

An Introduction to Loss Assessment Coverage

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By Tim Cline, CIRMS, Timothy Cline Insurance Agency, Inc., Santa Monica, CA

Probably the most misunderstood coverage provided as a part of the individual unit owner policy is Loss Assessment Coverage. This article will help you to understand the importance of this coverage and be able to explain it to your insurance agent or broker.

A fundamental principle of condominium ownership is that each individual owner has a proportionate ownership interest in the Common Area. For example, in many cases, owners in a 100 unit project would own the Common Area condominium association as tenants-in-common, each owner owing 1/100th interest. Depending on the project, the Common Area could include the exterior building elements up to and including the unfinished interior surfaces of the floors, walls and ceilings of each unit as well as the swimming pool, spa, tennis courts and other recreation facilities. Unfortunately, what is not always recognized is those same owners have a 1/100th interest in the liabilities associated with the maintenance of those same Common Area elements.



What if a child should drown in the Common Area swimming pool and the distraught parents sue the condominium association for wrongful death? If the jury gives the family a \$5,000,000 award, but the Association only maintains \$2,000,000 in liability coverage, where will the remaining \$3,000,000 come from? It's likely that the Board of Directors would meet and determine each unit owner's share of this additional \$3,000,000. This is called a special assessment, and the governing documents give the Board the authority to levy such an assessment against each owner in the project. In the example of the 100 unit complex above, the unit owners could expect an assessment of approximately \$30,000 ($\$3,000,000 \div 100 \text{ unit owners} = \$30,000$).

Could the unit owner submit this \$30,000 under the liability coverage of his/her individual unit owner policy? It's not likely. Most individual unit owner policies only protect the individual unit owner against sums that the individual unit owner may be legally liable for as a result of bodily injury or property damage - not necessarily for sums that a corporation or business that an individual unit owner is an owner in. Furthermore the special assessment comes to the unit owner in the form of a bill or a financial obligation... somewhat like a "cash call" facing an investor when the investment starts to go sour. Effectively, the Board is asking each unit owner to "ante up" their share of the amount that exceeded the liability coverage that the Association maintains.

Loss Assessment Coverage is designed to protect the individual unit owner against such a special assessment. It can be purchased in amounts of up to \$100,000. Unfortunately, many unit owners only purchase the policy minimum, which generally is only \$1,000 of coverage, even though higher limits are available at a very modest premium. Loss Assessment Coverage will protect the unit owner for special assessments as a result of liability claims (such as bodily injury and property damage lawsuits) or due to a covered loss (fire, explosion, etc.) to the Association's structures that exceeds the coverage maintained by the Association. Loss Assessment Coverage will not protect a unit owner for a special assessment other than those caused by a loss as a result of the perils specifically named in the policy. For example, in most cases, Loss Assessment Coverage will not cover special assessments necessary to correct maintenance problems (the cost to replace the roof, for example), interior rain damage, latent building defects, poor materials or workmanship, legal costs necessary to litigate against the developer, structural upgrading or enforcement of building laws, asbestos removal, etc.

If the unit owner doesn't have the \$30,000 and is unable to pay the special assessment, the Board of Directors would place a lien on the unit. If the lien is not satisfied, the Board of Directors could foreclose on the unit owner. If there is a lender on the unit, the lender may step in, assume ownership of the unit and pay the special assessment as this may be the only way the lender can have clear title on the unit so the unit can be sold and the lender can move on.

In any event, it's important for the individual unit owner to contact his/her insurance agent and neighbor to make sure he/she is maintaining Loss Assessment Coverage. The cost is minimal... but can be of vital importance should the individual unit owner be the unfortunate recipient of a special assessment from the Board of Directors for an earthquake or other coverage loss.

About the Author: Tim Cline, CIRMS, is President of Timothy Cline Insurance Agency, Inc. of Santa Monica. Tim is a former President of the Greater Los Angeles Chapter of CAI and currently the Chair of the CAI National Insurance and Risk Manager Professionals Networking Committee. This letter contains only a general description of coverage and is not a statement of contract. For a more detailed description of the policy conditions and exclusions, please consult the policy itself.