Revised Alert: Avoiding Potential Liability Arising from the Absence of Fire Sprinklers in Residential Structures

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It may be surprising to learn that currently there is no federal law requiring the installation of fire sprinklers in residential structures. In fact, some states are actively fighting against such a requirement. Despite most states and municipalities requiring fire sprinkler systems in commercial structures, few states or municipalities have tried to implement this requirement in residential structures. In 2011, U.S. fire departments responded to 370,000 home structure fires that caused $6.9 billion in direct damage. According to the 2009 American Housing Survey, 4.6 percent of occupied homes (including multi-unit) had sprinklers, up from 3.9 percent in 2007. Investigation by the National Fire Protection Association revealed homes (including apartments) that had sprinklers installed averaged 74 percent lower losses per fire. Despite this increase in residential sprinklers, this is low when compared to commercial structures. An examination of reported structure fires from 2006 through 2010 indicated sprinklers were present in 55 percent of reported fires in health care properties, 48 percent in manufacturing facilities, 51 percent in hotels and motels, 53 percent in prisons and jails, and 53 percent in dormitories and barracks.

In the absence of action on a federal or state level, local governments are proceeding to enact regulatory standards. Currently, 392 ordinances now mandate installing sprinklers in one- and two-family homes, with 146 ordinances having been passed in California. While states such as California and Maryland have adopted the 2009 version of the International Code Council-International Residential Code, which requires sprinklers in new townhouses and one- and two-family homes, other states, like Florida, have acted to prevent laws requiring the installation of sprinklers in residential homes. South Carolina has taken another approach, which is to only include the townhouse requirement. States including Hawaii, Minnesota and Oklahoma, have adopted preemptive language and/or have bills pending preventing local governments from adopting laws or regulations requiring sprinklers in residences.

Given the absence of a federal requirement and conflicting state laws, it is imperative that insurance companies protect themselves from potential liability by being aware of those states and local governments that have enacted regulatory standards requiring residential sprinklers. Homeowners could begin filing suit against a home designer and/or home builder for negligence asserting that house fires are foreseeable, that sprinklers are a proven effective means of preventing fire spread, and arguing that the home designer or building failed to satisfy the standard of care a reasonable person would exercise in similar circumstances knowing these facts. Further, if local governments continue to mandate the inclusion of sprinklers in one- and two-family homes, homeowners could have causes of action for negligence per se when the home owner/builder violates a local ordinance, making recovery more likely as common law negligence per se creates a presumption of negligence. Due to these evolving and conflicting state laws and local ordinances, insurance companies should stay abreast of the requirements by relying on their counsel to evaluate whether there are codes or standards that require sprinkler systems to have been installed, either in original construction or in large renovation projects, to avoid potential liability in this fast-changing legal area.

To discuss any questions you may have regarding the opinion discussed in this Alert, or how it may apply to your particular circumstances, please contact: Megan Peitzke at mpeitzke@cozen.com or 213.892.7907.

1 http://www.nfpa.org/itemDetail.asp?categoryID=953&itemID=23071&URL=Research/Fire%20statistics/The%20U.S.%20fire%20problem
7 http://www.firesprinklerinitiative.org/legislation/sprinkler-requirements-by-state.aspx