

REES BROOME, PC

COMMUNITY ASSOCIATIONS NEWSLETTER

Water, Water Everywhere . . . The Essentials of Property Damage Insurance for Condominiums

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The Essentials of Property Damage Insurance for Condominiums

Water is the essence of life . . . Water is also at the essence of most unexpected maintenance and repairs for our Condominium clients in Virginia, DC, and Maryland. Below is a primer on the key issues that can arise when there is evidence of water damage in a unit or to the common elements.

Condominium clients are the most impacted by water claims, but we do have townhome and cooperative clients that have to address water claims from time to time as well.

Insurance v. Repair Responsibility

Responsibility for attending to water leaks (either from Mother Nature or plumbing) is often difficult to confirm given the overlapping provisions in most recorded governing documents about repairs, maintenance and insurance.

Typically, there are master insurance requirements (especially in the context of Condominiums and cooperatives), but there are also statutes at play in Maryland, DC and Virginia, especially in each Condominium Act.

In a typical condominium, the maintenance and repair language would obligate owners to maintain their unit in good condition. But, there is also language that requires the Board of Directors to obtain a master policy of property damage insurance for the entire condominium – including builder grade unit components. Often the master policy of insurance provides coverage to basic builder grade unit components even when an owner has not honored their maintenance obligations. However, it is increasingly common for our Condominium clients to have master policies of property damage insurance that have deductibles in the range of \$25,000 to \$50,000. This means that in many instances the water damage to builder grade unit components will be covered by the master policy only after the damages exceed \$25,000 to \$50,000.

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Maryland Condominiums – Section 11-114 of the Maryland Condominium Act

In Maryland, the Maryland Condominium Act caps the amount of the master policy deductible that can be assessed to a unit owner at \$10,000, which may be well below the Condominium's actual master policy deductible. In the event the master policy deductible is greater than the cap, the delta between the cap and the actual policy deductible must be absorbed as a common expense for the Condominium. This can be devastating to maintenance of a balanced budget, especially if there are multiple losses in a given year. The Maryland Legislative Action Committee for the Community Associations Institute (CAI), of which Hillary Collins of our firm is a member, has been advocating to increase the maximum allowable deductible assessment in Maryland for several years. Maryland also requires an annual notice be sent to all Condominium owners about their possible liability for the master policy deductible per Section 11-114(g)(2) of the Md. Condominium Act. Our suggestion is to send these notices with the Condominium's annual draft budget notice.

Virginia Condominiums – Section 55.1-1963 of the Virginia Condominium Act

In Virginia, as of July 1, 2025, all community associations must affirmatively disclose in their resale certificate if there is a possibility that an owner may be held responsible for a master policy insurance deductible. This new checkbox on the standardized resale certificate is intended to generate more awareness for prospective purchasers to see that their personal condominium insurance policies (commonly known as HO6 policies) are purchased in amounts and with the required endorsements that would cover the possible assessment of a \$25,000 or even a \$50,000 master policy deductible.

Unlike Maryland, in Virginia the amount of the master policy that can be assessed to a unit owner is not regulated and is instead dependent upon the language of the recorded condominium instruments. If you are not aware of what the condominium instruments for your Virginia Condominium say about who bears responsibility for the deductible in the event of a water loss, we would urge you to review that information in detail and seek out the assistance of the condominium's insurer and broker. It is also important for Virginia condominium managers to be aware that any time the amount of the master policy deductible changes, Section 55.1-1963(C) of the Va. Condominium Act requires a notice to be sent to all unit owners in the Condominium.

DC Condominium Act – Section 42–1903.10 of the DC Condominium Act

In the District of Columbia, the Bylaws control. The DC Condo Act provides that unit owners are responsible for up to \$5,000 of the master policy deductible if the loss originated in their unit, irrespective of fault, unless the condominium instruments provide otherwise, and so long as the condominium has provided notice. Meanwhile, many unit HO6 policies have an endorsement that covers the owner for their potential liability for the master deductible. It is best practice to remind owners to make sure they have enough coverage for this potential liability.

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However, DC rules may soon change. The proposed amendment was first introduced in November of 2025. It aims to adjust insurance requirements for condominium unit owners by increasing the deductible from \$5,000 to \$25,000 for damage originating from an owner's unit. If owners fail to secure appropriate insurance, the condominium association is empowered to purchase policies on their behalf and charge them for the premium.

Similarly, DC condominiums require notice to their communities. When any insurance policy has been obtained on behalf of the unit owners' association, Section 42–1903.10(a) of the DC Condominium Act requires written notice of the policy and written notice of any subsequent changes for each unit owner.

Self-Insurance

As our firm has reported in recent years, there has been a hardening in the insurance market for community associations. These market changes have been the result of climate change, significant storms and incidents like the tragic building collapse in Surfside, Florida. Due to these market changes, many of our community association clients are being urged to self-insure more and more water losses to minimize claims and improve the claims history for the community association.

Whether or not a condominium can self-insure a loss often depends upon the unique facts and circumstances of the source of the loss, the scope of the damage, the loss history for the community over the past five years, and the language in the recorded community governing documents. Self-insurance is not for the faint of heart as opting to self-insure often puts the Board and Management in the role of acting as a loss adjuster. For Maryland Condominiums, the Condominium Act assists with offering guidance on who bears responsibility to initiate repairs, who bears responsibility for unit upgrades, etc.

In Virginia, where the self-insurance and repair process is governed by each community's recorded governing documents, the process of confirming what is a covered builder grade unit component can fall upon the Manager, Board and legal counsel. Also, it is not uncommon that when a loss is covered by the master policy deductible that the unit owner and their HO6 insurer are solely responsible for coordinating the necessary unit repairs.

Repairs

One of the most challenging aspects of addressing plumbing leaks in HOA communities is determining who is responsible for repairs. In sum, when an owner reports a dreaded water leak, how you as the Manager or Board Member react depends upon the applicable jurisdiction for your community. In Maryland, the Act compels Management to act to assist with mitigation and repairs. In Virginia, whether Management gets involved in a loss depends often on whether the leak is on-going. If yes, then Management must act. If not, then Management may not have to act unless and until the unit owner can demonstrate that the damages to builder grade components exceed the master policy deductible. In DC it is best to look at your condominium's governing documents for controlling information.

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Often times when water damage occurs, the duty to stop the leak is immediate which can be through emergency maintenance. It is important to make repairs to stop the damage from becoming a bigger problem which may mean that the final repair liability is determined later. There may be an obligation to repair the unit even in circumstances when a neighbor was negligent. Deferred repairs in the DC Metro area are risky and could lead to bigger insurance issues down the line.

Conclusion

Due to the impacts water can have on a community and their budget, Rees Broome suggests being as proactive as possible by having an insured and uninsured loss policy and by implementing mitigation measures like routine unit inspections, water alarms, etc. Repairs can get expensive and often times the proactive approach will save your association in the future.

Please reach out to any of our RB attorneys for further guidance and welcome Spring!