



White Paper

Insurance for Small Urban and Rural Public Transportation Systems in Texas

Sponsored by
Texas Department of Transportation

May 2007



The Texas A&M University System • College Station, Texas 77843

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Purpose of White Paper

Insurance is used to protect a transportation provider's property and its liability associated with transportation service delivery. Insurance issues can affect agreements with other entities, drivers, vehicles, passengers, shared vehicles, and many aspects of coordinating public transportation service. Because there are so many variables in a coordinated transportation system, this paper will focus in on the few insurance issues most commonly cited by providers.

Insurance Constraints from Regions

Insurance-related barriers and constraints were reported by several Texas planning regions. The most common insurance-related constraint was concern over the increasing cost of liability insurance.

In addition to concerns for the rising cost of insurance, the regions also identified the following concerns:

- The use of restrictions on resource sharing and funding specific insurance requirements. Certain grants have specific insurance coverage requirements. The insurance coverage requirements conflict with other program insurance requirements.
- Insurance carrier restrictions against vehicle sharing, as well as differing insurance requirements for various programs, may preclude providers from carrying clients of other programs.
- Insurance (or lease agreements) prohibits the use of equipment for other than original program purpose.
- Inflexible requirements for van pool drivers and restrictions on van pools for commuter purposes only.
- Volunteer drivers that use their own vehicles need additional insurance.

Regions Overcoming Barriers

Just as regions identified insurance as a barrier to coordination, some regions have also proposed interagency meetings to resolve programmatic differences in insurance requirements. For example, the Gulf Coast Region recommended forming an insurance task force to overcome coordination barriers and review insurance practices in the region. The goal would be to have regional and interagency agreements to set minimum insurance requirements across program areas for participating agencies and organizations as a first step in removing insurance barriers.

Regional Insurance Coordination

The Gulf Coast Region has proposed forming an ad hoc insurance task force to address issues facing providers. The task force would conduct an inventory of existing insurance practices.

Cost Savings Through Risk Management¹

Any discussion of liability insurance requires mention of risk management. Using risk management tools and techniques improves safety and reduces liability, and ultimately reduces insurance costs. For risk management to be effective, it must take place at every level of your organization. Every employee and contractor can contribute to the success of a risk management program. A very brief overview of the risk management process is diagrammed below. For more information on risk management, visit TxDOT's Training and Personal Development website for course offerings on liability and risk management. There are many training opportunities and information resources for risk management from a variety of organizations, including:

- American Public Transportation Association www.apta.com
- Association of Governmental Risk Pools www.agrip.org
- Community Transportation Association (CTAA) www.ctaa.org
- Federal Transit Administration/Office of Safety & Security [://transit-safety.volpe.dot.gov](http://transit-safety.volpe.dot.gov)
- National Safety Council www.nsc.org
- National Transit Institute (NTI) www.ntionline.com

What is Risk?

Risk is defined as "...the possibility of suffering harm or loss" by the *American Heritage Dictionary*. Risk is also uncertainty of the occurrence of an event, action or condition, and/or outcome of that event, either positive or negative. Risk management expands the dictionary definition and views risk more in terms of uncertainty. The goal of risk management is to reduce exposure to bad events; minimize the impact of threats; increase the exposure to good events; and maximize the benefits of opportunities.

Risk management is the process of controlling the chance or possibility of financial loss. It is a proactive course of action protecting your system's assets and income by identifying all the possible causes of accidents or losses, then taking deliberate, planned steps to either prevent or absorb the losses.

There are five steps to risk management as shown in Figure 1:

1. *Risk Management Planning*: How will risk be managed?
2. *Risk Identification*: What are the possible risks?
3. *Risk Analysis*: Which risks should we manage?
4. *Risk Response*: What will we do to manage those risks?
5. *Risk Monitoring and Control*: How are we doing?

¹ The Section on Risk Management summarizes material from TxDOT Course "Risk Management and Tort Liability" (TRF203) taught and co-developed by Tylen Di Sciuolo through the University of Texas at Arlington. See TxDOT Training and Personal Development at <http://www.txdot.gov/careers/training/default.htm> for more information.

Implementing a risk management program is a critical element in reducing liability and insurance costs.

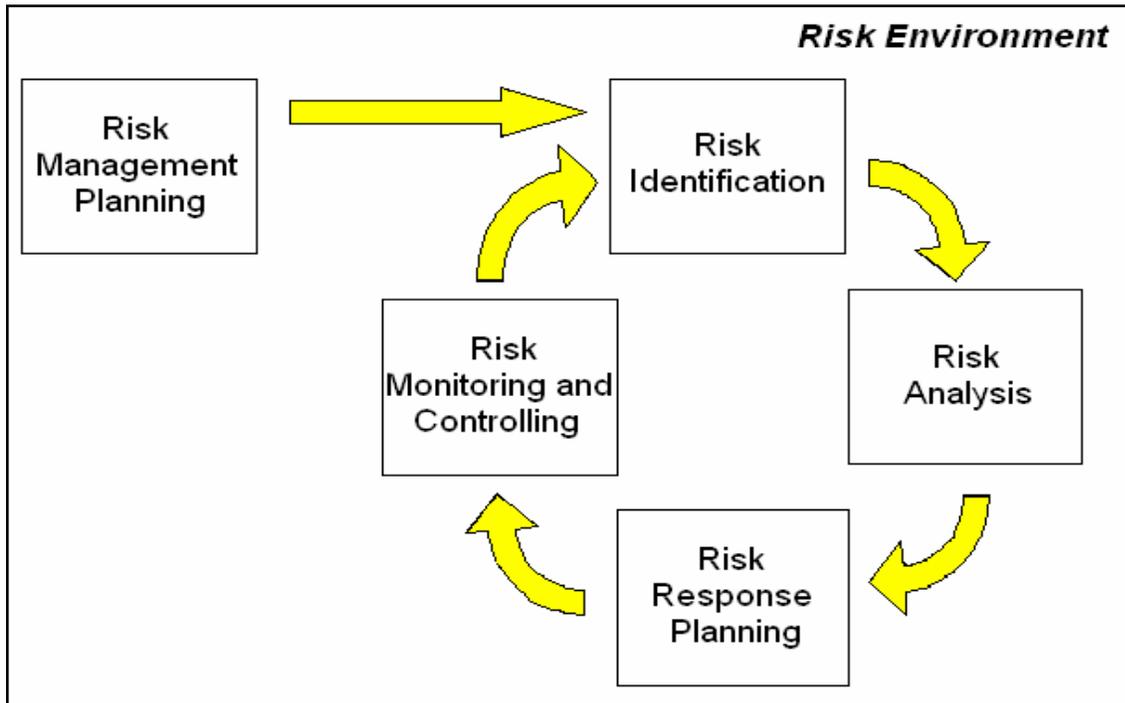


Figure 1 - Risk Management Process

Communicate with Your Insurance Carrier

Different transportation service coordinating activities may affect insurance coverage, but insurance coverage should not be a barrier to coordination. The problem is largely one of identifying, minimizing, and communicating risk.

The keys to overcoming insurance barriers center on knowing your risks and effectively communicating with insurance companies and underwriters. Insurance premiums are directly proportional to the amount of risk the underwriter foresees in providing you coverage. The higher the risk — the higher the insurance premium.

Educate your current insurance carrier (and their underwriters) on coordinated transportation. Explain your projects, the agencies involved, and your operating plan. For example, showing driver hiring and training requirements such as criminal background checks and pre-employment drug testing demonstrates efforts to reduce risks and premiums. A driver with several speeding tickets on his/her motor vehicle record can increase premiums dramatically. Although the cost for casualty and liability insurance is typically greater for van pools and smaller flexible-use vehicles in comparison to larger buses on a fixed route service,² risk management tools can reduce those costs. If insurance premiums are high for a particular service, ask why and take steps to mitigate the risk. It pays to shop around for the best price armed with detailed information about your organization's risk management practices.

² 2004 National Transit Database (Urban Transit) Operating Expenses.

Liability for Political Subdivisions

For providers that are units of local government, there are certain specified limits on liability. The Texas Tort Claims Act became law on January 1, 1970. The Tort Claims Act waives sovereign immunity and limits a plaintiff's ability to sue and recover compensation in claims against governmental units. Knowing your liability is an important part of the risk management process.

The Act establishes the maximum amount of liability for damages for State and municipal governments at \$500,000 for any single occurrence for injury or death of a person, \$250,000 per person, and \$100,000 for any single occurrence for destruction of property. Local government and emergency service organizations limits are: \$300,000 for any single occurrence for injury or death of a person, \$100,000 per person, and \$100,000 for any single occurrence for destruction of property. (In many cases, transit agencies are considered governmental units. For more information on exactly how Texas Tort affects your agency's liability, please consult with a qualified attorney.)

Insurance Options

Texas Municipal League Intergovernmental Risk Pool

Texas Municipal League Intergovernmental Risk Pool (TMLIRP) provides Texas municipalities and other units of local government with risk financing and loss prevention services. The Pool offers workers' compensation, liability, and property protection to Texas political subdivisions, which include transit authorities and councils of government. (It does not insure private non-profit organizations). Many councils of government (COGs), and transit agencies are currently members of the TMLIRP. Contact TMLIRP via phone or website (1-800-537-6655) <http://www.tmlirp.org/tmlirp/index.html>

TMLIRP has approximately 2,500 members that are all local units of government such as towns, cities, authorities, or special districts. To join TMLIRP, contact the agency and complete a questionnaire about your transportation service including information on annual miles of service, vehicle types, payroll, budget, and other related matters. TMLIRP can cover members for up to \$10 million. Rates at TMLIRP reflect the Texas tort claims guidelines, which cap the amount that a government entity can be held liable for at \$100,000 per person for bodily injury and \$300,000 for any one occurrence.

TMLIRP, however, does not insure counties. In the case of counties providing transportation services, the Texas Association of Counties runs an insurance program for agency liability and auto liability. Insurance pools do not just provide liability coverage but also offer other ways for agencies to coordinate, through risk management and training opportunities.

There are three primary TMLIRP operating funds: Workers' Compensation, Liability, and Property. All member contributions flow into these three funds. The other four operating funds handle specific operational functions, such as reinsurance and large loss coverage through the Reinsurance Fund.

One benefit of using TMLIRP is the ability to add drivers. TMLIRP covers the entity at risk and adding drivers is not a problem.

Other State Experiences in Risk Pools

Other states have transit-specific risk pools. The Washington State Transit Insurance Pool (WSTIP) <http://www.wstip.org> started with eight public transit systems united to form a self-funded liability-only pool. Today, WSTIP's membership has increased to 22 public transit organizations with three associate members. Their current annual budget is approximately \$8.5 million. WSTIP provides auto liability, general liability, public officials (errors and omissions), all risk property, crime, and boiler and machinery. The current loss fund is actuarially set at \$4,300,000 and the administrative expenses are \$2,000,000. Current member equity is in excess of \$12 million. WSTIP is accredited by the Association of Governmental Risk Pools.

Other transit-specific pools exist throughout the country, in states such as Michigan, Wisconsin, Rhode Island, and Virginia. These pools typically have \$1–3 million in shared funds. The pool also requires money for administrative expenses such as salaries for staff, claims administrators, and an actuary. For claims over the amount in the shared fund, many pools purchase excess insurance or reinsurance, to leverage member coverage to \$10 million or \$20 million.

Coordination Activities

Coordination activities may involve sharing vehicles, sharing drivers, volunteer drivers, and using various program funding sources. With so many variables it can be confusing. Out of this confusion misconceptions about insurance and program requirements have developed. The Federal Interagency Coordinating Council on Access and Mobility (CCAM) adopted a policy statement that eliminates any misconceptions on vehicle resource sharing. A summary of the policy statement is provided below.

Vehicle Resource Sharing Policy Statement³

There is a common misconception that vehicles cannot be shared among differing federal program grantees. The CCAM policy statement:

“...clarifies that Federal cost principles do not restrict grantees to serving only their own clients. To the contrary, applicable cost principles enable grantees to share the use of their own vehicles if the cost of providing transportation to the community is also shared.”

The policy statement further explains:

*“Often Federal grantees at the State and local levels restrict transportation services funded by a Federal program to clients or beneficiaries of that Federal program. Some grantees do not permit vehicles and rides to be shared with other federally-assisted program clients or other members of the riding public. Federal grantees may attribute such restrictions to Federal requirements. **This view is a misconception of Federal intent.**”*

This guidance pertains to Federal program grantees that either directly operate transportation services or procure transportation services for or on behalf of their clientele. This includes

³ Federal Interagency Coordinating Council on Access and Mobility Vehicle Resource Sharing: FINAL POLICY STATEMENT. Available at http://www.unitedweride.gov/1_1165_ENG_HTML.htm

Department of Transportation, Department of Education, and Department of Health and Human Services transportation programs. In particular:

“...None of the standard financial principles expressed in any of the OMB circulars or associated Federal agency implementing regulations preclude vehicle resource sharing, unless the Federal program’s own statutory or regulatory provisions restrict or prohibit using program funds for transportation services.”

The policy document is available at http://www.unitedweride.gov/1_1165_ENG_HTML.htm, or http://www.unitedweride.gov/FINALVehicleSharing10_1_06.doc. In many cases, overcoming differing insurance requirements between programs is a matter of cost allocation of insurance cost and not a result of programs that preclude vehicle sharing.

Joint Use Vehicles

A shared vehicle can be operated by one or both agencies using paid and unpaid (volunteer) drivers, but the agency that owns the vehicle should take the lead in administering policies and procedures for vehicle use and coordination activities. This includes, but is not limited to, insurance, and driver standards, qualifications, and training. A shared-use agreement should be prepared that defines the rights and responsibilities for each agency participating in the coordination effort.

In coordination projects where vehicles are shared, an accident will not only affect the party operating the vehicle, but the agency owning the vehicle. Therefore, liability insurance coverage should be high enough to cover this potential risk.

Use a check-list for a shared use agreement to address the following areas:

- Commercial Automobile Insurance covering:
 - Liability, Uninsured/under-insured motorists, Additional insureds to include all participating agencies, physical damage coverage of the vehicles, comprehensive and collision deductibles.
- Specify which agency, the owner or the operator, will be responsible for paying the out-of-pocket deductible.
- Medical Payments Coverage for the medical treatment costs of a person injured in an accident paid by the insurance carrier without the injured person having to file a suit.
- Workers’ Compensation Insurance.
- General Liability Insurance.

Hiring and Training Drivers for Joint Use Vehicles

When sharing vehicles, ensuring uniform driver qualifications is a critical component of good risk management practices. Uniform driver qualifications should be established and agreed to among all of the agencies participating in the coordination plan. Once the qualifications criteria has been established and accepted, the participating agencies must then agree that all of the drivers meet the standard at inception. The lead agency may wish to oversee establishment and monitoring of the driver qualifications, or delegate the responsibility to one of the participating agencies.

Agencies may also wish to adopt the violations provisions of the Commercial Drivers License (CDL) for all vehicles operated in their project, regardless of vehicle size. These provisions require drivers to report any moving violation to their employer within 24 hours.

A CDL driver is required for any vehicle designed to transport 16 or more passengers, including the driver; however, these provisions may be adopted for all vehicles. The requirement for vehicle operators to have a valid CDL is based upon the vehicle manufacturer's seating and weight classifications, not the functional seating capacity of the vehicle. (Please see the White Paper on Driver Hiring and Training Standards at http://www.regionalserviceplanning.org/clearinghouse/white_papers/)

Mixing Client Populations

In most coordinated transportation systems, different client populations will be served at the same time. This should not be a problem for human service agencies since the population each serves has a scope similar to the other agencies in the coordination effort. However, insurance carriers have at times hesitated to cover agencies that are serving "mixed" client populations because of the increased risk.

It is important to understand that the risks are different for different client populations. Transporting school children is different from transporting the senior population. And in that regard, restrictions for mixing adult riders with school-aged (e.g. Head-start) riders do occur. However, it is possible to adjust to this risk and calm your insurance carriers' fears by developing and adopting driver and training standards, and limiting mixing with school-aged riders. This way, all agencies in your coordination effort can be assured that their particular customers will receive safe and reliable service regardless of who provides the service. It is important to note that public transportation providers have been mixing clients successfully for years. Many coordination projects address the issue of client mixing by working to educate member agencies about not only the differences, but the similarities of their particular client population.

Volunteer Drivers

Volunteer drivers can represent a key component of coordination activities. Several agencies and providers have noted that providing automobile liability coverage for volunteer drivers is difficult. Insurance companies may require additional insurance for volunteer drivers beyond their current coverage.

In Texas, the Texas Charitable Immunity and Liability Code Ann. §84.001 et seq. (2006) provides civil immunity for volunteers **unless the damages arise from the operation of a motor vehicle** or other malfeasance. Religious charitable organizations that own or lease their own motor vehicles are not liable for damages arising from someone entrusted to provide transportation services.

Texas makes most individual volunteers liable for motor vehicle incidents but provides specific protections for religious or charitable organizations that own or lease the motor vehicle. Texas links the ability to recover damages in cases involving volunteers to insurance coverage. Immunities are available to volunteers or nonprofit organizations only if the organization that engages the volunteer's service is covered by insurance and the state limits recovery in the amount of the insurance policy. The Act does not limit liability for any organization unless it has liability insurance that covers \$1,000,000 for personal injury and \$100,000 for property damage.

Texas makes most individual volunteers liable for motor vehicle incidents but provides specific protections for religious or charitable organizations that own or lease the motor vehicle.

The issue of volunteer drivers has been addressed in other states through policy actions and rule-making. The National Conference on State Legislatures (NCSL) conducted a 50-state survey for the American Association of Retired Persons (AARP). The report, "Volunteer Driver Liability and Immunity," includes a listing of state statutes and is available through the NCSL web site at <http://www.ncsl.org/programs/transportation/HUMANSVSTRAN.htm>.

Other States' Policy Solutions Relating to Volunteer Drivers⁴

California Insurance Code Section 11580.1 - No policy of insurance issued under this section may be canceled by an insurer solely for the reason that the named insured is performing volunteer services for a nonprofit charitable organization or governmental agency consisting of providing social service transportation. *Source:* <http://www.leginfo.ca.gov/calaw.html> Click Insurance Code check box on right hand side about half way down. Put 11580.1 in the search box and click on Search. From the list, click on the link that says: Insurance Code Section 11580-11589.5

Hawaii Senate Resolution 22 - Requesting the Department of Transportation and the Executive Office on Aging to collaborate on providing transportation to seniors and visually impaired persons, and expressing the legislature's support for federal legislation to provide funding for ITNAmerica for a five-year national rollout and grants. *Source:* http://www.capitol.hawaii.gov/session2006/Bills/SR22_.htm

Maine Code 2902-F Volunteer Drivers - An insurer may not refuse to issue motor vehicle liability insurance to an applicant solely because the applicant is a volunteer driver. An insurer may not impose a surcharge or otherwise increase the rate for a motor vehicle policy solely on the basis that the named insured, a member of the insured's household or a person who

⁴ Winter Park Health Foundation. December 2006. Lauren Firestone & Margaret Lynn. 220 Edinburgh Drive Winter Park, Florida 32792, Document available at unitedweride.gov/Volunteer_Drivers_for_Senior_Transportation_12-2006.pdf

customarily operates the insured's vehicle is a volunteer driver. For purposes of this section, "volunteer driver" means a person who provides services, including transporting individuals or goods, without compensation above expenses to a nonprofit agency or charitable organization ... This section does not prohibit an insurer from refusing to renew, imposing a surcharge, or otherwise raising the rate for a motor vehicle liability insurance policy based upon factors other than the volunteer status of the insured driver. *Source:* <http://janus.state.me.us/legis/statutes/24-a/title24-asec2902-f.html>

Michigan Insurance Code 500.2118 - An insurer shall not refuse to insure, refuse to continue to insure, or limit coverage available to an eligible person for automobile insurance. Underwriting rules that an insurer may establish for automobile insurance shall be based only on the following... (f) use of vehicle... for transportation of passengers for hire... Rules under this subdivision shall not be based on the use of a vehicle for volunteer or charitable purposes or for which reimbursement of normal operating expense is received. *Source:* [http://www.legislature.mi.gov/\(S\(4x3wbbblwqktp2v4olnok55\)\)/mileg.aspx?page=getObject&objectName=mcl-500-2118](http://www.legislature.mi.gov/(S(4x3wbbblwqktp2v4olnok55))/mileg.aspx?page=getObject&objectName=mcl-500-2118)

New York Section 223 of Title 1 of Article 3 - The program would provide an on-demand transit service for seniors that would use automobiles driven by volunteer and paid drivers to transport seniors to where they need and want to go. After a period of five years, the program would no longer be eligible for state funding and would be completely self-sustaining, relying on consumer fares and voluntary community support to remain operational. *Source:* <http://public.leginfo.state.ny.us>, Click Laws of New York at the bottom of the page. Scroll down and click ELD Elder. Click Title 1. Scroll down and click 223.

South Carolina Silver Haired Legislature. Be it resolved by the South Carolina Silver Haired Legislature that the General Assembly enact and the Governor sign legislation to guarantee that any licensed driver, operating a currently insured vehicle to transport seniors or persons with disabilities, shall not be liable beyond the coverage of his/her insurance, except in the case of gross negligence. *Source:* <http://www.state.sc.us/lsgov/aging/docs/SHL2006Resolutions.pdf>

Conclusions

Insurance is used to protect a transportation provider's property and its liability. Many of the constraints and concerns identified by the planning regions regarding insurance issues can be overcome through diligence and cooperative agreements. In some regions these efforts have already begun.

Risk Management and Communication Key to Cost Concerns

The greatest concern on insurance issues is the rising costs. The first strategy to reduce costs should be through improved risk management programs and practices. Insurance costs may also be reduced by joining risk pools. Finding lower cost insurance rates requires having risk management practices in-place and communicating with insurance providers and underwriters.

Vehicle Sharing

In most cases, federal programs do not preclude vehicle sharing. Cost sharing and cooperation can overcome a reluctant agency's concerns. Interagency and regional agreements can be used

to set minimum driver qualifications, and allocate insurance and vehicle costs to enable vehicle sharing.

Driver Qualifications

Setting regional driver qualification standards can help reduce risks, and reduce costs and the ability to share drivers and vehicles.

Mixing Riders

Public transportation providers have been mixing clients successfully for many years. Except in the cases of school-aged children, where liability issues can arise, mixing riders can be accomplished through education and cooperation.

Volunteer Drivers

Although other states have greater liability protections for volunteer drivers, there are opportunities in Texas to use volunteer drivers. Examples of legislation from other states are provided to aid in potential policy changes sought in Texas.

Other Resource Documents

Transit Cooperative Research Program, LEGAL RESEARCH DIGEST, December 1994-Number 3. *State Limitations on Tort Liability of Public Transit Operations*.
<http://www.tcrponline.org/bin/publications.pl?category=19>

Transit Cooperative Research Program, LEGAL RESEARCH DIGEST, August 1997—*Number 8 Transportation Service Agreements: A Preparation and Reference Guide for Transit Attorney*.
<http://www.tcrponline.org/bin/publications.pl?category=19>

Helpful Links

- American Public Transportation Association www.apta.com
- Association of Governmental Risk Pools www.agrip.org
- Community Transportation Association (CTAA) www.ctaa.org
- Federal Transit Administration/Office of Safety & Security <http://transit-safety.volpe.dot.gov>
- National Safety Council www.nsc.org
- National Transit Institute (NTI) www.ntionline.com
- National Transit Database Information www.ntdprogram.com/NTD/ntdhome.nsf/?Open
- Public Risk Management Association (PRIMA) National www.primacentral.org
- Rural Transit Assistance Program (RTAP) www.ctaa.org/ntrc/rtap

Common Vehicle Insurance Terms

Liability: The portion of a policy that pays for bodily injury or damage that your vehicle does to others as the result of an accident. This is the most important part of any vehicle insurance policy. For example, your vehicle hits a legally parked car with two people in it. There is substantial damage to the car and both people suffer neck injuries. This would be covered under your liability coverage.

Medical Payments: Limited payments (generally \$1,000 to \$5,000) for medical treatment made to persons injured either on or by your vehicle. These payments are made regardless of fault to

deter people from filing a liability claim. For example, a passenger trips and falls on your bus and then has a doctor's visit to bandage a bruised knee.

Uninsured Motorists: Provides coverage to you and your passengers should an uninsured motorist be at fault in an accident. Your insurance company pays on behalf of the uninsured driver. This also applies in hit and run situations. For example, another driver rear ends your vehicle causing damage and injury to two passengers, then leaves the scene without stopping.

Collision: Coverage which pays for damage to your vehicle as the result of a crash with another vehicle or fixed object. For example, a driver hits a tree causing \$2,500 in damage to your vehicle.

Comprehensive: Comprehensive coverage provides payments to repair or replace your vehicle as a result of virtually all other causes (except collision), such as fire, theft, flood, or vandalism.