

PRODUCERS AND ADJUSTERS BULLETIN NO. 27

TO: All Property and Casualty Insurance Companies, Producers and Adjusters, and all Property Management Companies

RE: Coverage of Unit Owners under Condominium Insurance Master Property Insurance Policies

DATE: September 12, 2017

Under the Delaware Uniform Common Interest Ownership Act (DUCIOA), 25 Del. C. Chapter 81, a condominium association is responsible for the repair or replacement of the common elements and the individual condominium units, after a casualty loss that results in damage to a unit and to the common elements or structure of the condominium. The exception to this requirement is for "improvements and betterments" installed by unit owners. See 25 Del. C. 81-313. DUCIOA became effective September 30, 2009.

It has come to the attention of the Commissioner that some management companies for condominium associations are telling unit owners that their claims are not covered by the association's master insurance policy and that they are telling the insurer for the master policy that there is no claim to be investigated or adjusted, essentially blocking the unit owner from making a claim under the master policy. This type of action is inconsistent with DUCIOA.

DUCIOA Section 81-313, applicable to all common interest communities formed after DUCIOA's September 30, 2009 effective date, provides in pertinent part (emphasis added):

- (a) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:
 - (1) Property insurance on the common elements and, in a planned community, also on property that must become common elements, insuring against all risks of direct physical loss commonly insured against. . . .
- (b) In the case of a building that contains more than 1 unit having horizontal boundaries or vertical boundaries that comprise common walls or other boundaries between units, the insurance maintained under paragraph (a)(1) of this section, to the extent reasonably available, must include the units, but need not include improvements and betterments installed by unit owners. . . .
- (d) Insurance policies carried pursuant to subsections (a) and (b) of this section must provide that:
 - (1) Each unit owner is an insured person under the policy with respect to liability arising out of such unit owner's interest in the common elements or membership in the association. . . .
 - (4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

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Additionally, for those common interest communities that were formed before DUCIOA's September 30, 2009 effective date, DUCIOA at Section 81-119 provides:

In matters and as to issues where neither such existing provisions of the declaration, bylaws, code of regulations, declaration plan, or plats or plans (as duly amended) of preexisting common interest communities or approved common interest communities nor the Unit Property Act expressly addresses the matter or issue, the provisions of this chapter (DUCIOA) shall control.

The Unit Property Act discusses insurance at 22 Del. C. § 2238 as follows:

The council shall, if required by the declaration, the code of regulations, or by a majority of the unit owners, insure the building against loss or damage by fire and such hazards as shall be required or requested without prejudice to the right of each unit owner to insure each such unit owner's own unit for each such unit owner's own benefit....

Thus, it is the Commissioner's interpretation of DUCIOA that each unit owner is an insured under the master policy and may make a claim for a covered loss under the policy and that such a claim cannot be blocked by the management company.

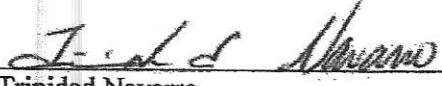
While a management company may act as a conduit for claims being made under the master insurance policy, essentially acting as a third party administrator, it cannot refuse to present a claim for a unit owner.

If an insurance producer or agent becomes aware of a claim potentially covered under the master policy, the producer is obligated to report said claim to the insurer for the master policy.

In the event that the insurer for the association's master policy becomes aware of a claim, it must take reasonable actions to investigate and adjust the claim as per its policy. All insurers owe the association and the individual unit owners a duty of good faith in the handling of these first party claims. See DUCIOA at 25 Del. C. 81-113.

Questions regarding this notice should be directed to consumer@state.de.us

This Bulletin shall be effective immediately and shall remain in effect unless withdrawn or superseded by subsequent law, regulation or bulletin.


Trinidad Navarro
Delaware Insurance Commissioner

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