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*Community Associations Newsletter*

## RAISE YOUR HAND IF YOU'RE INSURED

### A Primer About Condominium Property Insurance from a Legal Perspective

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"Insurance Law" was a semester-long course in law school. I remember thinking, "why on earth would someone take a law school class about insurance?" Why indeed. As forlorn as I am for not having taken that course, it probably would not have helped significantly in the world of community associations in the DC Metropolitan area. Car insurance, and even homeowner's and renter's insurance have different analyses than the intersection between a condominium's master property insurance policy and a unit owner's policy.

The most compelling aspects of the relationship between a unit owner's insurance and the condominium's master insurance policy can be: (1) who covers what?; and (2) who pays that master insurance policy deductible of $5,000 (or $10,000 or $20,000)?

If you are the owner of a condominium unit, you have probably heard about and possibly been required by your lender to purchase an individual (commonly known as "H06") insurance policy. Both the H06 and master property insurance policies are supposed to do what insurance generally is designed to do: mitigate the risk of loss resulting from certain events in exchange for regular payments by the policy holder. A "loss" usually means when personal or real property is damaged or destroyed. The trick is for both owners and the condominium association to be adequately insured, and for both to have a clear understanding about who pays the master policy's deductible. An owner's H06 policy is secondary to the condominium's master policy of insurance. The master property insurance policy is generally intended to cover losses to the common elements and units while H06 is usually designed to cover claims related to betterments, improvements to a unit, the master deductible, and alternate living expenses, depending on the language of the policy.

DC and Maryland laws have been amended in recent years to, among other things: (a) clarify that the condominium's master insurance policy is primary and applies to units; and (b) specify what is expected of unit owners in terms of insurance coverage. Virginia condominiums and owners can look to those laws to guide best practices. In DC, unit owners are required to have certain minimum insurance coverages to the extent reasonably available. Further, if a loss originates from a unit, the owner may be held responsible for a master policy deductible of up to $5,000 *unless the condominium instruments provide otherwise*, and so long as the condominium has provided notice. *Nota bene*: plenty of DC Condominium Instruments do "provide otherwise" so comparing the recorded documents to insurance policies on a regular basis is prudent. Maryland owners are also responsible for up to $5,000 of the master policy deductible if the loss originated in their unit; MD condominiums must provide notice annually of owners' responsibility to pay the deductible and what that deductible is.

In addition to these statute-based requirements, condominium associations in DC, Maryland and Virginia may have certain insurance requirements listed in their recorded covenants. Examples of such requirements include descriptions of the minimum dollar amounts of certain coverages, no-contribution provisions, what is meant by "condominium replacement cost," what must occur in the event of partial or total destruction of the building(s), and notification requirements. It is likely that a condominium's insurance policies fulfill its requirements, in part because carriers underwriting condo insurance should be accustomed to the typical requirements. However, boards should talk to their association's insurance agent and verify that the condominium's insurance matches what is required in the covenants and if not, why not.

For unit owners, it is important to understand where the master policy coverage ends and the unit owner's obligations begin in the event of a loss. It is easy to identify that line on paper, however, it can be harder in real life when dealing with replacing upgraded floors, an improved dishwasher, drywall and paint.

From those of us whose job it is to help communities in worst case scenarios where significant costs are not covered by insurance, be reminded that water leaks and ensuing losses are practically guaranteed to occur in multi-unit buildings. That being the case, become friends with your insurance agent, familiarize yourself with the condominium's insurance requirements, and your own H06 policy, and do a cost benefit analysis of obtaining as top-notch (which might be more expensive) insurance as your and your community's wallet will allow.