

## ARTICLES

# A SHORT FABLE ABOUT PROPERTY INSURANCE

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**A** man in Monsey named Moshe bought a townhouse. He bought homeowner's insurance for the townhouse. The man's daughter moved into the townhouse. The man never lived there. For 10 years, premiums were paid on the homeowner's policy. Then a pipe broke in a wall, causing great damage. The man filed a claim on his 10-year-old homeowner's policy. The insurance company denied coverage.

Why? When the man applied for homeowner's coverage, he told the insurance company in the application that he was going to live in the townhouse. It would be his primary residence. But it turned out not to be. He lived somewhere else. His daughter lived in the townhouse. Her occupancy didn't count as his occupancy. So the man's insurance application contained a misrepresentation. As a result, 10 years later, when a loss occurred—the broken pipe—the insurance company denied coverage.

The man sued. He lost at trial. He appealed. He lost on appeal. Both the trial and the appellate courts ruled in favor of the insurance company. (You can read the appellate decision at <https://tinyurl.com/insure88>.) The courts decided that the homeowner's insurance policy was invalid from the very beginning—worthless and meaningless—because of the inaccuracy in the man's application for coverage. It didn't matter that the broken pipe in the wall had nothing to do with the inaccuracy.

This outcome should not surprise anyone familiar with insurance law. When an insurance application contains an inaccuracy, this gives the insurance company an opening to say it would never have issued the insurance policy had it known the truth. Here, the company successfully argued that it issued the homeowner's policy in the mistaken belief that the policyholder lived in the townhouse, i.e., it was owner occupied. The fact that it wasn't changed the risk profile entirely, because people will take better care of their own house than someone else's. The insurance company would not have issued the policy at all had it understood the greater risk because the house was not owner-occupied. At least that's what the law of insurance says, and the courts confirmed in this case.

The fact that the homeowner's insurance policy had been in effect for 10 years, and premiums had been paid for all that time, didn't change the result. (In contrast, it probably would have changed the result if the misrepresentation had occurred in an application for a life insurance policy.) Presumably the homeowner's insurance company had to refund 10 years' worth of premiums because the homeowner's policy turned out to provide as much insurance protection as a roll of toilet paper. The reported appellate case doesn't mention a refund, though.

The fable of Moshe in Monsey teaches important lessons for anyone who applies for insurance. The insurance application requires obsessive accuracy. If anything in it is wrong, this might entirely invalidate the insurance, as happened here. One might think one is "getting away with something" by misstating facts—intentionally or otherwise—in an insurance application. But the insurance company will probably get the last laugh, at a time when



it's too late to do anything about it.

When buying automobile insurance, for example, one might save a few dollars by saying a car spends most of its time in the relatively collision-free suburbs, whereas it really spends most of its time driving around, or parked, on the collision-rich streets of Brooklyn. The insurance company might go ahead and issue a piece of paper that looks like an insurance policy. If the holder of that policy has a significant claim, though, the policy might vanish, just as Moshe's policy in Monsey did, based on the policyholder's misrepresentation about the location of the car.

One also needs to think about changes in facts, and how they might affect existing insurance coverage. Suppose Moshe initially did live in the insured townhouse. At some point in the 10-year life of his insurance policy, maybe in the middle of a renewal year, he decided to move to Brooklyn. Was he supposed to tell the insurance company right away that the townhouse would now no longer be owner-occupied? The logic of this court decision suggests he should in fact have notified the insurance company at some point. How many people would think of doing that? How many people would realize that, for insurance purposes, having their daughter live in their townhouse is very much not the same as actually living there?

Similar issues and concerns arise when a real estate or other company buys insurance. The company might think it is "getting away with" something by giving the insurance company facts that aren't quite accurate, or by not reporting later changes that make previous facts inaccurate. That strategy will very likely backfire at the time when the company needs its insurance most—when the company needs to submit a significant claim.

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