

The Risks Of Not Purchasing Insurance For Your Condominium Unit

By Jeffrey Rembaum, Esq., Kaye Bender Rembaum, Oct 18, 2022

Do you think you do not need condominium insurance because your condominium association has it? You would be so very wrong if you do! It has happened more times than I can count—the supply line that feeds the toilet ruptures in the upstairs unit while the owner of the unit is out of town, the upstairs unit owner forgot that he or she started to fill the tub and it overflows, or the upstairs unit owner ignores a broken toilet, all of which result in water flowing down into the unit below. Next thing you know, the remediation workers arrive and start ripping out the soaked, damaged drywall in the units below and after cutting holes in the drywall use their industrial-sized blowers to dry things out to prevent mold.

Meanwhile, the downstairs unit owners want to have a “word” with the upstairs unit owner to discuss who is going to pay for the repairs. They demand a copy of the upstairs unit owner’s insurance policy. The owner of the upstairs unit where the leak occurred smiles and explains, “The condominium association has insurance. They’ll take care of it.” Right? Wrong! Even if the condominium association has the duty of repair to portions of the damaged property, typically the damaged common elements, the upstairs unit owner is not off the hook because both the condominium association and its insurance company can often “subrogate” their financial damages against the upstairs unit owner and so, too, can the downstairs unit owners and their insurance companies. At the end of the day, the upstairs owner who caused the damages could have significant financial liability. (In plain English, to “subrogate” a claim means that one party goes after the other for their financial damages for having caused the damage in the first place.)

So, now that I have your attention, most especially if you are a unit owner who does not have insurance for your unit—in the example described above, not only can the upstairs unit owner bear significant financial liability, but even their condominium unit is at risk of being foreclosed to satisfy a judgment against them—and there is no homestead protection! Because the upstairs unit owner decided not to purchase insurance, he could actually lose his unit in a foreclosure. The following explanation is why:

By way of oversimplification, the Condominium Act, more specifically, §718.111(11)(f), Florida Statutes, requires the condominium association to insure everything that the unit owner is not responsible to insure. The unit owner is responsible to insure

... all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit... the association is not obligated to pay for any reconstruction or repair expenses due to property loss to any improvements installed by a current or former owner of the unit or by the developer if the improvement benefits only the unit for which it was installed and is not part of the standard improvements installed by the developer on all units as part of original construction, whether or not such improvement is located within the unit.

But, however, the unit owner’s insurance policy, typically referred to as an “HO-6 policy,” not only includes coverage for the items set forth above plus other personal items, but also includes liability coverage for having caused damages to the condominium property.

§718.111(11)(j)1–2, Florida Statutes, makes patently clear that A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by

insurance proceeds **if** such damage is caused by intentional conduct, **negligence**, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of the insurer.

The provisions... regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also apply to the costs of repair or replacement of personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure. **(emphasis added.)**

Furthermore, also pursuant to §718.111(11)(g)2, Florida Statutes,

...unit owners are responsible for the cost of reconstruction of any portions of the condominium property for which the unit owner is required to carry property insurance [set out above], **or for which the unit owner is responsible, and the cost of any such reconstruction work undertaken by the association is chargeable to the unit owner and enforceable as an assessment and may be collected in the manner provided for the collection of assessments pursuant to § 718.116, Fla. Stat. (emphasis added.)**

§718.116, Florida Statutes, is the unit fore-closure section of the Condominium Act which explains the steps necessary to foreclose against an owner's unit for failing to pay assessments.

In condominium living, the general rule is that the party who has the duty of purchasing insurance for a particular portion of the condominium property also has the primary duty to repair the damages to such portion regardless of fault (unless the condominium association has opted out of that regime by a vote of the unit owners, which is a rarity). But, simply because the condominium association has insurance and may have that primary duty of repair after the insurable casualty event, that does not mean that the negligent unit owner that caused the damage will not be the primary target for reimbursement for expenses incurred by the condominium association's insurance company or by the condominium association for its deductible and related expenses. The same concept applies for the downstairs unit owners, who could seek reimbursement from the upstairs unit owner for any necessary expense incurred because the upstairs unit owner was negligent.

There are typically two parts to the HO-6 insurance policy, the primary coverage for personal losses and the other for liability coverage. Condominium associations should consider amending their declaration to require every unit owner to have both personal and liability coverage, and at a minimum, liability coverage. Your condominium association should discuss this requirement with the condominium association's insurance agent as well as review the possibility of amending the declaration of condominium with legal counsel.

Anytime a condominium association experiences a casualty event, in addition to reporting the claim to the insurance carrier, usually through the condominium association's insurance agent, the condominium association should be in touch with its legal counsel to explore all the different aspects necessary to both repair and reimburse the condominium association for its financial losses. At the end of the day, owning a condominium unit and not having purchased insurance is similar to taking a rowboat out on a rough sea day without life preservers.

Insurance Agent: Mack, Mack & Waltz #954-640-6225

Certificate of insurance: www.EOldirect.com – *reference Oriole Condo 1 Club*