

# ANDERSON KILL Co-Op, Condo & Real Estate Advisor

## Is Your Status as an Additional Insured ... Secured?

By Robert D. Chesler and Deborah B. Koplovitz

All too often, a co-op or condo board — that assumes it has “additional insured” coverage to protect against loss or liability stemming from an alteration project — finds that when it’s time to make a claim, the coverage was not in fact secured.

When a condo or co-op retains its own contractor, it is typical for the managing agent to demand a certificate of insurance from the contractor. A certificate of insurance typically identifies the contractor’s insurance company and the policy limits. While it is not proof of coverage, the information on a certificate of insurance is very useful, particularly if the condo or co-op needs to make a claim against the contractor.

However, it is critical to note that a certificate of insurance does not confer any rights under the policy to the condo or co-op. It is merely information relating to the *contractor’s* insurance coverage. If sued, the certificate of insurance does not give the condo or co-op the right to make a claim under the contractor’s insurance policy.

In the case of a resident’s alteration project or a neighbor’s construction project, in order to make a claim under the contractor’s insurance policy, the condo or co-op must be endorsed onto the contractor’s policy as an additional insured. Just how to become an additional insured is not so obvious: it is governed by the actual terms of the insurance policy. See *Gilbane Bldg. Co./TDX Constr. Corp. v. St. Paul Fire & Mar. Ins. Co.*, 2016 NY Slip Op 06052, ¶ 1 (App. Div. 1st Dep’t 2016).

In some rare instances, the certificate of insurance may contain this endorsement. More often than not, however, the endorsement is in a separate document.

Unfortunately, the standard way to check this box in the New York real estate world is to obtain an ACORD (Association for Cooperative Operations Research and Development, the global data standards-setting body for the insurance industry) certificate of insurance listing the co-op or condo, the managing agent and the board as “additional insureds.” Indeed, it is so common that it is an oft-heard re-

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frain from unit owners, their contractors and even their insurance brokers, that the ACORD certificate is sufficient to convey additional insured status on a co-op or condo board.

However, this practice is insufficient because the ACORD certificate of insurance is not evidence of coverage. This long-standing practice of relying on an ACORD form should be put to an immediate end in our industry.

If you are still in doubt, the next time you are presented with this form, take a quick look at its top paragraph and you will see that it specifically states that it is not evidence of insurance coverage.

Rather than being listed by an insurance broker as an additional insured, what most insurance policies require is a separate contract signed by the insured, in which the insured has agreed to add additional insureds to the policy.

Insurance companies are notorious for hoping that people will rely on an ACORD certificate of insurance, and brokers are only too

happy to add any names that an insured asks to be added to that form.

We hope that this article is a word to the wise. Make sure that each insurance policy is reviewed by an attorney to ensure that the board, its directors and officers and the managing agent are added as additional insureds in accordance with the requirements set forth in the additional insured endorsement page of the insurance policy.

This process may take a little longer than just having a broker list some names on a certificate of insurance, but in the end, this extra step can result in avoiding litigation over a denial of coverage, which is a much more expensive, time-consuming and frustrating endeavor.

The takeaway: Make sure your co-op or condo has been added to an insurance policy as additional insureds in the manner required by that particular policy. That way, your building will be armed with the ability to make a direct claim against the insurance company for coverage under the policy. ▲

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Anderson Kill practices law in the areas of Insurance Recovery, Commercial Litigation, Environmental Law, Estates, Trusts and Tax Services, Corporate and Securities, Antitrust, Banking and Lending, Bankruptcy and Restructuring, Real Estate and Construction, Foreign Investment Recovery, Public Law, Government Affairs, Employment and Labor Law, Captive Insurance, Intellectual Property, Corporate Tax, Hospitality, and Health Reform. Recognized nationwide by Chambers USA, and best-known for its work in insurance recovery, the firm represents policyholders only in insurance coverage disputes — with no ties to insurance companies and has no conflicts of interest. Clients include Fortune 1000 companies, small and medium-sized businesses, governmental entities, and nonprofits as well as personal estates. The firm has offices in New York, NY, Stamford, CT, Newark, NJ, Philadelphia, PA, Washington, D.C., and Los Angeles, CA.

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