Application:
♦ Written apps preferable
♦ Some insurers insist on them
♦ Apps contain info necessary to underwrite, rate and issue policy
♦ Some insurers give standard app forms to be completed by the brokers; apps are designed to elicit info insurer wants and needs
♦ Written apps are invaluable in resolving misunderstandings/disagreements between insured/insurer
♦ Written apps helpful with possible misrepresentation or non-disclosure on part of an insured

The policy:
♦ All policies have a lot in common
♦ All policies describe subject matter of insurance -property to be insured
♦ All policies based on Basic Fire Policy containing mandatory coverage required by Insurance Acts/Civil Code
♦ Insurers use standard policy documents containing info common to most insureds; they tailor policies to specific needs by combining standard wordings (riders) with a policy that includes commonly used extensions, limitations and additional perils. This reduces the amount of info that must be typed/printed electronically.

Two main ways insurers adapt Basic Form:
1. **Specific policy** - begins with policy that includes the insuring agreement, all normal exclusions and limitation and the Stat/General Conditions. This standard policy is adapted to specify needs by attaching riders to add or subtract perils or modify terms of policy.
2. **Modular style** - policy is sum of several parts/modules. Generally has declaration sheet at front showing details such as name of insured, policy period and premium and perhaps the address, construction and occupancy, and amount of insurance. Pages are added, each containing a portion of the contract, e.g: page for extensions, limitations and definitions, page for stat conditions, page for additional perils, page for insuring agreement.

The Basic Agreement:
Insurance policies are contracts, subject to same laws that govern all contracts
Insuring agreement of fire policies embodies 5 elements that any agreement must have to be a legal contract:
1. agreement
2. legal capacity to contract
3. consideration
4. intent
5. legality of objects

The insuring agreement establishes the policy as an agreement between legally capable parties for a consideration demonstration intent to do something that is legal.
**Insurance adds:**
6. indemnity
7. insurable interest
8. utmost good faith

**Direct Loss/Indirect loss**
- Fire policies indemnify insured against direct loss or damage to property insured
- A direct loss is the loss of economic value that occurs when property is damaged or destroyed
- An indirect loss is economic loss that arises from the direct loss or damage to property (e.g. business interruption or loss of rental income)

**Indemnity**
- Insurance policies are contracts of indemnity
- The principle of indemnity returns the insured to the financial position they were at just prior to the loss
- Insureds may not profit from their loss so not able to recover for more than amount of loss
- In the basic fire policy the amount of recovery is the least of:
  - The **actual cash value** of damaged or destroyed property at the time the loss occurs or
  - The **interest** of the insured **in the property** or
  - The **amount of the insurance**.
- ACV is the cost to replace the property less depreciation (physical condition, resale value, normal life expectancy)

**Insurable Interest**
Person who will benefit by continued existence of property or prejudiced by its loss.

**Exclusions**
- Most fire policies include several of the exclusions that form part of the basic fire policy. Some may be deleted for additional premium and other address perils that are not insurable.
- Some of the exclusions respond to the fire insurance provisions of the Insurance Acts/Civil Code
  - **Electrical Devices** - loss or damage to electrical devised and appliances caused by lightning or other electrical currents is excluded
  - **Uninsurable events** - loss or damage caused by riot, civil commotion war, invasion, acts of foreign enemy, hostilities, civil war, rebellion, revolution, insurrection or military power is excluded.
- Therefore loss by fire and by explosion of natural, coat or manufactured gas (fuel) is excluded if caused by one of these two events eg: I accidentally burn a pan of oil on the stove and the whole kitchen catches fire causing $6K in damage, this happens at
the same time that there is a riot in the same neighbourhood. This loss is covered. However, if a rioter sets fire to my kitchen it would not be covered.

♦ Note that riot can be added as an additional peril

♦ **Other Exclusions are:**
  - **Process involving heat** - only goods undergoing process excluded does not apply to other property that may burn as a result eg: pan excluded, kitchen that burns down is covered.
  - **Radioactive contamination** - excludes all contamination loss regardless of peril causing it
  - **Property that can be insured specifically** - money, auto, tractors, aircraft, watercraft
  - **Additional hazards introduces after policy becomes effective** - only losses arising from construction of the alteration or addition are excluded
  - **Vacant or unoccupied** - for more than 30 days beginning when insured learns of vacancy or unoccupancy. When occupancy resume, coverage automatically restored
  - **Volatile substance storage** - more than one gallon of gasoline, benzene, naptha or other substance of equal or lower flashpoint in addition to that in tanks of vehicles. Flashpoint of a liquid is lowest temp at which it gives off sufficient vapours to form ignitable mixture with air
  - **Operation of Law** - By-law or other law regulating zoning or demolition, repair or construction of buildings making it impossible to repair property as it was before the loss

**Contracts, Clauses and Limitations**

**Description of property insured**
- Subject matter of fire insurance contact is property, described in the policy, which the insured has an interest
- Property must be described precisely, ambiguity/vagueness in description can prevent insured from proving loss and being indemnified for it
- Location is a critical feature of the property description eg: if insured owns several rental condos in one building, only one suffers a loss that must be clearly identified.
- Location is key for movable property; there are limitations in the policy about when and where the property is covered at location that may not be identified on the policy; however the location that usually houses the property is still identified.
- An item listed on the policy does not mean just one individual object eg: jewelry may mean a dozen small items, office contents may mean folders, staplers, hole punches

**Premium calculation**
- Generally it is a specified portion of the amount of insurance
- Expressed as a rate per $100, known as rate of premium or rate
- Several characteristics of property risks make the rates vary
  - Public fire protection - fire hydrants, fire halls
♦ Private fire protection - water mains, hydrants, pumps, fire fighters owned by large manufacturing plants
♦ Occupancy - combustible materials, hazardous processes
♦ Construction - height and area, number of stories, frame higher rate than concrete
♦ Susceptibility of property insured - perishibility of property, susceptibility to smoke, fire, water, etc.

Limitation of Liability
♦ A deductible clause
♦ A coinsurance clause
♦ Clause limiting recovered to specified % of property insured at time of loss, whether clause conditional or not (deferred payment clause)
♦ Insurance Acts of common law provinces require all policies to have stamped or printed on the face of policy "THIS POLICY CONTAINS A CLAUSE THAT MAY LIMIT THE AMOUNT PAYABLE"
♦ Until recently this was stamped or printed in red ink only, now legislation in some provinces has allowed specified sizes or bold print
♦ Without this stamp or wording, any clauses containing limitations are not legally binding on insured
♦ No similar requirement in Quebec

Coinsurance
♦ Stops insured from underinsuring
♦ Helps keep the pot full (to cover all claims)
♦ Stops those willing to insure for the correct amount from subsidizing those less willing
♦ Protects both insured and insurer
♦ Obliges insured to maintain specified minimum amount of insurance in relation to value of property insured
♦ If insured does not, then insured must share with the insurer any partial loss thus insured becomes a coinsurer
♦ If total loss, insured is penalized by difference between amount of insurance purchased and amount of loss
♦ Must equal at least 80% of the ACV but 90% or 100% can be specified
♦ The higher the amount require, the less likely there is to have a total loss so the more likely insureds are to underinsure
♦ Inflation is an important factor in coinsurance, if there is considerable inflation then during the term of the policy the amount of insurance may fall below the coinsurance limit.
♦ Formula is: did over should times loss equals recovery

Waiver of coinsurance clause
♦ Typically for small losses
♦ Calc of ACV to determine coinsurance penalty is not economical
If loss exceeds either 2% or $5000 coinsurance will not be waived
Applies separately to each item of the policy

**Stated Amount Coinsurance**
- Alternative to standard coinsurance clause
- Also encourages insureds to maintain minimum amount of insurance
- Amount is specified in dollar amount rather than a percentage
- Amount of insurance required is stated in a signed Statement of Values, which is prepared with accountants and submitted at inception of policy and every renewal
- The amount of insurance is adequate if it equals or exceeds the dollar figure specified so it is simpler than the standard clause to work out coinsurance requirements
- Also penalizes insureds for underinsuring
- Needs no waiver of coinsurance because no calculation of ACV needed to determine coinsurance penalty
- Expires independently of policy, usually three months later so insured has three months after renewal to confirm values. If not it is replaced with the standard coinsurance clause at that time
- Insulates the insureds from fluctuations in property values
- Gives insurers more confidence in adequacy of amount of insurance
- More often used when insuring large, high value completes, insured under single item
- Following up on annual statements of values not economical for small risks.

**Average Distribution Clause**
- Used for operations where goods moved from one building to another as can be difficult to arrange separate amounts of insurance for contents of buildings
- If total value remains constant, insurer may agree to the policy covering all goods in all buildings under single item (blanket) with an average distribution clause in place of the coinsurance clause
- This clause apportions the total amount of insurance when a loss occurs by the ratio of values in each building to the values in all buildings
- Does not penalize insured when loss occurs if amount of insurance equals or exceeds values at risk
- Amount of any under-insurance is spread proportionately over all insurance
- Denies insured from full recovery if all property in some of buildings is destroyed, even if loss is less than total amount of insurance

**Deferred Payment Clauses**
- Insured is indemnified for only a portion of total loss to building at time of loss
- Remainder of loss deferred until insured repairs or replaces building
- Addresses moral hazard from possibility of total loss if the cost to repair or replace equals or exceeds the value of building before the loss, or amount of insurance. The clause discourages insureds from burning down their own building to collect money from insurance.
- Rebuilding clause often found in farm policies is most common type of deferred payment clause.
Typically if building suffers damage of 2/3 or more of its value, 50% of amount of loss paid at time of loss, if insured replaces or repairs building within 9 months, spending at least amount payable under the policy, the insured will pay the balance of settlement with interest. If insured does not repair or replace the initial 50% becomes the final loss settlement.

Protection of other interests

- Named insured is only one party who may have interest in property
- Real estate may be used as security for a loan eg: mortgage
- The mortgagee (lender) acquires an interest in the property and the right to sell it to discharge the borrowers debt, thus before selling property the land titles office establishes the repayment of the mortgage should property be sold.
- Mortgagees have an insurable interest in the property because they may suffer monetary loss should the property be damaged or destroyed and the borrower fails to repay their debt to the mortgagee
- Mortgage does not reduce the borrowers interest in the property, the mortgage must still be repaid even if the property is damaged or destroyed sometimes the mortgage agreement insists on full repayment immediately if property is destroyed.
- Most mortgagees/lenders insist on evidence of fire insurance

Loss Payees

- Lenders to the insured are called loss payees
- Any cheque issued by insurer for claim settlement should have both the name of the insured and the name of the loss payee; the cheque must be endorsed by all parties named on the cheque.
- If the insurer does not include the loss payee on the cheque, the insurer may be required to also indemnify them with any additional cheque.
- Provincial legislation protects the interests of loss payees. Insurer not allowed to cancel or alter policy to the detriment of a payee without written notice to payee. If fails to do so, then insurers obligation to loss payee is still in place until policy expiry date.
- Loss payees may still be denied indemnity if there is misrepresentation or material change not reported to insurer that would cause the claim to be denied

Mortgage Clauses

- Mortgagees are one particular class of loss payee.
- Mortgage clauses were developed to protect their particular interests
- A mortgage clause names the mortgagee as loss payee and is attached to policies
- Main benefit of mortgage clause is that policy covers mortgagee even if named insured unable to recover because of breach of condition
- Mortgage clause creates separate contract between insurer and mortgagee. A breach by any party other than the mortgagee is set aside; the mortgagee may recover from the policy even if the insured cannot
- Mortgagee clause allows mortgagee to give notice of loss and proof of loss
Allows mortgagee to continue its interest with stat condition regarding change of interest

In exchange for these rights, the mortgagee assumes some obligation such as
- they must notify the insurer of learning of any vacancy
- any transfer of interest or
- any increase in hazard

Mortgagee may also have to pay for these changes if there is an additional premium and insured does not pay

Under the mortgage clause once the insurer has indemnified the mortgagee for loss, becomes subrogated to rights of mortgagee against insured for amount of loss paid.

Because the mortgage clause is a separate contract, the insured may become a third party and therefore subrogation rights apply

These subrogation rights are second to the mortgagees right of recovery from the insured therefore the insured must reimburse mortgagee before reimbursing the insurer.

A fortuitous loss is:
- Accidental in origin as far as insured concerned
- Result of loss or damage from a cause extraneous to object destroyed or damaged (not inherent fault or defect)
- Not the result of the willful or fraudulent action of the insured

Fire

Friendly Fire: one that burns within its intended confines eg: fireplace

Hostile Fire: fire that escapes its confines and ignites property not intended to be burned eg: candle is knocked over and sets fire to the sofa

Insurance responds only to hostile fire, except when property is accidentally damaged by friendly fire. Scorching from friendly fire is not insured, only if it is from hostile fire even if it does not ignite.

Fire is defined by the courts as combustion accompanied by visible flame or glow

Proximate Cause
- In order to recover a loss from a fire policy one must prove the loss was caused by a peril insured by the policy and to do this one must establish the cause
- There are lots of events that precede the loss, but only one event that initiated the continuous chain of event leading directly to the loss. It is this event that is the proximate cause of the loss
- The definition of proximate cause is that event in a natural and continuous sequence of events unbroken by an efficient intervening cause, that results in the loss and without which the loss would not have occurred
- Under the legal doctrine of proximate cause the insured must prove the loss by establishing the proximate cause and showing that cause is an insured peril (the insured must prove their loss/claim)
Actual Cash Value versus Replacement Cost

- ACV serves the principle of indemnity by denying the insured to profit from a loss, however this may not be the fairest to the insureds
- Replacement cost is an alternative to ACV
- Insured must replace or repair item with identical new item thus still not profiting from the loss
- RC is not a cash settlement it is a reimbursement for the amount it cost to buy a new item of like kind and quality and does not penalize the insured for depreciation
- In order to recover the following conditions must apply:
  - Replacement must be made promptly
  - Replacement must be on the same or adjacent site
  - Payment limited to cost of replacing, repairing, construction or reconstruction (whichever is less) on same site with new property of like kind and quality and for like occupancy
  - Settlement made when work is completed and for now more than amount of cost of work
  - Any other insurance covering same perils and same interest must also have same replacement cost provisions
- If there is a coinsurance clause it will also be based on replacement cost instead of ACV
- If the insured can not fulfill the conditions above then the loss will be settled ACV
- Although there s no additional premium for replacement cost, because the insured has to insure for more than ACV policy, the amount of premium would be increased accordingly.

Named Perils versus All Risks

- Named Perils responds only to losses caused by perils specifically in the wording of the policy
- In order to recover the insured must show both that the property damaged destroyed was insured property and that the cause of the loss was a listed peril. The insurer must either refute what the insured proves or pay the claim.
- All risks says what is not covered
- Insures any fortuitous loss unless the peril that caused it is specifically excluded
- Exclusions alone shape and define the coverage of the policy
- There are three types of loss that exclusions under an all risk policy that address:
  1. Types of property - money, watercraft, aircraft;
  2. Types of loss - loss of market, delay, use or occupancy;
  3. Types of risk - infidelity, dishonesty, etc.

- There is no universal all risks form, each insurer can pick and choose which exclusions they use
- To recover under and all risk form, the insured must show that the property damaged or destroyed was insured property and that the loss arose from a fortuitous risk (not inevitable)
The insured does not need to prove the loss is covered, it is the insurer who must show that the peril causing the loss is excluded or pay the claim.

The best example of a peril under an all risk form that is not covered by a named perils form is Mysterious Disappearance.

**Package Policies**

Packages are used to maximize profitability it is not cost effective to make up a policy to fit each individuals needs.

For a homeowner a package policy follows this outline:

**Section I**

**Coverage A - Dwelling building**
- Fixtures and fittings, outdoor trees and shrubs

**Coverage B - Detached Private Structures**
- 10% of Coverage A
- Garage, shed, etc.

**Coverage C - Personal Property**
- 70% of Coverage A
- Property at residence, property away from premises (student, storage or temporarily away)

**Coverage D - Additional Living Expenses**
- 20% of Coverage A
- Expenses to live away from home because either uninhabitable or not allowed due to civil authority

Each section is a percentage of coverage A and is in addition to coverage A, not deducted from coverage A.

The package policies also have extensions of coverage to cover anything from Debris Removal, to moving to a new home, replacing locks, fire dept. charges, even rewards for fraud and arson conviction.

**Homeowner Forms - Exclusions**

Exclusions for property policies generally apply to:
- Property/perils that should be covered elsewhere eg: business, watercraft, boiler and machinery
- Uninsurable perils eg: war, inevitable happenings such as wear and tear
- Trade risk perils eg: processes involving application of heat
- Perils against public policy eg: criminal acts, intentional acts
- Perils/property producing extraordinary exposure that is not considered in the price of the policy eg: earth movement

Exclusions that are common to both the Residential Basic Form and the Homeowners Form are:
- Loss/damage to building structures used for business or farming
- Loss to property on exhibition or to be exhibited at any fairground
♦ Loss to property illegally acquired, kept, store, transported or property subject to forfeiture
♦ Loss of evidences of debt or title
♦ Loss of property lawfully seized or confiscated (except to prevent spread of fire)
♦ Loss occurring after vacancy to knowledge of insured for more than 30 consecutive days
♦ Loss arising from nuclear incident
♦ Loss caused by contamination by radioactive material
♦ Loss caused by war risks
♦ Loss from intentional/criminal acts or failures to act by insured or others directed by insured
♦ Loss to personal property while it is undergoing a process involving the application of heat
♦ Loss caused by earth movement
♦ Loss caused by contamination or pollution or release, discharge or dispersal of contaminants or pollutants

Specified Perils:

1. Fire
2. Lightning
3. Explosion
4. Smoke
5. Impact by land vehicle or aircraft
6. Water damage
7. Windstorm/Hail
8. Falling object
9. Vandalism or Malicious Acts
10. Riot
Mobile Homes:
- Mobile home is factory built on its own chassis;
- Can be moved by towing;
- Some units are double wide;
- Similar to regular construction home and may be insured as such;
- Others known as trailer homes
  - Usually rest on masonry blocks,
  - Mobile (can be moved)
  - Primary or secondary residence
- Defined as: factory built on their own chassis, towed to dwelling site, placed on full, continuous foundation of concrete or concrete blocks or on piers of concrete block or on heavy timber supports
- Space between the ground and the underside of the unit is closed off with a skirt
- Best installations use tie downs to provide stability against windstorm. These are heavy straps passing over the top of the unit and fastened to the foundation on either side or to the ground if the unit rests on piers or heavy timber
- Tie downs are often built into the unit and hidden by the outer covering of the home or they are fixed only to the chassis so not to pass over the top of the unit
- Mobile home parks were created for dwellers of mobile homes, they resemble subdivisions, they have paved roads, landscaped lots, water, sewer, hydro services, some have police and fire dept. protection.
- Mobile homes may have some of their equipment and furnishings built in similar to a trailer, motor home or boat
- Mobiles are designed with space efficiency in mind but also there is a weight consideration
- This can cause an underwriting issue - a minor loss may become a major loss if there is damage to an interior component, perhaps the entire structure will be affected by it
- Life span of the mobile home is generally less than conventional house and therefore depreciate more quickly (no replacement cost coverage available)
- Mobile Homeowners Form is a package policy similar to the homeowners package - it includes property and liability coverage with these differences:

Coverage A:
Homeowners described as "the dwelling and attached structures"
Mobile is described as "the dwelling including appliances, furniture and equipment forming a permanent part of the building, permanently attached carports or garages, awnings, skirting, porches and tie down equipment"

Emergency Removal Expense:
- Homeowners policy does not have this
- Optional extension of coverage A
- Unique to Mobile Homeowner form
- Permits insured to use up to 5% of amount of insurance under coverage A for any reasonable expense incurred to remove the building to protect it from an insured peril
♦ Deductible does not apply (not to be confused with the automatic 30 day extension which insured property necessarily removed from the premises to prevent loss/damage for 30 days or policy expiry)
♦ Reimburses insured to specified fraction of total amount of insurance under coverage A for expenses incurred in moving the unit itself
♦ Does not increase amount of insurance; only allocates part of it.

**Coverage C:**
Appliances, furniture or equipment forming permanent part of the building is already covered under Coverage A so not included in Coverage C.

**Special Limits:**
Identical to Homeowners Basic except limit on manuscripts, stamps, philatelic property is only $500 and not $1000 as in HO.

**Exclusions:**
(not found in homeowners form)
1. while building is being moved "loss or damage occurring while building being moved, except in an emergency to protect it when endangered by insured peril. Moving includes the period of time during which the leveling jacks or blocks are removed or all utilities are disconnected
2. conversion "loss due to conversion, embezzlement or secretion by any person in possession of the building"

**Basis of Claim payment:**
No replacement cost option on building as in HO for loss involving personal property insured has same option as under regular home form.

**Tenants Package Forms:**
♦ evolved from homeowners policies
♦ intended for insured who do not own the dwelling they occupy as principal residence but others may require a tenants form
♦ Renters not responsible for building, need insurance for personal property and personal liability
♦ Employees occupy dwellings as employees of owner (rectories, clergy, estate managers, apt. managers, housekeeper, nanny)
♦ Proprietors live in commercial building owned by the company that operates the business. Company has building insurance, proprietor needs contents ins. (pub, shop, etc.)
♦ Two types of tenants policies - basic form and comp. Form

**Co-operatives:**
♦ Owned collectively by its members, each member purchases a share in the co-op;
♦ The co-op owns an apartment building and each member has exclusive rights to the use of a unit in the building;
♦ Members of the co-op are both tenants of the building and part owners
A member wishing to leave the co-op sells its share back to the co-op

- Operating expenses including building maintenance, insurance, mortgage, taxes, insurance premiums are paid by the co-op's revenue, which come from assessments levied against the owners
- The building is insured by the co-op, the individual members must each get their own insurance for their personal property
- A tenants package is perhaps the most appropriate policy for the members

**Condominiums:**

- Condominiums can be apartments, row houses, townhouses, single family homes, semi-detached homes, duplexes
- Condo owner has clear and full ownership of specific unit in building
- Owns the 4 walls, floor and ceiling (cube space concept)
- Also owns a share of common elements including elevators, utilities, rec. facilities, parking areas, gardens, land, etc.
- Condo owners collectively make up the condo corporation
- Condo corp is administered by board of directors (members of the corp elected)
- Objective of corp is to manage condo, assets, pass by-laws, establish rights and duties of members (restriction of satellite dishes, pets, etc.)
- Unit owners have rights often in proportion of their ownership
- Provincial legislation requires condo corp to insure entire building including individual units
- Owners choose to insure contents (personal property)
- Condo forms cover personal property as well as liability of the owner
- Forms may cover unit betterments and improvements and loss assessment and contingency
- The word "unit" replaces the word "dwelling" in the wordings
- Optional trees and shrubs coverage - 5% of Coverage C

**Improvements and Betterments:**

- Covers improvements and betterments made or acquired by the insured to the individual unit (putting in hardwood floors, kitchen cupboards, fixtures)

**Loss Assessment:**

- Covers unit owner is condo corp policy insufficient or inadequate for loss caused by insured peril to common area of the building (elevator)

**Contingency (unit additional protection):**

- Covers unit owner if condo corp policy insufficient or inadequate for loss caused by insured peril to insureds individual unit (water damage)