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FROM THE EDITOR

It was hard enough to manage multi-unit housing structures before 2020. The task became considerably more complicated and demanding during the COVID-19 pandemic, an event likely to have a lasting impact on the operation of rental, condominium and cooperative housing.

Among other things, "stay at home" orders implemented in response to the pandemic had an opposite impact on multi-unit housing facilities than on most other enterprises.

In this edition of Adjusting Today author Joseph Harrington discusses the insurance ramifications of the pandemic on these operations, including coverage issues that might be clear and others that will be subject to interpretation and clarification for some time to come.

While the information refers to typical situations and shouldn't be interpreted as legal guidance for addressing any specific case, it is timely and thought-provoking reading for anyone associated with these types of housing facilities.

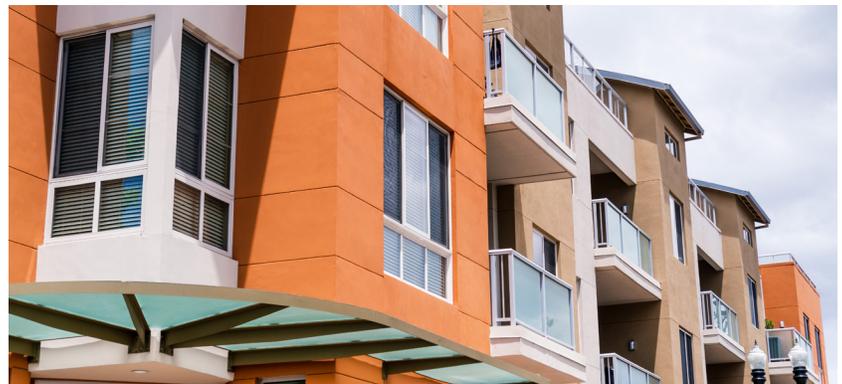
Sheila E. Salvatore
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Insuring Multi-Family Housing in a New Era

An already complex mix of risk and insurance issues is on track to become even more complicated

By Joseph S. Harrington, CPCU



During the COVID-19 pandemic most nonessential businesses and public services simply shut down or had their employees work from home if possible. Landlords and residential associations, on the other hand, had to deal with an increased around-the-clock presence of residents at the very time when the use of common areas and facilities needed to be regulated systematically.

Among the new or aggravated challenges arising in 2020 for managers of multi-unit housing were:

- How to fund building maintenance and regular services (water, electricity, refuse collection, etc.) at a time when rent and assessment revenue were depressed by economic conditions;

- How, at the same time, to provide funding for increased cleaning and sanitizing service;
- How and under what conditions to regulate the use of hallways, elevators and other common areas;
- How and under what conditions to restrict the use of common facilities such as pools, exercise rooms and lounges; and
- Whether and how to regulate the behavior of residents, such as imposing requirements to wear face coverings and/or restricting the number of guests in dwelling units.

All this and more came at a time when residents and managers of housing complexes continued to grapple with complex and evolving risk and insurance challenges unique to multi-unit housing.

Variety of Arrangements

Most people are familiar with the three basic types of multi-family housing arrangements in the U.S. Under a **landlord-tenant** arrangement the owner of a residential structure owns all of the building property, including the dwelling units. A tenant leases the right to use a dwelling, but generally has no property interest in the structure or its components. Even if a tenant installs permanent carpeting, cabinets, shelving or other fixtures, those usually become property of the building owner.

More often than not, leased apartments will come equipped with major appliances, such as stoves, refrigerators and dishwashers, which are personal property of the building owner. Although it's a common practice, providing use of personal property is not an inherent part of the landlord-tenant relationship. In some cases tenants may purchase their own appliances and take them when they move. While a residential tenant has a *use* interest in a leased apartment, a tenant's property interest generally entails only his or her movable personal property, such as furniture, clothing, cookware, athletic equipment, electronic devices, etc.

Under the **condominium** form of ownership residents have a direct property interest in the units they occupy (or rent to others); they can sell those units or bequeath them to heirs, subject to conditions in the condominium master agreement and community by-laws, which are themselves subject to state statute. The condominium structure itself — including its common areas — is owned collectively by the unit-owners through a condominium association run by a board representing the unit-owners.

Ownership Interests

The precise delineation of ownership rights in a condominium community — where an association's ownership ends and a unit-owner's begins — is established in the master agreement or "declarations." Processes and procedures for regulating the association and individual unit-owners are generally established in a condo association's bylaws. Of those two documents, the declarations are usually primary; any disagreement or inconsistency between the two will usually be resolved under the terms of the declarations.

There are essentially three variations of ownership in condominium communities. Under a "bare walls" approach the condominium association owns only the unadorned, load-bearing walls, floors and ceilings, plus plumbing, heating, air conditioning and electrical systems that serve all units. Anything added or attached to the unit by the owner (shelving, wallpaper, wall-to-wall carpeting, hanging lamps, etc.) is the property of the unit-owner and might not be insured under the association's property insurance.

As an alternative to the bare walls approach, a master agreement may designate the association to be the owner of permanent alterations and improvements within dwelling units. The manner in which condominium agreements assign property ownership and insurance responsibilities has a direct impact on the application of insurance coverage. In many cases, the wording of condominium community documents can serve to trigger or deny coverage under a policy.



Property Ownership and Insurance in Multi-Unit Housing

	Landlord-Tenant	Condominium Community	Cooperative Community
Definitions (for purposes of this table)	“Landlord” refers to a building’s owner and its managing agent. “Tenant” refers to individuals leasing living space.	“Condominium community” refers to a setting where people individually own their dwelling units and collectively own other real property through an association.	“Cooperative community” refers to a setting where individuals own a share of a residential corporation and the right to occupy a unit.
Building structure (fixtures, systems and load-bearing walls)	Owned entirely by the building owner and typically insured under a standard commercial property (CP) policy.	Owned collectively by a condo association or cooperative and typically insured under a condo CP policy.	
Permanent fixtures in dwelling units	Generally owned and insured by the landlord. Renters insurance typically covers a tenant’s “additions and alterations.”	Ownership and insurance obligations subject to terms of the condominium master agreement. Can be insured under the association’s CP policy or individual unit-owner’s policy.	Typically owned by the cooperative association and insured under the association’s CP policy. In some cases insurance obligation may fall to the unit-owner.
Personal property in dwelling units	Landlord’s property (e.g., major appliances, if included) covered under the landlord’s CP policy. Tenant’s property insured under a renters policy.	A unit-owner’s or resident member’s personal property is insured under a unit-owners policy. Personal property of a condo association or co-op within dwelling units would be covered under a condo CP policy.	
Insured causes of loss (“perils insured against”)	Landlord selects between named perils (basic or broad) or open perils (“special”). Tenants personal property typically insured on a named-perils basis.	Association and unit owners decide between open and named perils coverage.	
Assessments on residents for damage to building property	N/A Landlord and its insurer bear the full cost of losses.	Unit-owners policies typically include limited amounts for paying a unit-owner’s share of an association loss assessment.	
Assessments on residents for insurance deductibles	“	Some unit-owners policies provide limited amounts for paying a unit-owner’s share of an association’s insurance deductibles.	
Building owner’s loss of revenue (when all or part of a structure cannot be occupied)	CP business income coverage available for loss of rents due to physical damage by a covered peril.	CP business income coverage available for loss of assessments due to physical damage by a covered peril.	
Resident’s loss of use (when a unit cannot be occupied)	Coverage provided in renters/unit-owners policies for additional living expenses incurred due to inability to access apartment/unit as a result of physical damage by a covered peril.		
Increased Cost of Construction: Building Owner	Coverage for additional cost to bring undamaged parts of a building into compliance with building ordinances is available for property covered for replacement cost under a CP policy; similar coverage for property insured for actual cash value is available by endorsement.		
Increased Cost of Construction: Residents	N/A	A stated percentage — typically up to 10 percent of the dwelling property limit — can be devoted to additional costs to bring undamaged property into compliance with building ordinances.	

HOAs and Co-Ops

Many of the principles and practices used to regulate condominium communities are also used by community associations of owners of detached, single-family residences (known as "HOAs" for "homeowners associations"). Like condominium communities, HOAs may have collectively owned recreational facilities and open space, but their resident members own their dwelling structures, along with a narrow piece of land where the dwelling is located. HOA residences are therefore usually insured individually under homeowners policies, while the association insures the common property.

Cooperative apartment communities, commonly known as "co-ops," function much like condominium communities except that a resident does not own

a unit but rather a share in the corporation that owns the structure(s). A resident's share is usually commensurate with the size of his or her unit in relation to the entire co-op community. The corporation then provides a proprietary lease to the owner/resident for their unit.

Co-op residents own the right to lifetime occupancy of their units and they can generally sell or bequeath that right. Any transfer, however, will require the approval of the co-op board of directors. It is also common to restrict the rental of the unit to others. Ownership rights and insurance considerations regarding fixtures and improvements to a unit by an occupant are determined by the documents establishing the co-op.

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Landlord Property Coverage

Under landlord-tenant arrangements damage to building property is usually insured under standardized commercial property (CP) policies. CP coverage for building property generally extends to designated structures, their internal and external fixtures, their machinery and equipment (such as HVAC units) and personal property used to maintain the structure and premises.

Regarding personal property, property owners and claim adjusters need to be mindful of three categories of CP coverage, each under a different limit of insurance. The first category, mentioned above, is personal property used to maintain the structure and premises, such as fire-fighting

equipment, but also including floor coverings, outdoor furniture and some appliances owned by the insured. This property is covered under the same limit of insurance as the structure itself, so any loss recovery paid for this type of property would deplete the amount available for repairing or replacing structural damage.

In addition, a typical CP policy provides a separate limit for business personal property of the insured, without qualification for its purpose. This limit might overlap with the building property coverage to cover fixtures, machinery and equipment at the insured location. It would be essential for the owner of an apartment building that operated another business on site, such as a dry cleaner or retail store.

Allocation of Property Insurance Coverage Under Condo Association and Unit-Owners Policies

Ownership Provisions in Condo Master Agreement	Standard Condo Association Commercial Property (CP) Policies	Standard Policies for Individual Unit-Owners
Resident owns permanent features in a dwelling unit	Building property coverage typically applies to structural elements, including load-bearing walls, plus machinery, equipment and external building fixtures.	Dwelling property coverage typically applies to fixtures, alterations, improvements and appliances within the dwelling unit.
Association owns or is required to insure permanent features in dwelling units	Building property coverage typically extends to fixtures, alterations, improvements and appliances within dwelling units <i>if the association is required to insure them</i> under the master agreement.	Association policies provide primary coverage before unit-owners policies and would pay for damage to permanent features within dwelling units up to the CP limit. If the CP limit is insufficient for full recovery, coverage could be triggered under a unit-owners policy.
Perils insured against	Special perils is the coverage normally chosen, with named perils being an option; both are subject to the requirements of lenders or the condo master agreement.	Here also, special perils is normally chosen, with named perils being an option; both are subject to the approval of other stakeholders.
Loss settlement	Settlement of losses is on actual-cash-value basis unless replacement-cost settlement is selected or required under the condo master agreement.	Loss settlement typically provided on a replacement-cost basis.
Other provisions	A condo association insurer typically waives its right to recover (subrogate) against a unit-owner.	No separate coverage for other structures, such as a garage. Coverage for a unit-owner's shed at the insured location comes under the dwelling coverage limit.

Finally, a typical CP policy includes a limit for property of others under the insured's care, custody or control. If an apartment complex owner stores property of its tenants as a service, this limit would pay for an insured loss to that property while in storage.

Landlords and Tenants

Understandably, residential tenants have no obligation to insure the landlord's property, even the unit they occupy, for damage by property "perils" such as fire, windstorm and other hazards. For that reason, renters' policies typically restrict property coverage to tenants' personal property and personal liability.

Sales of renters insurance lags far behind that of homeowners insurance, principally because there is no mortgage lender to require coverage, but also because most renters over the years have not owned valuable personal property. That is changing somewhat, as more high-income urban professionals and affluent elderly embrace renting, but many renters still do not have property insurance.

A growing number of landlords are requiring tenants to have renters insurance as a condition of their lease. That's mostly to ensure that tenants have liability coverage for bodily injury or property damage to others, including damage to the landlord's property. In addition, however, renters insurance for tenants' personal property helps landlords avoid disputes over damage to tenants' possessions, even though it provides landlords with no direct benefit.

Landlords and tenants have separate but related interests when a location cannot be occupied because it or a related property has been damaged. In that situation a landlord stands to lose rental income while units cannot be occupied, while tenants might incur added costs for an alternative dwelling. These separate exposures are insured separately. The landlord's loss of rental revenue will be partially compensated by the business income coverage available under a CP policy; a limit for coverage must be selected, it is not provided automatically.



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A renters policy usually contains a limit of insurance for “additional living expenses” needed to pay for substitute housing in the event a unit cannot be occupied due to a covered loss. Coverage under that limit applies only to the amount *in excess* of what the insured tenant usually pays for rent. The amount a tenant recovers under a renters policy will depend in part on whether the lease provides for an abatement, suspension or cancellation of rent payments when a unit cannot be occupied.

For both the landlord and tenant, coverage for loss of use or rents is provided only in response to the type of damage insured under the respective policy. That damage does not necessarily have to be to the property insured under the policy and the coverage typically extends to orders by civil authorities closing off access to the property due to damage at nearby or related locations. But, as policyholders learned to their chagrin during the COVID-19 pandemic, coverage for loss of use or rents is not provided for disruptions caused by events not insured under a property policy.

Condo and Co-Op Property Coverage

Property insurance coverage for a condominium or co-op community works partly like that in a landlord-tenant arrangement in that a community association insures the basic building structure under a commercial property policy, while residents insure personal property in the individual dwelling units with a unit-owners policy.

Where insurance for condos and co-ops departs from that for landlord-tenant situations is in coverage for permanent fixtures within dwelling units, such as cabinets, wallpaper, wall-to-wall carpeting and lighting fixtures, in addition to plumbing, wiring and radiators that extend into a unit.

As indicated above, the assignment of ownership for such property and the responsibility to insure it are established in master condominium or co-op agreements, which are not standardized and can vary greatly in their specific provisions. Standard insurance policies are designed to avoid a “gap” in coverage for building property within dwelling units, but they, too, are sometimes modified in ways that can create confusion following a loss.



The “HO-6” unit-owners policy developed by the Insurance Services Office (ISO) includes coverage for damage to appliances, fixtures, alterations and improvements within the dwelling space of the insured unit-owner. (Most policy forms used by property/casualty insurers in the U.S. are either developed by ISO or modeled after ISO forms.)

The HO-6 base form provides no coverage for the basic building structure, but does cover fixtures and permanent additions within dwelling units. As we’ve seen, however, some condominium agreements assign ownership of fixtures in units, and/or the duty to insure them, to the association. For these situations ISO’s condominium association CP

policy automatically extends property coverage to appliances, fixtures, alterations and improvements within dwelling units when the condominium agreement requires the association to insure them.

In addition, the ISO condominium association policy explicitly states that its policy provides primary coverage first before any other policy. If the association’s limit is sufficient, the unit-owners’ policies will not have to pay for damage to building property within units.

Taken together, these insurance provisions are designed to make clear which insurance policy responds to damage to building features within units. Whether it does or not depends on whether a condominium agreement clearly delineates ownership interests and insurance responsibilities — and whether the respective insurers have departed from the use of ISO wording.

General Liability

Anyone who acquires a unit in a condominium or co-op community will be required to have personal liability insurance for any bodily injury they cause to staff, other residents or guests, and for any damage they cause to property of the community, other residents or guests. Personal liability insurance is required under master agreements to protect the interests of the community and its residents, and by mortgage lenders who want to avoid having their collateral encumbered by liability judgments.



Liability and Insurance for Multi-Unit Housing

	Landlord-Tenant	Condominium Community	Cooperative Community
Liability for bodily injury to residents and third parties (e.g., guests)	<p>Landlord's legal liability covered under a commercial general liability (CGL) policy.</p> <p>Tenant's personal liability covered under a renters policy, if present.</p>	<p>Association's or co-op's legal liability covered under a commercial general liability (CGL) policy.</p> <p>Unit-owner's or resident member's personal liability covered within a unit-owners policy.</p>	
Liability for damage to structure	<p>Not applicable to landlord.</p> <p>Tenant's personal liability covered under a renters policy.</p>	<p>Generally not applicable to a condo association, but it could be liable under certain terms for damage to permanent property of unit-owners in dwelling units. In that case, coverage would generally be available under a CGL policy.</p> <p>A unit-owner's personal liability is covered under a unit-owners policy.</p>	<p>Generally not applicable to co-op corporations.</p> <p>Unit-owner's or resident member's personal liability covered under a unit-owners policy.</p>
Personal injury to resident (e.g., invasion of privacy)	<p>Landlord's legal liability covered under a standard CGL policy.</p> <p>Personal injury not covered under typical renters policy, but may be available by endorsement.</p>	<p>Association's or co-op's legal liability covered under a standard CGL policy.</p> <p>Personal injury not covered under typical unit-owners policy, but may be available by endorsement.</p>	
Management and professional liability	<p>Not applicable to tenants.</p> <p>Property manager liability to building owners is covered under professional liability insurance.</p> <p>Liability of officers and directors of rental companies to shareholders is covered under directors and officers ("D&O") policies.</p>	<p>Not applicable to unit-owners or members in their capacity as individual owner-residents.</p> <p>Managerial liability of association or co-op board members is excluded under CGL policies and covered under association directors and officers ("D&O") policies.</p> <p>Professional liability of property managers hired to operate and maintain communities is insured under their own professional liability policies.</p>	

Personal liability insurance is required under master agreements to protect the interests of the community and its residents, and by mortgage lenders who want to avoid having their collateral encumbered by liability judgements.

COVID Questions

Bodily injury includes disease, so, depending on the circumstances, landlords and resident associations can be held legally liable for any person — resident, guest or employee — contracting a viral or bacterial infection. As a practical matter, it is usually difficult for a claimant to establish the source of an infection. Nonetheless, in 2020, numerous states granted limited immunity to nonprofit organizations — including resident associations — from bodily injury claims arising from the COVID-19 coronavirus. However, the immunity did not extend to willful or reckless misconduct. Associations were still expected to implement and try to enforce public health directives regarding mask-wearing, social distancing and limitations on gatherings.

Of growing importance to owners and managers of multi-unit housing is the coverage provided under a CGL policy for allegations of personal injury, including unlawful invasion of privacy and interference with the enjoyment of private property.”

Other Liability Issues

As noted earlier, in recent years landlords have increasingly added lease provisions (where permitted) requiring tenants to have renters insurance as a condition of occupancy. Although a tenant’s personal liability coverage would not respond to claims against a landlord, it would cover a tenant’s liability for damage to the landlord’s property and would provide an additional source of defense and indemnity coverage for claims lodged against both the landlord and the tenant.

Liability coverage for both legal defense and damages is a standard feature of homeowners policies and is also provided in virtually all renters and unit-owners policies. For its part, a landlord, condominium association or co-op will purchase a commercial general liability policy (CGL) to cover any legal liability it incurs for bodily injury or property damage to third parties, including residents. Community residents will typically *not* be classified as insureds under an association’s CGL policy, except perhaps for actions they take on behalf of the landlord or association.

As for residents who use their vehicles on behalf of the community, landlords and residential associations are advised to add “non-owned, hired” auto liability coverage to their CGL policies. Without it, resident volunteers may be without coverage for an at-fault accident while driving on behalf of the community.

Of growing importance to owners and managers of multi-unit housing is the coverage provided under a CGL policy for allegations of personal injury, including unlawful invasion of privacy and interference with the enjoyment of private property. Landlords and association boards have an obligation to take reasonable steps to protect residents from hazards arising from individual units. That sometimes requires some degree of intrusion into a resident’s personal life, even more so in the time of COVID-19, when one person’s actions could be life-threatening to another.

Potential Liability Claims by Residents and Source of Coverage for Association Directors

Claim	Source of Coverage
Bodily injury, including disease, for failing to take reasonable steps to maintain a safe, healthy living environment.	Covered under a CGL policy; defense coverage usually "outside limits" and does not deplete amount for damages.
Property damage to individual units and any third-party property.	"
Personal injury (e.g., invasion of privacy) to any resident, guest or third party.	"
Loss of use or value of a unit due to an act or omission of association.	Coverage depends on provisions of condo agreements, circumstances of loss, and provisions of CGL and D&O policies.
Negligent or wrongful act resulting in physical or economic loss to the association.	Covered under a D&O policy; defense coverage typically within limits and thus depletes amount for damages.
Negligent or wrongful act resulting in physical or economic loss to individual unit-owner(s).	"
Auto, workers comp, pollution and other liabilities.	Coverage typically excluded from CGL and D&O policies; separate policies needed.

Management Liability

Regarding its tenants, a landlord or its agent is obligated to meet the terms of a lease agreement and adhere to the laws regulating the operation of rental dwellings. Any obligation a landlord or its agent has to run a rental operation in an economically sound manner is owed strictly to the owners of the structure(s). Any insurance coverage for "wrongful acts" breaching that duty is acquired under a "directors and officers" (D&O) policy, much as with any other commercial enterprise.

Things are different in condominium and cooperative communities in that some residents serve as association board members managing the community and its common property in the interest of all residents. In that role they take on a duty to act with care to protect the interest of the community as a whole and its individual members.

COVID Impact

As indicated at the outset, the COVID-19 pandemic imposed an almost unprecedented degree of

responsibility on those entrusted with the ownership and safe operation of multi-unit housing complexes. We say “almost” unprecedented because multi-unit owners, managers and residents have had to take extraordinary measures in the past following natural disasters and damaging accidents within their communities. Several states responded to COVID-19 by declaring the pandemic to be an emergency, thus empowering landlords and association boards to implement emergency measures under some degree of immunity from liability.

Yet the impacts of the pandemic proved to be far more extensive and enduring than those following localized disasters, and have raised expectations that will last long after COVID-19 is tamed — if it ever is. Going forward, it is safe to assume that property insurance for multi-unit housing will have to anticipate loss of access to common areas, and liability insurance will have to attempt claims for acts and omissions alleged to be either too lax or too zealous in protecting residents’ safety and property rights.

These are matters that both the insurance and multi-unit housing industries will continue to follow closely. Construction and interpretation of insurance policies is ultimately a matter of law for the courts to decide — and they will have the final say on if and the extent to which CGL policies cover COVID-19 claims.



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