

Property Claims and Condominiums
Dictation of Seminar Presentation

Introduction: Slide #2

I've been asked to talk about the claims process after a loss occurs at a condominium corporation's property. Condo claims for the most part are similar to any other property claim but they do have a few unique features that need to be investigated before the proper and correct settlement can be reached.

I'll be talking about the claim adjustment mainly from the point of view of the adjuster for the condominiums corporation's policy. Most property loss claims at a condo complex will involve a unit owner as well as the corporation.

The unit owner may be making a claim under his unit owner's policy in which a separate insurance company and adjuster will be involved.

My talk is a very broad outline of the claim process and is not meant to focus in on specifics. I will talk about the Standard unit Bylaw and Deductible Assessment options in a little more detail however.

Tonight I hope you'll take away a little better understanding of the roles and responsibilities, again in a very broad sense, of the various parties involved and the importance of cooperation good documentation which allows for a quick and accurate assessment and settlement.

The Claim Process:

Pre-loss planning: Slide #3

Even before a loss occurs there are many things a corporation can do to help reduce the chances of a loss and reduce the impact of a loss when one does occur.

In very broad terms;

Risk Management – Preventing damage

The board and property managers should ask themselves what can we do to help prevent or reduce the number of claim.

Things such as regular maintenance and inspection.

Communicating potential risks and causes of loss with unit owners

Identify potential problems and address them

Emergency Procedures – When damage does occur

Even before damage occurs, it is smart to have protocols in place to deal with a loss.

It is good to have emergency phone numbers in place so that residents and site managers can contact the appropriate board members or property management firm following a loss.

It is also good to pre-screen cleanup and repair companies and to have the contact information for these companies available.

Contact information for your broker and insurance company should be kept in the same folder or file that deals with loss protocols.

When a Loss Occurs: Slide #4

Safety

Once a loss occurs, the first on site responders should keep a few things in mind. Safety of the people in the area must be paramount, and this includes the safety of the responders. With a fire loss, smoke and heat are obvious safety concerns, not quite so obvious may be structural damage or air quality issues. Water losses can present their own safety concerns such as slip hazards and electrical issues.

Mitigation

Once the site is safe, the next step is to mitigate damages as much as possible. This is the responsibility of the insured and is written in the policy statutory conditions. Just having contact information for emergency cleanup and repair companies so they arrive on scene quickly goes a long way to mitigate damages incurred.

Protect Evidence

Every effort should be made to collect or protect evidence relating to the cause of the damage. This can be as simple as taking some photographs of the broken pipe before it is repaired and keeping the damaged section of pipe for later inspection. On larger losses it may be best to limit access to the area where the loss originated. You will still want to look after any mitigation work as soon as possible, but if the area where the loss originated does not have to be entered or changed it is best not to.

Slide #5

Keep Owners informed

Efforts should be made to keep the unit owner informed or what is happening and what will happen in the near future.

Preliminary Damage Assessment

The on-site personnel will also be making an assessment of the damage to get an idea of whether this loss should be reported to the insurance company or not. Minor issues that can be looked after by the site manager or regular maintenance company can be dealt with directly, but any incident where there's a question on the extent of damage or if the loss affects the public and corporation as a whole, it should be reported immediately.

Reporting the Claim: Slide #6

If it appears a claim report is warranted, take some time to gather the policy documentation and any incident reports available.

As a general rule, any new claim report should be made to your broker or insurance agent. The brokers are well versed in the claims process and coverages and can discuss the matter with you in order to confirm that a claim report to the insurance company is warranted.

As a claims adjuster, I'm not aware of the impact on underwriting and premium calculations a claim report, even if there is no claim payout will have. Your broker or agent may have a better idea in this regard.

Once the decision has been made to report the claim to the insurance company, the broker will send a notice of loss form or email to the insurance company, who in turn will set up a claim file and assign an adjuster.

The adjuster may be an in-house desk adjuster, or a staff adjuster who works only for the insurance company, or the insurers may assign an independent adjuster such as myself who works for many different insurers as assigned. Once the claim's in the hands of the adjuster, the claim investigation can be started.

The Players:

A number of different people or entities will be involved in the claim process.

The most important is the insured. The insured in the case condominium corporation claims will be the condominium corporation. Representatives for the condo corporation can be designated board members or the hired property management company.

The insurance company for the condominium corporation will of course be involved. The adjuster for the insurance company will normally be the contact person for the insurer and will carry out the investigation.

Also involved may be the unit owner and the unit owner's insurance company and adjuster and then finally emergency and repair contractors.

The above are the typical involved parties in a typical claim, other parties may be involved depending on the loss circumstances.

Roles of the Players: Slide #7

Insured:

The insured has a heavy responsibility following the damage and a claim report. The insured is a party to the insurance contract and has a number of duties and responsibilities under the contract.

These duties and responsibilities are laid out in the policy wordings and statutory conditions. The adjuster will discuss the more pertinent responsibilities which include cooperating with the insurance company's investigation, providing access to the damages, providing documentation to assist in loss and coverage assessment and the insured is responsible to hire and authorize the emergency work and repair contractors as required.

The insurance company does not hire the contractors or is responsible for the repairs to the insured's property. The company, through the claims adjuster, can assist in contacting and arranging for contractor service but all work must be authorized by the property owner. The contractor is working for the property owner.

This issue of who hires who becomes very blurry in the light of the insurance company's desire to assist the insured as much as possible. I must admit that I am guilty of not making it crystal clear on every claim that the contractors doing the work are not hired by or directed by the insurance companies.

In every claim involving a reputable and experienced emergency and restoration contractor, the contractor will obtain a signed authorization form from the condominium corporation's representatives. This authorization confirms the relationship between the contractor and the corporation.

In accordance with the policy, the insured is also responsible for completing the claim form called a Proof of Loss. A Proof of Loss, when completed, provides all the information the insured is required to provide under the statutory condition number 6 "duties after a loss".

Again, this responsibility becomes very blurry in actual practice.

As long as there are no issues or disagreements between the insured and the insurance company, the adjuster will often complete the Proof of Loss form and give it to the insured to sign once all of the claim details and costs have been confirmed. This is normally at the end of the claims process.

If there is a coverage issue or disagreement over the scope or cost of repairs, it is the insured's responsibility to complete and file the Proof of Loss form in order to tell the insurance company exactly what the insured wants paid out under the policy. Only after the Proof of Loss has been submitted is an insured able to take further action for recovery under the policy.

In addition to the Statutory & General Conditions requirements, the insured is expected to Act in Good Faith.

Role of the Insurance Company/Adjuster: Slide #8

The insurance company's role is rather straightforward with regards to the claim. They are required to make payment to the insured for the covered loss sustained in accordance with the policy's terms and conditions. It's with these terms and conditions that the adjuster gets involved and things can get complicated.

The adjuster is basically responsible for gathering information to be able to assess coverage, assess quantum, and assess liability towards possibly recovering any claim payout from an at fault third party.

The Insurance Company & their adjusters must also Act in Good Faith.

There is no set definition as to exactly what "Good faith means. Generally for the insurance company it means:

Cooperate with the insured

Conduct the investigation into coverage and damages in a timely manner;

Be honest and upfront and communicate with the insured.

Do not take advantage of the insured due to Economical constraints and lack of knowledge of the claim process ect

The Role of the Unit owner Slide #9

The role of the unit owner in the claim process is much the same as the condo corporation role. The unit owners are considered additional Insureds

under the corporation policy. They are expected to cooperate with the claim investigation and damage assessment.

The unit owners may also be involving their own unit owner's insurance coverage and will have their own insurance company involved.

The Role of the Contractors Slide #10

The contractor will provide expertise and recommendation on the emergency work required. If hired by the insured to carry out the emergency work, the contractor will provide the manpower, equipment and expertise to complete the work quickly and thoroughly.

Once the emergency aspect of the damage has been dealt with, the insurance company will ask the contractor(s) to provide a detailed estimate to complete the covered repairs. The contractor used by the insurance company for this estimating process will normally be one of the insurer's pre approved contractor. In the case of the Aviva Stevenson & Hunt program the pre approved vendors are, in alphabetical order:

Belfor / Hickman Mount Restoration

First on Site Restoration

Lubnow Restoration

Winmar

Once the scope of repair and claim settlement amount has been confirmed, the insured can then hire a contractor to complete the repairs. The insured does not have to use the one of the insurance company's contractors;

however there are benefits to using them, such as direct billing and work guarantees and warranties

The Claim Investigation Slide 11

The Adjuster for the insurance company will carry out an investigation into Coverage, Cause, Damages, Settlement, Salvage & Subrogation.

Assessing Coverage:

One of the first things an adjuster will do upon receiving a claim assignment is obtain a copy of the policy declarations.

The Policy declaration will tell us if loss falls within the coverage period, has the loss occurred within the effective and expiry dates of the policy.

The declaration will also tell us who the insured is. What the insured address is. The loss location can be different from the insured's mailing address and it is this loss location that must be confirmed. A declaration will also tell us what property is insured and for how much.

The Aviva coverage through the Stevenson & Hunt Condo Program normally insures building and business contents to a stated maximum limit. The declaration will tell me how much that limit is.

The declaration will also tell me what the basis of settlement is. Is it replacement cost or actual cash value.

The dec sheet will also identify the deductible and if there are any different deductibles for different causes of loss.

Many policies now have increased deductibles for sewer backup and water damage. The policy deductible may be \$1,000.00 but any water loss will be adjusted subject to a \$2,500.00 deductible. Now some water damage deductibles can be exorbitant. I am aware of one here in the City that is \$50,000.00.

The declarations will also identify any endorsements that have been added to the policy such as an additional insureds endorsement, condominium corporation endorsement, and more and more frequently, and endorsement that adds additional living expense coverage for unit owners. This additional living expense coverage is normally capped at \$10,000.00 per unit, or \$100,000.00 per loss. It also contains a clause that excludes coverage for any unit owner with their own insurance. The coverage is also just for unit owners, it does not extend to tenants.

Policy Wordings:

As part of our coverage investigation, we'll also get a copy of the policy wordings. Along with the Declarations, the wording is the contract agreement between the insurance company and the insured.

It says what is covered under the policy and how settlement is calculated.

Through the course of the adjustment process, I will refer to the policy wordings in order to confirm whether the property damaged and the cause of that damage is covered under the insurance contract.

It would be a good idea for anyone involved in insurance claims to read the policy.

Loss Investigation: Slide 12

With the policy declarations and wordings in hand, the adjuster will now start collecting information about the loss.

Basically, we need to confirm the five W's (who, what, when, where, & why)

Who:

We want to confirm Who the insured is. Who found the problem, who the unit owners are that have been affected, Who responded to the problem, and Who are witnesses to the event if any. We will also try to identify Who may have been responsible for the damage.

What:

Our investigation will confirm what happened and what caused it to happen. Sometimes this is very straightforward, such as a simple ruptured pipe due to deterioration or fire due to cooking.

Some time confirming what happened is not straightforward and a great deal of time and money on experts can be expended.

We also need determine what was damaged and what needs to be done to restore that damage.

When:

We will confirm when the loss happened. Basically, the date of loss and time. We'll also try to determine whether the loss occurred suddenly or over a period of time.

Where:

We will confirm where the damage occurred starting from the street address and drilling down to the location of the cause.

Why:

The adjuster will want to determine why the loss occurred. Probably the most time and money is expended on this why question. Did the loss occur due to carelessness, deterioration, poor workmanship, poor design, lack of maintenance, or just plain stupidity.

I had an electrical transformer loss a few month ago at a large commercial building. The transformer arced to ground and blew all 3 phases. We knew pretty quickly What happened.

But, at the same time London hydro had power outages in the area. It was not clear and it is still questionable after 2 months of investigation whether the transformer caused the power outages or did the power outage cause the transformer damage. The insurers for the building still have an electrical engineer working on the Why the transformer blew!

With the why it happened information in hand, we can then assess whether a third party may have been responsible for the loss and whether it would be appropriate to pursue recovery of the claim payout, deductible and any uninsured damages from the third party.

The who, when, and where questions are pretty straightforward and easy to answer. It is the what and why questions that involve most of the investigation.

An adjuster can use experts to help determine the answers to the five W's. We will often hire an origin and cause fire expert to confirm why the fire occurred. We can hire engineers to assist in answering why the damage occurred and also to assist in answering the what has been damaged question. Many a time, we'll use structural engineers to confirm the condition of the building following a loss.

The adjuster will also obtain the services of reputable restoration contractors to assist in determining what has been damaged and what it should cost to repair or restore the damages.

Working with the contractor, we will develop a scope of repairs which is a basic listing of everything that needs to be fixed and what needs to be done to fix it. The contractors will then price the job based on this scope. Once we have the contractor's estimate in hand, it will be reviewed and approved by the insurance company. A copy of the estimate is then provided to the corporation for their review and approval.

The corporation does not have to use the contractor I use to determine the estimated cost of repairs. As mentioned earlier, the emergency and restoration work is carried out by a contractor working on behalf of the condominium corporation or building owner as the case may be. The

adjuster and insurance company's role is to establish an accurate cost of settlement and is **not** to coordinate and complete repairs.

Slide 13

A couple fire scenes I have been involved in

Coverage & Repair responsibility (slide 14)

As part of my investigation into the five W's, I need to confirm just what is damaged and who is responsible in law to repair it.

Condominium's Declaration and Standard Unit Definition

To answer these two questions when dealing with a condominium claim I want to have a copy of the condo's declarations and any standard unit bylaw.

The condo's declarations lay out whether the condominium corporation or the unit owner is responsible for maintenance or repairs after damage within the unit. Maintenance and repair after damage are two separate issues.

The Condominium Act of Ontario requires the corporation to repair the units and common elements after damage. This obligation to repair after damage does not include the obligation to repair after damage any improvements made to a unit.

The obligation to maintain or repair after damage can be altered by the corporation's declaration. The declaration can remove some or all of the corporation's responsibility to maintain or repair after damage to the units and place it on the unit owners.

The Condo Act also includes a section #99 (1), which states that the corporation shall obtain and maintain insurance, on its own behalf and on behalf of the owners, for damage to the units and common elements that is caused by major perils or the other perils that the declaration or bylaw specify.

This basically says the condominium corporation shall obtain insurance for both themselves and the owners. The owners can access this insurance even if the responsibility of repair after damage to the units has been transferred to the unit owners.

The act also makes it clear that the obligation to insure under Subsection 1 does not include insurance for damage to improvements made to a unit.

The condominium corporation's policy does not insure unit improvements so the claim investigation must answer the question; what is an improvement.

Standard Unit – Slide 15, 16 & 17

The Condo Act also lays out how to answer the question of what constitutes an improvement to a unit. *Section 99 (5) says that for the purpose of this section, the question of what constitutes an improvement to*

a unit shall be determined by reference to a standard unit for the class of unit to which the unit belongs. A standard unit for the class of unit shall be the standard unit described in a bylaw made under Clause 56(1)(h), if the board has made a bylaw under that clause.

The act also allows the standard unit to be described as per the schedule mentioned in Clause 43(5)(h) if the board has not made a bylaw. Basically, Clause 43(5)(h) refers to a schedule setting out what constitutes a standard unit as provided by the declarant following turnover and registration of the declaration. This particular schedule of what constitutes a standard unit is normally only available for new corporations since about 2001.

The question of what constitutes an improvement can be easily answered if the standard unit bylaw's been put in place. The standard unit bylaw lays out specifically what is insured by the condo corporation's policy and anything not included in the standard unit bylaw is considered an upgrade or improvement for the purpose of insurance coverage responsibility.

Without a standard unit bylaw, we can often get bogged down in arguments between the condo insurer and the unit owner insurer as to what is and is not an improvement.

There's very little case law on this question of improvements. There's one small claims court decision which basically says if there's no standard unit definition, then everything is part of the standard unit and there are no improvements. Many of the companies insuring condominium corporations disagree with this decision.

A well-written standard unit bylaw completely avoids any question of who's covering what.

I personally would like it if every corporation had a well-written standard unit bylaw. I have seen some really excellent standard unit bylaws in which the unit finishes are listed and identified in a detailed and clear manner right down to the doorknobs. I've also seen other standard unit bylaws which instead of making things clear as to what is part of the standard unit, causes more confusion.

Deductible Assessment: Slide 18 & 19

Another claims process unique to condominium corporations' loss is the assessment of the corporation's deductible.

The condominium act contains a Clause 105(1) which says that if a deductible is part of an insurance policy obtained by the corporation in accordance with this act. Remember Section 99(1), the amount of that deductible will be considered a common expense.

Section 2 of the deductible clause allows the corporation to assess the deductible or the lesser cost of repairing damage, to the unit owner when that owner, a tenant or person residing in the owner's unit has through an act or omission caused damage to the owners unit. This basically allows the corporation to assess the condo's deductible to the owner of the unit where the damage originated if that owner or occupants residing in the unit caused the damage by an act or omission. What is an act or omission can

raise questions and cause dispute. This clause does not address what happens when the act or omission of the owner tenant ect causes damage to other unit or common areas.

The Condo Act goes on and Subsection 3 of Clause 105 allows the corporation to pass a bylaw which extends the circumstances under which the deductible can be assessed to the unit were the loss originated as long as the damage to the unit was not caused by an act or omission of the corporation or its directors, officers, agents, or employees.

This basically allows the corporation, as long as it did not cause the damage, to assess the deductible to the unit owner no matter what the cause as long as the damage originated in that owner's unit.

Claim Settlement: Slide #20

Once all the required investigation is completed, the adjuster can turn to calculating the claim settlement under the policy.

We have investigated the policy coverages, confirmed who sustained the damages, where those damages occurred, what those damages were, when they occurred, and why they occurred. This information is assessed in light of the policy wordings and the adjuster will confirm whether or not the loss is covered under the policy.

If the loss is covered, we can then move on to assessing the amount of damages by reviewing estimates, schedules, expert reports etc. This will allow us to determine the amount of the loss.

We can now turn to the question of how much will the policy pay out as settlement.

It is to answer this question that we need to turn to the standard unit definitions and declarations. The condominium corporation's policy will not pay for improvements to the unit or any of the unit owner's contents.

If we have determined that there are improvements in place, the condominium corporation's policy still must respond and cover the standard unit value of the damages. One of the most common scenarios, with regards to standard unit and improvements, deals with flooring.

The standard unit definition may include "builder's grade" carpet and pad, but the damages in the unit are to upgraded hardwood floors. These upgrades have been made by a unit owner in the past and may not be the current owner, it does not matter, that hardwood flooring would still be considered an upgrade or improvement for the purposes of the insurance settlement.

The corporation's policy covers the value of the standard unit carpet and pad even though that carpet and pad is no longer in the unit.

The unit owner's coverage pays for the increased costs in excess of the value of the carpet and pad so that the unit owner can have their hardwood flooring back in place following a loss.

For example, builder's grade carpet and pad may be valued at \$20.00 a square yard, whereas the hardwood that was damaged will cost \$30.00 a

square yard to replace. The condominium corporation's policy will pay \$20.00 and the unit owner's policy will pay the additional \$10.00 to bring the total up to the \$30.00 required to affect replacement.

Slide #21

How payment of the condominium corporation's settlement occurs will depend on a number of factors. On very large losses, an insurance trustee may have been appointed, in which case the condo's policy settlement will be paid into the trustee account from which the board and trustee can make payments to interested parties as required.

In a typical scenario, we'll see one of the many reputable insurance contractors carrying out the repairs in which case upon completion of those repairs and receipt of confirmation that the repairs have been done to the board's and unit owner's satisfaction, I can issue a cheque payable to the contractor for the corporation's portion of the work.

On other occasions, I have issued co-payable cheques to the corporation and their preferred contractor or on occasion to the unit owner and their preferred contractor.

Conclusion: Slide #22

Claims involving a condominium corporation throw in a few additional factors that must be addressed, but most of the process is still the same as any other property claim.

A great deal of communication and cooperation is required to effectively investigate and settle insurance claims in general.