

# CONDO CLAIM NEWS

## Summary of PA & MD Condo Acts

### **I. Pennsylvania Condominium Act**

As of November 2, 1980, the Pennsylvania Condominium Act took effect and placed the responsibility for insuring the complete building structure under the master policy procured by the condominium association. This law is still in effect and Section 3312 specifically requires the association's master policy to cover all building items exclusive of improvements and betterments installed by the unit owner after original occupancy.

Moreover, Section 3312 (c) requires the insurer of the master policy to waive its rights to subrogation and also mandates that the master policy is primary and not contributing with any insurance carried by the unit owner. This section also requires that any covered loss under the master policy to be adjusted with the association and any insurance proceeds to be payable to the association or their designated trustee.

### **II. Maryland Condominium Act**

The Maryland Condominium Act applies to all condominium regimes established after July 1, 1982. This law also remains in effect and Section 11-114 provides that the council of unit owners must maintain property insurance on the common elements **and** units exclusive of improvements and betterments installed by any unit owner. Like Pennsylvania, Section 11-114 (c) of the Maryland Condominium Act requires the insurer of the master policy to waive its right to subrogation against any unit owner or any member of their household. This Section also requires the master policy to be primary and not contributing with any other insurance.

However, the Maryland Legislature amended the Maryland Condominium Act in 2001 permitting the condominium association to recovery up to \$1000 of the master policy's deductible from a responsible unit owner.

### **III. Conflicts among condo associations, unit owners and their carriers**

The most prevalent problems can be traced to the condominium association's ignorance of their statutory obligations or their simple unwillingness to make claims under the master policy related to premium or renewal problems. Condominium associations view a loss under their master policy deductible or a loss which effects only one unit as being a problem for the unit owner and their HO-6 carrier to resolve.

Under the current statutory language in both states, if a loss is below the master policy deductible, this does not excuse the condominium association from failing to make repairs to the damaged unit (less improvements and betterments). If the condominium association is required to maintain property insurance and chooses to have a large deductible, it in effect is choosing to be self-insured for the amount of the deductible.

When the condominium association refuses to make repairs or refuses to report the claim to the master policy carrier, the unit owners most naturally make claims under their HO-6 policy. This in turn creates a dilemma for the HO-6 carrier. They should properly deny the claim indicating that they are excess to the master policy, however this usually leads to disputes between its insured and the agent. If the HO-6 carrier elects to pay the claim and attempts to proceed with subrogation against the condominium association on the basis of the condominium association's breach of their statutory duties, they may be considered a volunteer and are not entitled to recovery.

### **IV. Conclusions**

Millers Capital Insurance Company is required to uphold the above referenced statutes regardless of any language contained within the relative bylaws. Any reference to "**bare walls**" or "**studs out**" are long outdated and are not governing to our claim practices. The Pennsylvania and Maryland Statutes supercede any language contained within the bylaws that is contradictory or in conflict with the applicable statute. Millers' Claim Department attempts to

abide by the regulations as set forth and all of our independent adjusters have been advised of our position regarding handling of condominium claims submitted under our master policies. In most cases, Millers and/or its independent adjusters will require the property manager on behalf of the condominium association to mitigate any damages presented to Millers as well as securing repair estimates.

The summaries outlined above are not designed to replace any legal opinions obtained by our policyholders but are intended to serve as information only regarding our claim handling procedures. Your agency is welcome to share this information with our clients and we appreciate your assistance in assuring that all claims are mitigated and presented to us in a timely manner.

As always, our adjusters are available to answer any questions regarding our claim handling procedures. Please feel free to send us an email or give us a call.

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