

ANDERSON KILL CO-OP, CONDO & REAL ESTATE ADVISOR

EDITOR'S NOTE:

Co-op boards and unit owners alike are often unsure as to who is responsible for what when damage to a unit (or damage originating in one unit) occurs. It behooves boards to make sure owners know what kind of coverage they should carry. Below, guest columnists Edward J. Mackoul and Justin Kraus of Mackoul Risk Solutions lay out the usual division of responsibility and the kinds of coverage unit owners should opt for.

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Insurance for Co-Ops and Condos: Who's Responsible for What?

By Edward J. Mackoul and Justin Kraus



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Most co-ops and condominiums have adequate coverage to protect the building against the most common contingencies, but that coverage doesn't extend into the units to cover

the homeowner's improvements, alterations or personal property. When a claim occurs, more often than not it is unclear what the co-op or condominium is responsible for and what the homeowner is responsible for. That confusion is magnified if negligence is involved.

So, who's responsible for what when it comes to the unit? And, how does negligence affect that responsibility?

There are typically two areas in the bylaws that relate to responsibility within the unit. One is maintenance of the unit. The other is damage to or destruction of the unit.

There are a number of areas that owners are responsible for maintaining within their

unit because no one has access to them, such as the plumbing fixtures. But when it comes to damage to these areas resulting from something such as fire, the association may be responsible for their repair or replacement. In most instances, *it's not what caused the damage, but what was damaged.*

The bylaws will indicate the responsibility of both the association and the owner. There are typically three ways an association should be insured: "bare walls," "all in" and "single entity." Single entity coverage is also known as original specifications or builders grade, and is the most popular. This typically will mean that the association is responsible for putting the unit back to its original condition at the time of conveyance from the developer, and the owner is responsible for any improvements they or any prior owner has made to the unit.

Some owners in a co-op assume that since they do not own the actual unit, they should maintain renter's insurance. This is an error as a renter's policy will not provide coverage for what they are responsible for within the unit.

Edward J. Mackoul is the president and **Justin Kraus** is a personal lines supervisor at Mackoul Risk Solutions, a firm that specializes in insuring community associations, their boards, residents and management firms.

Co-op and condominium owners often do not realize that within their unit they are generally responsible for damage to all improvements and betterments made by them or a prior owner, as well as finishings like wall-to-wall carpeting, wallpaper and even the varnish on the floors and the paint on the walls.

When an uninsured owner is sued for damages by another owner or their insurance company, the board and management firm will almost always be dragged into the suit. Boards are constantly confronted with charity decisions when there is inadequate coverage or the owner is uninsured and is sued for damages by another owner or the association.

Over the past few years it has been a common practice to have the proprietary lease (in a co-op) or bylaws (in a condo) amended to require that each shareholder or unit owner carry individual HO-6 insurance, also known as condo/co-op homeowners insurance. This is done by the attorney for the association and will usually state what the minimum required limits are for each coverage. Some requirements are even left up to the board's discretion, as times change they could require higher limits of coverage, especially for personal liability.

The best way an owner can protect against loss or liability is by purchasing an HO-6 policy. Below are the coverages that boards should encourage owners to obtain.

Improvements and Betterments

Also known as additions and alterations, this coverage provides for what an owner is responsible for within their apartment, which generally includes improvements and alterations made to the unit by that owner, as well as any prior owner. This could include kitchen cabinets, built-in wall units, wall-to-wall carpeting, wallpaper, paint, bathroom fixtures, tile and upgraded flooring.

Personal Property and Contents

Coverage provides for the owner's personal property including furniture, rugs, TVs, stereos, clothes, etc. Expensive items like jewelry, furs, silverware, antiques, collectibles and fine arts are covered, but subject to limitations. To insure these items to their full value, it's best

to purchase a floater and insure each item for its appraised value.

Loss of Use and Additional Living Expenses

Coverage provides for the additional costs of living away from home if the owner can't live in the unit due to damage from a fire, storm or other insured peril. It covers hotel bills, restaurant meals and other living expenses incurred while the unit is being rebuilt.

Personal and Family Liability

Coverage provides for claims by others for bodily injury or property damage caused by the negligence of the owner or their family members. This could include injuries to others or damage to the property of others in the building (e.g., water overflow). Liability limits range from \$100,000 to \$1,000,000; however, it is recommended that you maintain a personal umbrella policy. Personal umbrellas provide additional coverage in increments of \$1,000,000 and would only require either \$300,000 or \$500,000 of personal liability before providing excess coverage.

Medical Payments

If someone is injured on the property and seeks medical attention, this coverage pays for minor medical treatment, such as stitches, ambulance rides, X-rays and urgent care.

Loss Assessment

Coverage is provided if the owner is assessed in the event the co-op/condo association did not maintain adequate coverage for either a covered property (building) or liability loss. Each owner can be assessed a proportionate share to make up for the deficiency. In some cases, coverage will apply if the assessment is a result of the association having a high deductible for a covered claim. Limits range from \$1,000 to \$50,000.

When homeowners don't have insurance, it's usually because they don't realize they need it. Educate the owners on the responsibilities conferred on them by the bylaws and the insurance they should have to protect themselves. ▲

About Anderson Kill

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