

4 ITEMS EVERY BOARD SHOULD REVIEW TO HELP PROTECT ASSESSMENT LEVELS, FAIR MARKET VALUES, AND BOARD MEMBERS

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TOPICS OF DISCUSSION

~ **INSURANCE** ~

~ **DAMAGES AND COSTS** ~

~ **LEASING** ~

~ **REDUCING BOARD MEMBER AND OFFICER LIABILITY** ~

INSURANCE



“Single Entity Policies:” Requires Association to insure not only Common Elements, but also individual Unit items like interior walls, and “standard” equipment, fixtures and trim. Typical provision follows:

*The Association’s coverage shall also include **interior walls** within any Unit and pipes, wire, conduits and ducts contained therein, and shall include **all fixtures, equipment and trim within a Unit that were furnished with the Unit as standard items.***

What Are Standard Fixtures, Equipment and Trim?

- ❖ Cabinetry (builder's grade)
- ❖ Countertops (builder's grade)
- ❖ Light & plumbing fixtures (builder's grade)
- ❖ Furnaces & hot water heaters (builder's grade)
- ❖ Baseboards and moldings (if original)
- ❖ *Flooring (builder's grade) – not all Association policies cover*



INSURANCE

The Problem: Association's *insurance* responsibilities are much broader than its day-to-day *repair* responsibilities and includes items that the Co-owner is assigned day-to-day responsibility. Places a greater obligation on the Association to file insurance claims, which can result in higher premiums.

Resolving the Problem: Revise insurance requirements so that Association insures all Common Elements and Co-owners insure fixtures, equipment and trim within Unit.

- ❖ Must Amend Condominium Bylaws
- ❖ Must be approved 2/3^{rds} of those Co-owners entitled to vote and 2/3^{rds} of first mortgage lenders

DAMAGES AND COSTS: NEGLIGENCE



Standard Provision: Contained in both old and new documents:

Co-owners are responsible for damages or costs the Association incurs resulting from negligent damage to or misuse of any of the Common Elements by the Co-owner or the Co-owner's guests.

DAMAGES AND COSTS: NEGLIGENCE

The Problem: Increase cost arises because, contrary to what may be intuitive, negligence does not arise merely from having responsibility for an item that fails; rather, Association must show Co-owner failed to use reasonable care in performing a legal duty

Common Scenarios where Difficult to Prove Negligence:

- ❖ Broken or plugged refrigerator water lines
- ❖ Broken or plugged air conditioner condensation lines
- ❖ Overflowing toilets, sinks or bathtubs
- ❖ Overflowing washer machines
- ❖ Hot water heater failures



DAMAGES AND COSTS: NEGLIGENCE

Resolving the Problem:

1. Eliminate “negligence” reference and so that Co-owners are responsible for all costs to the Association, including the Association's deductible, that arise from an item that the Co-owner is charged with responsibility



- ❖ Must Amend Condominium Bylaws

- ❖ Requires approval from 2/3^{rds} of those Co-owners Entitled to Vote

2. Loss Assessment Endorsement: educate owners and encourage them to obtain an endorsement to their insurance policies to cover instances where the Co-owner may be required to pay the Association's costs including the Association's deductible.



DAMAGES AND COSTS: INCIDENTAL DAMAGE



Standard Provision: “Incidental damage” provisions are contained in both old and new documents. A standard provision follows:

The Association shall be responsible for the reconstruction, repair and maintenance of the common elements and any incidental damage to a Unit caused by such common elements or the reconstruction, repair or maintenance thereof.

DAMAGES AND COSTS: INCIDENTAL DAMAGE

The Problem: Results in Association paying for damage to items that are not Common Elements, that the Association may not even know existed, and that the Association is not otherwise responsible for maintaining, repairing or replacing on a day-to-day basis.

What do “incidental damages” entail?

- ❖ Drywall
- ❖ Flooring
- ❖ Personal property?



DAMAGES AND COSTS: INCIDENTAL DAMAGE

Resolving the Problem: eliminate "incidental damage" provision



- ❖ Must Amend Condominium Bylaws
- ❖ Requires approval from 2/3^{rds} of those Co-owners Entitled to Vote

RENTAL RESTRICTIONS

The Problem: Too many rentals could affect financing and insurance premiums

- ❖ Conventional lenders, Fannie Mae, Freddie Mac, the FHA and VA all have owner-occupancy and investor-owned requirements that govern their willingness to underwrite or insure loans within a condominium community
- ❖ Fannie Mae, Freddie Mac, the FHA and VA will not make/insure a new loan/refinance an existing loan in a condominium community unless at least 50% of units are owner-occupied.
- ❖ Fannie Mae, Freddie Mac, the FHA and the VA will also not make/insure a new loan/refinance an existing loan in a condominium community if any investor owns more than 10% of the units in the community
- ❖ Insurance underwriters may treat condominium like apartment complex for premium purposes



RENTAL RESTRICTIONS

Resolving the Problem: Boards should consider having Co-owners adopt leasing restrictions that:

1. Cap the total number of leased Units

- ❖ Grandfather only existing leased units or all co-owners owning units at time of amendment?
- ❖ Should hardship exceptions be granted?



2. Limit the number of Units that can be leased at any one time

3. Must Amend Condominium Bylaws

- ❖ Requires approval from $2/3^{\text{rds}}$ of those Co-owners entitled to vote and $2/3^{\text{rds}}$ of first mortgage lenders

REDUCING BOARD MEMBER AND OFFICER LIABILITY

- 1. Condominium Act:** Section 54 of the Condominium Act requires that bylaws contain indemnification clause for the Board. The indemnification clause exclude indemnification for willful and wanton misconduct and for gross negligence.
- 2. Nonprofit Corporation Act:** Section 209 of the Nonprofit Corporation Act goes further than the Michigan Condominium Act to allow an association to eliminate director, officer, or volunteer liability for money damages for nearly *any action taken or any failure to take action*. There are limited exceptions to this safety net, which include a financial benefit received by a director or volunteer officer to which he or she is not entitled; intentional infliction of harm to the corporation, its shareholders, or members; an intentional criminal act; and liability imposed under Section 497(a) (attorney's fees and costs relating to derivative actions).
 - Amend Articles of Incorporation:** to benefit from this level of protection, these must be contained in the Association's Articles of Incorporation to be effective.



Questions & Answers

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