



# The Insurance Mystery

## Where Does the Association's Responsibility End and the Homeowner's Begin?

by Joel W. Meskin, Esq., CIRMS ♦ Featured in Condo Media, August 2005

Do you remember that large pile of documents and papers you read when you closed on your condominium? Do you remember how clearly you understood what insurance responsibilities the association would assume and what you as a homeowner would assume? Do you recall thanking all those professionals for clarifying all the issues so you could sleep well at night? If your answer to these questions is yes, I congratulate you as one of the fortunate few who truly know what he or she is required to have when they move into a condominium or other community association where certain homeownership rights are held in common with others.

A condominium or other community association home is, in most cases, one of the largest investments you can make. You are investing financially in a home, and more importantly, you are investing in your lifestyle. That is why it is so shocking to learn that prospective buyers enter into a condominium or other community association home without truly understanding their rights, duties and obligations as set forth in the governing documents. This could easily be the basis of a psychological study. People do not want to ask questions fearing the answers may cause them to back out of a deal (and the home they love). And others used to impulse buying do not want to do their homework.

The most successful condominium experiences are those that do not involve surprises. Ignorance is bliss, until you discover that the damage to your condominium is not covered by the association insurance policy, and you did check if your coverage filled the gap. The first solution to this mystery is to use professionals who specialize in community associations. The right one is worth every penny. However, it is

your responsibility to ask these professionals if this is their specialty. In general, ask how long they have been specializing in this area. How many community associations do they represent? Are they certified by the Community Association Institute (CAI) or similar organizations advocating community association living?

Once you are satisfied with their professional expertise, ask them to describe your obligations pursuant to the governing documents. Governing documents generally include the condominium or associations articles of incorporation or trust documents, bylaws and conditions, covenants and restrictions or declarations. If they can't or won't take the time to answer your questions, get a new insurance professional.

Choosing the right professional is especially true when making decisions about insurance. It is important that the association and homeowners are confident that the insurance professional knows what you need. One specializing in community association risks knows where the association's responsibility ends and where the homeowner's begins. The proper relationship between the insurance for the association and your program is critical.

The basic proposition with respect to who is responsible to insure what is as follows: The association is responsible for the "common elements," and the individual homeowners are responsible for their individual interests. This may seem simple, but do not get lulled into a false sense of security by this simplicity.

How do a prospective condominium buyers or homeowners begin to understand their insurance duties and obligations? As noted, the best place to go is to a local community association specialist.



In the meantime, we will provide a checklist that should assist you in your due diligence. Again, as a homeowner you have two interests. Does the association have the insurance it is required to carry? And, do you have the best insurance you need as a homeowner?

The following list is not intended to be an all-inclusive list, but a starting point to help de-mystify the insurance process. What this should hopefully demonstrate is that a good professional is necessary to help protect what is very likely one of your biggest investments. But be warned that this is not a one-time exercise. Since life is not stagnant, things must be reviewed and monitored. For example, if the association changes insurance, do you need to change your personal insurance? You need to know before the claim. If you get new things or the association builds or remodels, does the insurance need to be revised? Insurance professionals should be sued to ask the questions and monitor the changes.

Whether you are an association homeowner or a board member, use the checklist as a basis of discussion for your association. The association needs to monitor its coverage and regularly advise the membership of changes, especially when it may impact their individual coverage. Community associations are all about “community.” The intersection of the individual and common interests are the keys to how well life in the association will flow. Fewer surprises and a greater understanding of responsibilities will lead to the best protection for everyone. Unfortunately, there are no shortcuts in life, including purchasing insurance.