this policy shall be absolutely barred, unless commenced within one year next after the loss or damage occurs.

22. *Subrogation.*—The company may require from the assured an assignment of all right of recovery against any other party for loss or damage to the extent that payment therefor is made by the company.