ARE ALL HO-6's CREATED EQUAL?

The Quality of the Unit Owner's HO-6 Coverage Becomes a Focus

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People in the condominium association insurance field have long suggested that individual unit owner coverage should be mandatory. It's not, you know. And while many Association's governing documents require the individual owner to obtain their own policy, Boards find enforcing these types of insurance requirements problematic. A study suggests that as many as 25% of condominium unit owners fail to purchase their own coverage. Perhaps that fact alone explains why, until recently, little attention has been paid to the quality of coverage the HO-6 policy provides. Of course the "the devil is in the details" – and at the time of loss it is nuances in the HO-6 policy language which severely impacts the quality of protection granted the unit owner.

HIGHER DEDUCTIBLES HAVE ILLUMINATED THE PROBLEM

The recent hard insurance market, runaway claims due to higher repair expenses, and years of deferred maintenance – have all combined to result in Associations maintaining significantly higher deductibles on their Master Policy. Some Boards have adopted this as a voluntary risk management step while others have been forced to accept a higher deductible by their insurance company as a condition of their renewal. The result means that thousands of dollars of losses are no longer covered by the Master Policy -- shifting much of the burden to the individual owners. This shift has really illuminated the lack of consistency and uniformity of the underlying HO-6 policies. Not all HO-6 policies have the same scope of coverage and, as a result, the protection they provide for the individual unit owner at the time of loss may vary greatly.

What can individual unit owner do to obtain the best, most comprehensive HO-6 policy? First and foremost, be an informed consumer.

There at least three different areas in which HO-6 policies respond differently, depending on the carrier:

> **1. The Master Policy Deductible -** If the loss occurred as a result of the unit owner's negligence (grease fire in the kitchen, overflow of a tub or toilet), many Boards will hold the individual unit owner responsible for the deductible. This also would hold true for losses that fall below the deductible. Does the individual unit owner's HO-6 policy cover this deductible? What about a loss that doesn't quite reach a master policy deductible of, say, $10,000? Would the HO-6 policy still cover the loss?

A Master Policy deductible of $10,000 or greater (per occurrence) is not unusual, with many homeowners associations maintaining a $25,000 or even $50,000 deductible for resulting water damage losses.

Unfortunately, many HO-6 policies limit the coverage of the Master policy deductible to only $1,000. Still other policies may indicate that they will cover the $10,000 deductible, for example, but if the loss falls below the deductible, they may opt not to cover the loss, citing the "other insurance provision*" contained in the policy which indicates that the HO-6 is secondary to any other collectible insurance and that the Master Policy would have responded – be it not for the $10,000 deductible. (*Note the underlying HO-6 contains the following statement: "This insurance shall be excess over other insurance in the name of the condominium covering the same property covered by this policy." It's the "same property" language in this statement that is particularly problematic. It's as if the carrier is saying, "the broader the coverage provided by the Master Policy, then, the less coverage we'll provide on our policy.") This is a frustrating wrinkle as it appears that it is not so much the policy language as much as claims adjusters (or their superiors) interpretation of their own policies.

This type of response from a carrier is unacceptable. There are carriers out there that will provide higher limits of coverage for the Master Policy deductible and will provide coverage for damage that occurs within the interior of the unit if it falls below the Master Policy deductible. Communicate your expectations with your agent/broker. If he/she is unable to obtain comprehensive coverage for the deductible – or cannot assure you how the claims office will handle losses that fall below the deductible -- keep looking!

2. **The Special Assessment -** What types of special assessments will be covered by the Loss Assessment coverage provided by the HO-6 policy?

The type of special assessments that will be covered by an HO-6 varies widely from carrier to carrier. The most basic (and limited) form of Loss Assessment coverage provides protection only for special assessments resulting from the same perils provided by the underlying H0-6 itself. This would typically include the standard "named perils" perils (fire, lightning, wind, hail, et al) plus the liability coverage (bodily injury or property damage). The better HO-6 policies broaden their coverage to pickup special assessments resulting from a personal injury claim (libel, slander, defamation of character, or invasion of rights of privacy). Some HO-6 policies will even cover a special assessment that resulted from an error in judgment committed by the Board of Directors. This latter coverage would be provided by the Directors & Officers Liability policy maintained by the Association that would seemingly make this coverage only important if the Board were sued in an amount in excess of the coverage maintained, or there were multiple occurrences that had exhausted their coverage limit. Finally, some policies will even cover a special assessment that results from discrimination claims levied against the Association. While this form excludes any fines or penalties imposed by law, this is still a policy with rather exceptional coverage.

3. **Real Property coverage** - To what extent of Real Property coverage is provided? (e.g. building alteration, additions, fixtures, installations or items of real property that are a part of the unit as defined by the governing documents)?

The process of "dovetailing" the HO-6 policy --- successfully tailoring an HO-6 policy that will pickup the interior improvements at the precise point where the Master Policy stops --- has always been tricky. One has to read the Master Policy carefully and analyze where the Master Policy ceases and where the unit owner policy should truly begin. It becomes even more tricky if the Master Policy “points” to the governing documents when detailing what coverage is provided the association, as the agent/broker must now interpret not only another carrier’s policy language, but also the CC&R’s for the Association.

The process can also become more complex if the Master Policy’s scope of coverage was reduced as a result of the carrier’s underwriting attempts to keep on the risk by limiting or reducing the type of property it covers at the time of loss. Hence, we’ll see Master Policies which were “single entity” or “all-in” at inception that became scaled back to “original builder’s specs” or “bare walls” policies at the time of renewal.

As a result, a condominium resident will want to not only obtain as broad a definition of “real property” as possible (to cover any improvements that may not be covered by the Master Policy), but also to obtain sufficient limits to cover any improvements made by the unit owner and the unit’s previous owners.

Because the language contained in the individual unit owner policy can often not be changed or modified, some duplication of coverage may be unavoidable. Its always best to err on the conservative side and maintain a broader scope of coverage and perhaps more coverage than may be necessary – in the event that the Master Policy (which likely has a different renewal date) is changed or modified during the HO-6’s policy term and responds differently than intended.

As in any purchase involving condominium insurance, it is best to buy individual unit owner coverage from an agent or broker who specializes in coverage for condominiums and is familiar with the intricacies of fitting the two policies (HO-6 and Master Policy) together. Obtaining as much information as possible about the Master Policy will help you in obtaining individual coverage – and once you have that information, obtain as broad of protection individually as you can reasonably afford.

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