

Force-Placed Policies: Who Is Entitled To Benefits?

By [Thomas Caswell](#) and [Monica Geyen](#)
Published in [Insurance Law360](#)

Force-placed insurance policies—also referred to as “lender-placed” or “force place” policies—have been the subject of debate centered on the question of *who* is entitled to receive policy benefits when there is a property loss covered by the terms of the policy: the lender, the property owner, or both. This article provides an overview of force-placed coverage in the real property insurance context and the exceptional circumstances in which such coverage is extended to cover the property owner’s interests in addition to the lender’s interests.

The Typical Force-Placed Policy Dispute

Mortgage contracts generally require property owners to maintain insurance on the property for the duration of the mortgage. In the event the property owner’s insurance policy lapses,¹ the mortgage agreement allows the lender to purchase an insurance policy to cover the property, known as force-placed coverage. The property owner is typically not listed as a named insured under the policy despite the occasional provision in mortgage contracts that allows lenders to add the cost of the premiums paid on the force-placed policy to the property owner’s mortgage payments.

In the typical coverage dispute, the property owner submits a claim to the insurance company that issues the force-placed insurance policy. The insurance company then denies the property owner’s claim because the property owner is not listed as a named insured under the terms of the policy. Subsequently, the property owner files suit against the insurance company, arguing that the insurance company wrongfully denied the property owner’s claim for benefits.

Courts have generally concluded that property owners do not have standing to bring claims against the insurance company because: (1) the property owner is not listed as a “named insured” or “additional insured” under the terms of the policy and, therefore, is not a party to the contract; and (2) the property owner does not qualify as a third-party beneficiary of the contract. Therefore, in the event of a loss, courts answer the question of who is entitled to the benefits under the force-placed insurance policy in favor of the lender only. See, e.g., *Williams v. Certain Underwriters at Lloyd’s of London*, 398 Fed. Appx. 44, 48-49 (5th Cir. 2010); *Kirundi v. Am. W. Home Ins.*, No. 3:09-CV-442, 2011 U.S. Dist. LEXIS 21371, at *11-14 (N.D. Ind. Mar. 2, 2011).

Limited Instances of Coverage for Property Owners

Aside from the rare situation in which the property owner is a named insured or additional insured under the terms of the force-placed policy, a stipulation pour autrui—a contract for the benefit of the third-party property owner—may be established by the language of the policy

¹ This article does not address circumstances other than the lapse of the property owner’s policy that prompt lenders to obtain force-placed coverage other than the lapse of the property owner’s policy. Additionally, this article does not express an opinion on any policy concerns that have been expressed regarding the lenders’ process in obtaining force-placed coverage.

when: (1) the stipulation for a third party is manifestly clear; (2) there is certainty as to the benefit provided the third party; and (3) the benefit is not a mere incident of the contract. Absent such an expression of intent in the language of the policy to afford property owners coverage under a force-placed policy, courts have concluded that property owners do not properly qualify as third-party beneficiaries to the contract. See, e.g., *Williams*, 398 Fed. Appx. at 48-49; *Kirundi*, 2011 U.S. Dist. LEXIS 21371, at *11-14; *Williams v. Fidelity Nat'l Ins. Co.*, No. 074428 Section "B"(3), 2009 U.S. Dist. LEXIS 8265, at *6-8 (E.D. La. Sept. 8, 2009).

Even so, on rare occasions, some courts have concluded that property owners may be third-party beneficiaries to certain provisions of the contract. These instances may arise when the policy language could only be interpreted to benefit the property owners. Such language may include provisions for: (1) temporary housing expenses; and (2) direct payment to the property owners in the event of a loss.

When the policy includes a provision for "Temporary Housing Expenses," property owners may have limited standing to assert claims for benefits under a force-placed insurance policy. A typical provision provides:

TEMPORARY HOUSING EXPENSE

If insured property is a dwelling and a flood loss covered by this policy make it unsafe or in poor condition to live in, or if a civil authority will not let owner go to and use the dwelling as a result of flooding to neighboring locations, we cover the reasonable amount owner paid in renting a temporary dwelling that is equivalent to owner's damaged dwelling so that owner's household can maintain its normal standard of living.

It has been held that this provision provides a direct benefit to the property owner in the event of a loss because it is the property owner who would be paid temporarily for housing expenses incurred while the damaged property cannot be occupied. This provision in a force-placed policy thereby provides the property owner with at least standing to pursue claims under this limited provision. See *Henderson v. Certain Underwriters at Lloyds, London, England*, No. 09-1320 Section: J, 2009 U.S. Dist. LEXIS 9069, at *6-7 & n.1 (E.D. La. Sept. 30, 2009). See also *Williams*, 398 Fed. Appx. at 47-48 (referencing property owner's delayed argument that "Temporary Housing Expense" provision gave property owner standing under force-placed policy, but concluding that such argument was waived).

Also, where the policy does not list the property owner as an insured but does provide for direct payment to the property owner in the event of a loss, a stipulation pour autrui may be established. For example, the force-placed policy may provide:

We will adjust all losses with you. We will pay you but in no event more than the amount of your interest in the "insured location." Amounts payable in excess of your interest **will be paid to the "borrower"** unless some other person is named by the "borrower" to receive payment.

This language reflects a clear intent to provide a benefit to the property owner because the policy provides for *direct payment* to the property owner in the event of a loss—albeit where the

loss exceeds the lender's interest in the property. See *Lee v. Safeco Ins. Co. of Am.*, No. 08-1100 Section: 1/3, 2008 U.S. Dist. LEXIS 69817, at *10-11 (E.D. La. July 2, 2008).²

Conclusion

The language of the force-placed insurance policy, as with any insurance dispute generally, is the linchpin of the coverage dispute. Assuming that the property owner is not listed as a named insured or additional insured in a force-placed insurance policy, courts may in limited instances extend coverage to property owners if specific provisions, read in the context of the entire policy, demonstrate an intent to treat the property owner as a third-party beneficiary to the contract. Absent such a clear intent in the language of the policy read as a whole, however, courts interpret force-placed insurance policies as covering only the lender's interests.

Thomas Caswell is a partner in the Minneapolis office of Zelle Hofmann Voelbel & Mason LLP. Monica Geyen is an associate in the firm's Minneapolis office. Zelle Hofmann is a national law firm representing clients in their most challenging insurance-related disputes, antitrust/competition and other complex business litigation. The views and opinions expressed herein are solely those of the authors and do not reflect the views or opinions of Zelle Hofmann or any of its clients. For additional information about Zelle Hofmann, please visit www.zelle.com.

² It is also important to determine whether third-party beneficiary status has been statutorily established or otherwise expanded or limited by the common law of the governing jurisdiction. See, e.g., *Barrios v. Great Am. Assurance Co.*, No. H-10-3511, 2011 U.S. Dist. LEXIS 91251, at *10-11 (S.D. Tex. Aug. 16, 2011) (noting presumption against third-party beneficiaries in Texas); *Baltazar v. Balboa Ins. Co.*, No. 8:10-cv-2932-T-33MAP, 2011 U.S. Dist. LEXIS 60, at *2-5 (M.D. Fla. June 7, 2011) (interpreting Florida statute providing basis for standing to sue as protecting parties that have an "actual, lawful, and economic interest in the property in question").