

AN INSURANCE AMENDMENT ENCOURAGES BETTER CARE OF THE CONDOMINIUM AND SAVES MONEY

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Talking insurance makes my head hurt. But suffering through this short article may help you to (a) encourage owners to take better care of the condominium property, and (b) save money on insurance.

Under most condominium declarations, the association is responsible to insure all portions of the condominium, including both common elements and units. This makes sense. The association is in the best position to guaranty that all of the buildings have adequate insurance coverage at all times. So, if disaster strikes and there is damage to the building structure and to improvements within one or more units (such as the interior walls, cabinetry or fixtures), the master policy purchased by the association will cover it. Remember, no one can predict whose unit will be damaged—that's why there is insurance. It spreads the risk out among all of the owners.

Insurance premiums for the master insurance policy are a common expense. All owners pay for the premiums for the master policy through their assessments. Unless the condominium declaration specifically states otherwise, deductibles are also a common expense. The deductible cannot be passed through to the owner of the damaged unit or the owner who caused the damage unless the declaration says so.

Many board members, unit owners and managers fear that since the owner who caused the damage does not pay for repairs of damages he or she caused (except indirectly through assessments), owners don't have the incentive to prevent damages from occurring. Examples of items within units which, if not properly maintained, may cause damages to the common elements or other units are water heaters, washing machine and dishwasher hoses and other plumbing fixtures, dryer vents and chimney flues. The cost to repair damages can be substantial.

How do you encourage individual responsibility in use and maintenance of the units and common elements? A comprehensive inspection program for high risk items within units is one way. Another way is to amend the condominium declaration to require that owners who cause damage to participate in the cost of repair by paying the insurance deductible.

Amending the declaration to make unit owners responsible for the deductible on the Association's master policy or other amount not covered by insurance for damages to their unit and limited common elements assigned to their unit may also lower total insurance costs while increasing overall insurance coverage available. At first, this sounds contradictory. Shifting the deductible to the unit owner won't seem like much of a savings to the owner who has to pay the big master policy deductible! The key is to be sure that each unit owner has an individual insurance policy covering the owner's unit. The insurance industry refers to a unit owner's policy as an "HO-6 policy." In addition to covering the unit's contents, that policy will generally cover most of the deductible on the master policy which the owner is required to pay. There are deductibles on HO-6 policies, too, but they are generally much lower than the deductible on the master policy, often in the range of \$250 to \$500. Since the HO-6 policy pays for most of the owner's responsibility for the master policy deductible, more total insurance coverage is available. Once owners have insurance to pay a portion of the master policy deductible, the association can increase the deductible on the master policy, and the premiums will go down substantially. Thus, shifting the responsibility for the deductible to the

individual unit owner's insurance would increase the total available insurance coverage and may be less expensive overall.

Under an insurance amendment, each unit owner would have to pay the deductible on the master policy for any damage which is (a) limited to that owner's unit, (b) caused by the fault of that owner or tenant, or (c) caused by the failure of a portion of the condominium property which that owner is responsible to maintain. For example, if a unit owner's water heater floods and causes damage solely to that owner's unit, then that owner would have to pay the master policy deductible for repairs to his or her unit. If more than one unit is damaged, the owners whose units are damaged or who caused the damage would pay a proportionate share of the deductible. If an owner's unit was damaged and that owner did not have an adequate individual unit policy, the owner could be required to pay the entire master policy deductible out of its own pocket.

A final reason to amend the insurance provisions is that Fannie Mae has a new requirement that the master policy cover any "improvements and betterments" installed by a unit owner. Complying with Fannie Mae requirements is important to make financing available. Also, Fannie Mae requires that all owners purchase an HO-6 policy anyway.

The information contained in this general article is not intended to be legal advice, and is not a substitute for the assistance of your legal counsel.

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