

INSURANCE PITFALLS

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When purchasing insurance for single-family homes or apartment dwellings, consumers usually purchase very broad and inclusive policies that are relatively simple to shop for. Cooperative housing, in contrast, divides insurance risks among several individuals and entities through multiple insurance policies affording fairly specific coverages. Although the cooperative dweller likely has a fairly simple shopping experience, cooperative directors must consider coverages for the complex as a whole, individual dwellers and for the themselves in their capacities as directors, officers and employees.

The cooperative is comprised, primarily, of the corporation-owned lands and buildings and of individuals spaces possessed by and containing property owned by private dwellers. Furthermore, the cooperative corporation itself is typically overseen by the private dwellers. Other actors in the cooperative are the property managers, employees and outside contractors. Each of these individuals or entities has liability exposures or property interests with respect to their relationships to the cooperative. As such, each has peculiar legal interest that must be protected. Many of these legal interests are properly served through insurance contracts.

Nevertheless, because there are so many interested persons and entities, properly insuring the cooperative in this broadsense is a difficult task. It is generally expected that dwellers obtain their own insurance for their personal liability, but, if appropriate coverage is not acquired, the cooperative may become a party to tort actions. Obviously, damages incurred by the cooperative are transferred to the dwellers, which makes proper insurance a concern of the directors of the cooperative. The same principal holds true in the cases of outside contractors, property managers and even, in the case of directors themselves.

In obtaining proper coverages, the cooperative wants to avoid duplicate insurance in as much as that is possible in order to save premium dollars. Duplicate coverage might exist, for example, where the cooperative provides certain personal furnishings, like washing machines, and insures them under the cooperative's commercial package policy. At the same time, nevertheless, sellers take it upon themselves to insure the same machines under their personal dwelling policies as personal contents. Obviously, little purpose is served in the cooperative and the dwellers both insuring four hundred washing machines. This may be an issue that could be more economically settles in the occupancy agreement.

On the other hand, the cooperative does not want to have gaps in its coverage. The cooperative wants all applicable risks, hazards and exposures to be considered and addressed—either through the purchase of insurance sufficient to cover the exposure or by electing to not cover the exposure, which is known as self-insuring. When a conscious decision has not been made about a risk, hazard or exposure, then what results is known as a gap. Gaps can be very costly and are always upsetting. An example of a gap is a commercial package policy, that is not known to the cooperative, that does not cover windows. If a proper reserve was not funded (that is, no self-insurance was completed) and a wind storm, perhaps, breaks seventy percent of the windows on the east face of a twenty-story high rise, replacement could cost hundreds of thousands of dollars and the cooperative may find itself in a position where it cannot repair the structure. Gaps particularly potentially expensive ones, should be identified and addressed.

The cooperative directors are in the burdensome position of having to make difficult insurance decisions for the cooperative when they often have little experience with the types of risks, hazards and exposures that exist. As a result, cooperatives often rely on the opinions of insurance agents who have little knowledge of legal matters and, usually, do not have significant experience insuring cooperatives. Often, insurance is duplicative or the exposure may be protected through other means, such as indemnity and hold harmless agreements. Perhaps most unsettling is that many cooperative dwellers are unaware of what gaps

exist with respect to their own direct property interests and, therefore, rely upon the board of procure appropriate coverages.

What results, then, is often surprise and financial burden at the time of loss—both of which insurance is supposed to anesthetize. Because of the complexity of the cooperative organization, however, such a result is often..., well, not surprising.