

Condominium Insurance Claims: Navigating the Complexities of Reporting Losses

In the world of condominium management, insurance claims can be a sensitive and often misunderstood topic. Property managers and condo boards frequently face difficult decisions when it comes to reporting losses, especially when the damage is isolated to a single unit.

While the instinct to avoid impacting insurance premiums is understandable, it's crucial to recognize the legal and ethical responsibilities involved—and the rights of unit owners.

WHY CLAIMS OFTEN GO UNREPORTED

Property managers have historically been hesitant to report losses to insurers, particularly when advised by the condo board not to. This is most common when the damage is limited to a single unit and does

not affect common property. The primary concern is that multiple claims could lead to increased premiums for the entire condominium corporation.

However, this approach can create significant issues, especially for the affected unit owner.

UNDERSTANDING THE CONDO INSURANCE HIERARCHY

It's important to remember that the condominium corporation's insurance policy is primary—it covers both common property and the units themselves (excluding improvements). Unit owners, who pay condo fees that fund this policy, are insureds under the corporation's policy and have the right to file claims.

When total damages (including all units and common property) exceed the deductible, the loss should be reported to the broker and insurer. If the damages fall below the deductible, reporting may not be necessary, as the policy won't respond.

THE “JUST OVER THE DEDUCTIBLE” DILEMMA

Problems often arise when a loss slightly exceeds the deductible. For example, if the deductible is \$10,000 and the loss is \$12,000, the corporation may hesitate to report it to avoid a small \$2,000 claim that could impact premiums. However, the unit owner can only claim the deductible amount under their personal policy, leaving them short by \$2,000.

Some boards may consider covering the shortfall from the Operations & Maintenance (O&M) fund. This is risky. The O&M fund is intended for the benefit of all unit owners, not to resolve individual unit issues. Using it in this way could be seen as a breach of fiduciary duty and may expose the board to Directors & Officers (D&O) liability. This scenario has occurred in real cases and should be avoided.

RIGHTS OF THE UNIT OWNER

If a property manager refuses to report a claim, unit owners are not powerless. They can request a copy of the insurance policy in writing. Under the Condominium Property Act,

the corporation is obligated to provide it. Once obtained, the unit owner can submit the claim directly to the insurer.

TIMELY REPORTING

Most insurance policies require that any incident that may give rise to a claim be reported promptly. Failure to do so can prejudice the insurer's ability to investigate and defend the claim, potentially resulting in a policy breach. While minor issues may be resolved informally, caution is advised.

SPECIAL CONSIDERATIONS FOR BODILY INJURY CLAIMS

Bodily injury claims should always be taken seriously. If an injury is reported, it should be communicated to the broker and, in most cases, to the insurer. Red flags that suggest a claim is likely to proceed include:

- An ambulance is called
- Significant injury (e.g., broken bones)
- Time off work and wage loss
- Out-of-pocket medical expenses
- A letter from a personal injury lawyer

WHEN IN DOUBT, CONSULT THE EXPERTS

Every claim is different, and unique circumstances often warrant a discussion. This is where claims professionals can provide valuable guidance. Whether it's a minor issue or a complex situation, consulting with your broker can help determine the best course of action.



If you have questions specific to your business, or would like additional information, please reach out to your HK Henderson Advisor.

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