



# The Insurance Mystery

Where Does the Association's Responsibility End and the Homeowner's Begin?

**D**o you remember that large pile of documents and papers you read when you closed on your condominium? Do you remember how clearly you understood what insurance responsibilities the association would assume and what you as a homeowner would assume? Do you recall thanking all those professionals for clarifying all the issues so you could sleep well at night? If your answer to these questions is yes, I congratulate you as one of the fortunate few who truly know what he or she is required to have when they move into a condominium or other community association where certain homeownership rights are held in common with others.

A condominium or other community association home is, in most cases, one of the largest investments you can make. You are investing financially in a home, and more importantly, you are investing in your lifestyle. That is why it is so shocking to learn that prospective buyers enter into a condominium or other community association home without truly understanding their rights, duties and obligations as set forth in the governing documents. This could easily be the basis of a psychological study. People do not want to ask questions fearing the answers may cause them to back out of the deal (and the home they love). And others used to impulse buying do not want to do their homework.

The most successful condominium experiences are those that do not involve surprises. Ignorance is bliss, until you discover that the damage to your condominium is not covered by the association insurance policy, and you did check if your coverage filled the gap. The first solution to this mystery is to use professionals who specialize in com-

munity associations. The right one is worth every penny. However, it is your responsibility to ask these professionals if this is their specialty. In general, ask how long they have been specializing in this area? How many community associations they represent? Are they certified by the Community Association Institute (CAI) or similar organizations advocating community association living?

Once you are satisfied with their professional expertise, ask them to describe your obligations pursuant to the governing documents. Governing documents generally include the condominium or associations articles of incorporation or trust document, bylaws and conditions, covenants and restrictions or declarations. If they can't or won't take the time to answer your questions, get a new insurance professional.


Choosing the right professional is especially true when making decisions about insurance. It is important that associations and homeowners are confident that the insurance professional knows what you need. One specializing in community association risks knows where the association's responsibility ends and where homeowner's begins. The proper relationship between the insurance for the association and your program is critical.

The basic proposition with respect to who is responsible to insure what is as follows: The association is responsible for the "common elements," and the individual homeowners are responsible for their "individual interests." This may seem simple, but do not get lulled into a false sense of security by this simplicity.

How do a prospective condominium buyers or homeowners begin to understand their insurance duties and obligations? As noted, the best place to go is to a local community association specialists.

In the meantime, we will provide a checklist that should assist you in your due diligence. Again, as a homeowner you have two interests. Does the association have the insurance it is required to carry? And, do you have the best insurance you need as a homeowner?

The following list is not intended to be an all-inclusive list, but a starting point to help demystify the insurance process. What this should hopefully demonstrate is that a good professional is necessary to help protect what is very likely one of your biggest investments. But be warned that this is not a one-time exercise. Since life is not stagnant, things must be reviewed and monitored. For example, if the association changes insurance, do you need to change your personal insurance? You need to know before the claim. If you get new things or the association builds or remodels, does the insurance need to be revised? Insurance professionals should be used to ask the questions and monitor the changes.

Whether you are an association homeowner or a board member, use the checklist as a basis of discussion for your association. The association needs to monitor its coverage and regularly advise the membership of changes, especially when it may impact their individual coverage. Community associations are all about "community." The intersection of the individual and common interests are the keys to how well life in the association will flow. Fewer surprises and a greater understanding of responsibilities will lead to the best protection for everyone. Unfortunately, there are no shortcuts in life, including purchasing insurance. 

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# Condominium Insurance Due Diligence Checklist

QUESTION	YES	NO
<p><b>Have you determined what insurance requirements are set forth in the governing documents?</b> One important caveat to keep in mind is that just because the governing documents require that the association have certain insurance does not mean that the association's board has complied with that requirement. This gives rise to two possible issues: Was the board negligent in purchasing the insurance that the association bylaws require? Did the board expressly decide that it would not obtain certain insurance because it was too expensive, or they felt it was not needed? If the latter is the case, did they do this in the manner required pursuant to the governing documents and was it done with the correct vote and authority of the association? The result here is that the association members will have to cover the loss either negligently omitted or expressly declined.</p>		
<p><b>Have the insurance requirements been audited by a community association insurance specialist to make sure they are appropriate for this association?</b> Specifically, do the governing documents only set forth the bare minimum, or do they provide for full coverage, such as windstorm where appropriate, earthquake where appropriate, flood where appropriate, new ordinance coverage, full replacement cost or sewer and drain back up?</p>		
<p><b>Has the association conducted a proper property appraisal to determine the necessary property values to insure?</b></p>		
<p><b>Has the association determined whether the liability insurance limits comply with statutory requirements and whether that compliance obviates individual member exposure?</b> Specifically, if there is a judgment or settlement in excess of the association's insurance, could the individual homeowner be personally liable?</p>		
<p><b>Has the association determined whether the limits of liability required by the governing documents are sufficient or whether the community should obtain umbrella liability coverage?</b> There is no real right or wrong answer to this question, but it is an issue that warrants discussion and debate by the association and its board.</p>		
<p><b>Has the association purchased the state-of-the-art Directors and Officers (D&amp;O) liability insurance?</b> The governing documents of virtually all associations provide indemnity to volunteer board members for their work on the board. D&amp;O liability coverage generally covers this. If something is not covered by a policy, it will be the subject of a special assessment to the homeowners. Not all D&amp;O liability policies are created equal. In brief, the D&amp;O policies on the market can be exceedingly different in coverage, without being significantly different in cost. There are many D&amp;O coverages that are part of package policies that are just not adequate. Accordingly, if the insurance does not pay for the coverage, since the association has agreed to indemnify the board members, the association members will foot the legal fees and any judgments or settlements. Many policies do not cover employment practices liability, coverage for property managers, breach of contract, failure to maintain or obtain insurance, or demands seeking non-monetary relief. (The latter item is the most common D&amp;O Claim.)</p>		
<p><b>Is the association covered if a board member, employee or property manager steals from the association?</b> Like with D&amp;O coverage, there are some inherent differences in this coverage. Specifically, are the limits sufficient? Does the definition of employee cover directors, officers, property managers, the property manager's employees or volunteers? The proper liability limits should equal: The amount required by statute, if any; the amount required by the governing documents; or an amount to cover all funds of the association, plus three months of operating expenses, whichever is greater.</p>		
<p><b>Has the association complied with the insurance requirements set forth in the governing documents?</b></p>		
<p><b>If the association has made a decision NOT to comply with the insurance requirements, has it been done with the proper authority and has the association membership been properly notified?</b> Choosing not to purchase certain insurance may be within the discretion of the association board, as long as they do it properly. You need to understand when this happens so you can determine whether you can and should fill any such gap with your own insurance. Why, you ask, should you care about this? You should care, because if the board has made a decision inappropriately regarding insurance, and one or more members sue the association, or there is an uninsured loss, the individual members, who have agreed to indemnify the board for its decisions, will be financially responsible, most likely through a special assessment.</p>		
<p><b>Do you understand where the association's responsibility ends and yours begins?</b> For example, is the association responsible for all improvements and betterments in the home, none of the improvements or betterments, or only the original built improvements or betterments? Some community association insurance specialists opine that the individual home owner should assume that the association is not going to provide insurance for the improvements and betterments and the homeowner should make sure their HO 6 (Condo Owner Policy) contains the maximum available insurance.</p>		
<p><b>Before purchasing your individual home insurance (your H06), did you have your personal insurance agent review the association requirements so he or she could properly advise you as to the coverage you need?</b> If your agent has not recommended that these requirements be reviewed, you may want to choose another agent.</p>		
<p><b>Does your H06 homeowner's policy cover all improvements and betterments in your home, whether you put them in or they were already there at time of purchase? Are the limits adequate?</b></p>		
<p><b>Does your H06 have the maximum available "loss assessment" coverage?</b> Loss assessment coverage will cover an assessment where the limits of the association's coverage was insufficient; it will not apply if the association was not covered.</p>		
<p><b>Does your H06 cover the following exposures:</b></p> <ul style="list-style-type: none"> <li>• The Cost to Restore and Rebuild Your Home?</li> <li>• The Cost to Replace Your Personal Property?</li> <li>• The Extra Expenses Incurred by the Owner and His or Her Family During the Restoration to Live Elsewhere?</li> <li>• The Risk of Being Sued by the Cooperative, Other Shareholders or Their Insurance Companies for Damages Caused by Your Negligence?</li> </ul>		