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Risk & Reality Report

CRACKING THE CONDOMINIUM CONUNDRUM

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INTRODUCTION

Condominiums – I know, it's everybody's favorite subject.

Before we jump in, I want to mention a couple of things up front just to make sure expectations of what's to come are what they should be. Some of the things we're not going to be discussing are any specific coverage form or endorsement or the Directors and Officers (D&O) exposure.

This is more a discussion of concepts – what you need from the very beginning, what you need to know up front before you even start looking necessarily at coverage, and what you need in order to structure the condominium program for either the association or the unit owner.

Let's take a look quickly at our "Cracking the Condominium Conundrum" agenda. First, just to get us in the mood, we're going to talk about a couple of phone calls that you might receive or even phone calls you might make yourself.

From there we'll turn to the information that is required to provide the proper protection, and what we'll talk about that several times throughout this document, is that it's fascinating that once we know what one party needs, we know what the other party needs. As I mentioned, I might say that a few times here. Then we'll introduce two key property questions that must be properly answered in order for you to design the condo property coverage.

In fact, we'll spend most of this document talking about these two questions, and how to answer them, and I'll go ahead and tell you what they are up front – who owns what and what is it worth, in other words, what's the valuation procedure? Answering these two questions is where we'll spend the majority of our time here.

The next two agenda items go together. We'll be talking about the four real property definitions that apply to condominium coverage. We'll combine that with the three levels of association responsibility to answer the question that I already mentioned, "Who owns what?" Then, we're going to answer a question that I never really thought I would ever have to answer.

We'll next discuss how the NFIP muddies the water, so to speak. Then we'll turn our attention to our second question, "What is it worth," where we'll discuss the evaluation

and managing evaluation methods that might apply to a condo association and unit owner.

This is a quite an interesting discussion given the apparent improper use of terms that you might see in the governing documents or maybe in statue, but maybe the misuse isn't intentional. I'm not quite sure about this, but you'll see what I mean when we get there.

We'll end our discussion talking about managing the liability exposure or, more specifically, who we're going to assign blame to if somebody gets hurt. So let's begin.

THE "CALLS"

Let's start with our phone calls. As I said, you might make these phone calls. You might receive these phone calls. Just to give you an idea of where we are in the beginning of this discussion.

Our first phone call, "We're purchasing a condo unit at the Silver Lining Condos, and we need to get insurance in place. Can you give us a quote?"

You might also get this call, "Hi, my name is Hugh Kelalie. I'm a board member with Silver Lining Condominiums and we are looking for a new insurance program. Can you help us?"

Now I'm sure you probably answered both questions with, "Absolutely, we can help you," but for some reason, if both of these people called you in the same day, you may have treated them differently in regard to the information you requested before actually providing a quote.

Maybe we do this because of the difference in commission levels. I'm not accusing, just making a statement. Maybe it's because some of us don't realize that we actually need the same information for both situations regardless of whether it's the unit owner or association calling. Regardless, you need the same information. Hopefully, after reading this document, you'll see the reason for my being such a stickler about this and the need for you to ask for the same information regardless of who the client is.

What do you need? Let's jump right into it.

INFORMATION REQUIRED TO PROVIDE PROPER PROTECTION

What do you need to properly write coverage for either the unit owner or the association? First of all, you need a copy of the association's declarations, bylaws, coverage, conditions and restrictions, whatever. Basically, you need their governing documents. You need to know what rules they are playing under.

With that being said, you also need an official letter documenting the definition of a unit's boundary – we'll talk about why that's important in a moment – and who is responsible for insuring which property. As I mentioned already, we'll define the various types of property, and the various property definitions that apply to condos in just a moment.

Why do we want this letter? Why does this seem to be a necessity for writing condo coverage? A few of us, me included in that few, are likely qualified to answer who's responsible for which property, because it's a legal question to some extent.

Now we can probably make a pretty good estimation based on how it's written. It might look pretty clear, but assumptions create problems, and at the same time, if you have done something improper for the association or the unit owner, you could have an errors and omissions (E&O) issue on your hands. Therefore, you want an official document saying this is who's responsible for what property, even if you think the associational documents are absolutely clear. I hate to assume and you should, too.

Disappointment is a function of expectation, and if the unit owner or association expected something and you didn't give it to them, they're going to be disappointed, which leads again to an E&O problem.

Next, you need a copy of the applicable state statute – we'll talk about why this is important as we go along in this document – or you at least need access to this information.

You may not have to have the pages on your desk, but you need to be able to access the information. At the end of this document is an appendix with a list of every state condo statute and a link directly to those various statutes (see Appendix A).

Then you need a verifiable or signed property valuation calculation, mostly for the association, because you want to make sure you're insuring the property to the right values.

Remember, as I said before and will probably say another 17 more times, you need to collect the same information regardless of who the customer is, whether it's the unit owner or the association, because when we're writing property insurance coverage for either a condominium association or a unit owner, we have to remember there are, to some extent, competing interests. Their interests aren't mutually exclusive; in fact, if you really think about it, they're complementary. Where the interest of one party ends, the interest of the other party begins.

TWO KEY PROPERTY QUESTIONS

When the association is no longer responsible, the unit owner becomes responsible and vice versa. The problem is defining the point where the interest in property changes from the association to the unit owner and vice versa. When it stops being the unit owner's responsibility it becomes the association's responsibility. That's why it's so important to have all of that information and why we ultimately have to answer two key property questions when we're dealing with either the unit owner or the association.

The first question we have to answer, as I eluded to earlier, is “Who owns what” or rather who is responsible for what property. This is a puzzle we have to piece together, and it's essentially based on two key factors.

The first factor is the meaning and the description of the four real property terms found in either the association's governing documents or in statute. We combine that with the level of association responsibility spelled out in the governing documents, or again, statute, if it's not dealt with in the governing documents. Remember, it doesn’t matter who you're dealing with, if it's the association or the unit owner, because when the responsibility of one ends, the other begins.

Our second property question is "What is the value" or, more specifically, "What is the valuation method being applied to the insured property? What's it worth? What's it worth in insurance terms?"

Now whoever the insured is, association or unit owner, and whatever constitutes “insurable property,” again, relating back to responsibility, value can have different meanings based on the governing documents or statutes if not defined in the governing documents. You have to compare those to the valuation methods found in the insurance policy itself. This will make more sense when we get to that question a little later and go more in depth on that question specifically as it relates to values and valuation.

FOUR REAL PROPERTY DEFINITIONS

Let's start answering the first question by looking at just a few definitions of real property as it relates to condominiums. Understanding these four real property definitions is absolutely necessary to discover who is responsible and assign coverage for who is responsible for what property in the condo situation.

These definitions, as I've said already, are found in one of two places. They're either found in the governing documents of the condo, or they're found in the relative statute if they're not covered in the governing documents.

The four property definitions that we're going to take a look at are:

1. Common elements
2. Limited common elements
3. Unit property and unit improvements
4. Betterments

Common elements is real property owned in common by and beneficial to all members of the association. This can include land and parking lots which are probably covered or may not be covered under the insurance. It can sometimes – and I stress the word sometimes – include foundations and load bearing walls. We'll see why I say “sometimes” in just a moment.

Common elements can also include clubhouses, pool houses, pools, fences, gates, playground equipment, tennis courts, and basically any other real property that's owned by the association and allocated to all unit owners. Generally, the definition specifically excludes unit property when you see the definition of common elements. Remember that common elements are common – meaning they are assignable to all unit owners.

Then we have limited common elements. These are real property elements that are generally – but not always – beneficial to more than one but less than all or even a large portion of the unit owners. These can include structural foundations and load bearing walls. But if you remember, I just mentioned foundations and load bearing walls in the common elements. Here’s an explanation of how this is possible.

If you have one building, structural foundations and load bearing walls are a common element because every unit owner benefits from them. If you have two or more buildings, the foundation and load bearing walls in one building only benefit the tenants of that building. The foundation and load bearing walls become essentially limited common elements. These can include, as I said, structural foundations and load bearing walls when there is more than one building.

Other examples of limited common elements include things like common hallways or corridors that provide access to several units; walls or columns containing electrical wiring, sprinkler piping, or a plenum enclosure and ductwork for heating and air systems servicing several units.

Beyond the fact that sometimes limited common elements generally includes real property that benefits several people, there are situations when a limited common element is an element that only benefits one unit member such as steps, stoops, decks, porches, balconies, patios, exterior doors, and windows that again serve only that one unit owner but are outside what we define as the unit boundaries.

Those are considered limited common elements. So now we've covered common elements and limited common elements, and next we have unit property.

As mentioned earlier, unit property is essentially a function of the definition of unit boundary generally found in the governing documents and if not there then in the condo statutes of the state (see Appendix A).

Unit property benefits only the unit owner and mostly commonly includes the inside of exterior unit walls, interior partition walls but not load bearing walls – remember that these are limited common elements – counter tops, cabinetry, plumping fixtures, and any other real property confined to and solely used for the benefit of the unit owner.

The problem with the definition of unit property is that there's no one universal definition of unit boundary. Because of that, there are a lot of different parts of the building that could be assigned to the unit owner as unit property within the unit boundary. We'll talk about this more a little later when we get into some examples of Covenants, Conditions, and Restrictions (CCR) language as it relates to this topic.

That's the reason why you have to look at the governing documents or the statutes or get a legal opinion because you have to know, when you're dealing with unit property, who is responsible for unit property and to what point in the building.

When do the interests of the unit owner begin and end, and when does the association pick up? There's no one specific definition of unit property. It varies. You have to know how that association defines it or how that statute defines it if the association doesn't address it.

We've covered common elements, limited common elements, and unit property, and now we'll move on to unit improvements and betterments.

Unit improvements and betterments are included, to some extent, within the broad scope of unit property, but we have to separate it out for coverage purposes. We have to separate unit property from unit improvements and betterments for coverage purposes which you'll see in a moment. Put simply, this type of real property is created when the unit owner upgrades the unit. When they replace the carpets and put down hardwoods, when they go from a laminate counter top to a granite counter top, when they upgrade the cabinets – whatever they do, it is above and beyond what every other unit has; it is customized for the owner because they love hardwoods, they love cherry cabinets, etcetera.

Whatever it is that the unit owner does that is different than the rest of the association or how it was designed originally, it's an improvement or betterment to that unit that

benefits only that unit owner. Let’s look at a few examples so you can visualize what we're talking about as it relates to these four common property elements definitions:

1. Common elements



Remember, common elements are owned in common by all unit owners. You see the building here that has the foundation that's all common elements. Tennis court, tennis fence, pool house, those are all common elements.

2. Limited common elements


This hallway, a limited common element, leads to several different units. Now look at the balcony. The balcony benefits only the owner but it is outside of the definition of the unit boundaries, in other words, outside of the unit property. Because of that, it becomes a limited common element.

3. Unit property


Next is unit property. Unit property is all the real property that's inside the unit that benefits who? Nobody but the owner of the unit.

4. Unit improvements and betterments

And finally, we have unit improvements and betterments that we just talked about. It's still inside the unit but is a higher quality. Look at our counter tops here. Originally when I bought it was laminate. You see under unit property the green laminate and then they went to Corian or granite, or whatever that is so is no longer laminate.

They've improved it. They've made it better. Depending on who is responsible for what, the unit owner may or may not be responsible for those additional costs that come with going from laminate to Corian or granite or whatever they put in that is better than what was there before.

THREE LEVELS OF ASSOCIATION RESPONSIBILITY

Then who is responsible for what? Now that we understand the four real property definitions related to the condo association and the unit owners, we turn our attention to who is responsible for which property. Who owns what? We'll look at this from the associational side, from the association's point of view.

There are three overarching possibilities or three overarching concepts that apply to who's responsible for what.

1. All In
2. Bare Walls
3. Original Specifications

Take a look at this Real Property Responsibility Coverage Spectrum.

1. All In

On the far right, is All In. Everything that relates to real property is essentially assigned to and the responsibility of the association. That's All In – the name it gives away.

All In is also known as All Inclusive. Essentially this means that all four types of real property that we just discussed – common elements, limited common elements, unit property, and unit improvements and betterments – are the association's responsibility and they should be insured by the association.

2. Bare Walls

Then we have Bare Walls. Bare Walls indicates limited property coverage, but there's actually a question that pops up here – how bare is bare?

Bare Walls could mean the association is responsible only up to the studs and the roof joists and the floor joists and that area, or – and I've seen this in association documents – it could go up to as far as saying that the association is responsible up to the unfinished parameter walls, no interior walls but perimeter walls, the outsides of the unit that are part of the outside structure.

Now think about how ridiculous that is – unfinished perimeter walls means that the association is responsible for up to the unfinished drywall but the unit owner is responsible for the paint. Ridiculous, yes, but I've seen it.

Bare Walls could mean from just the joists up to and including unfinished drywall, unfinished and taped drywall, or even unfinished and un-taped drywall. I've seen these and many more weird things in my career covering just about every level in between, and you have to realize that two to six inches make a huge difference in value.

You've got to make sure you understand how bare a Bare Wall is. As you can see, since there is no one definition of “bare” or Bare Walls, problems can and will occur. Don't assume just because you have a Bare Wall situation that you know exactly what that means. You have to have someone give you a legal opinion on that.

3. Original Specifications

As you’ve seen, All In and Bare Walls are on the opposite ends of the Real Property Responsibility Coverage Spectrum – far right is All In, and far left is Bare Walls. Lastly is Original Specifications or what we call single entity coverage. This is in between All In and Bare Walls though it's closer to the All In side. It's the “in between” of those two extremes.

Essentially, the association is responsible for all real property existing within the building when it was originally constructed or when it was originally planned and designed, but the association is not responsible for improvements and betterments made by the unit owner as defined in whatever document you are using whether it be the governing documents of the condo or in the relative statute.

We have All In, All Real Property; remember taking this from the association's point of view. All Real Property, All In is the responsibility of the association, Bare Walls only up to however they decide and define what bare means, leaving unit property and unit improvements and betterments to the unit owner.

In Original Specifications, the only thing the association is NOT responsible for is unit improvements and betterments. Let's look at some examples of these types of wording and we'll start with the Bare Walls wording. But before you move on, I'm going to tell you right up front – there is a section that might create disagreement and that's OK. It makes my point of why you might want a lawyer to look at these things.

EXAMPLE 1 – Bare Walls

> *"All property insurance policies shall comply with the following: (1) Property insurance obtained by the Master Association shall be special form including earthquake, with vandalism and malicious mischief endorsements, insuring the Center Improvements, including the common areas of each Condominium Unit and the structural elements of the Condominium Units (**but excluding improvements made to the interior of Condominium Units or Sub-Units which are not Common Elements or Limited Common Elements**, and excluding fixtures, furniture, furnishings of a Unit or Sub-Unit and other personal property of the Owner of a Unit or Sub-Unit), together will all service machinery, equipment and facilities contained within the Property. Such insurance shall cover…." and so on and so forth.*

Now the little phrase in here that might create confusion, because I'm holding this as Bare Walls wording, but I said also "including the common areas". There are two possible meanings of including the common areas.

1. It could mean it includes unit property but it doesn't say that

2. Or it can mean areas shared in common by, or two multiple owners, like common walls or something along those lines. Again this is why a lawyer is needed to review the wording and clear up any confusion.

It appears to be Bare Walls because of the next statement regarding the exclusion of elements not classified as common elements or limited common elements, but there could be differences of opinion and those differences are reasonable.

Don't assume. That's why I chose this example. Get a lawyer. Get a legal opinion because this could be read either of those two ways. I hold that as Bare Walls wording because of that exclusion, improvements which are not common elements or limited common elements.

I based it on that wording but a lawyer might come back and say common areas includes the unit property. There's reasonable discussion to be had on both sides.

EXAMPLE 2 – Original Specification

> *"... Insurance on the Property (exclusive of the additions and improvements made by the Unit Owners to their respective Units and exclusive of the Real Estate, excavations, foundations and footings, and subject to other standard exceptions contained in such insurance policy), the Units and the Common Elements, against loss or damage by fire and against loss or damage by risk now or hereafter embraced by standard extended coverage. "*

Although the term “limited common element” isn't used in this section, to some extent, it is understood because the requirement includes coverage for the units.

You can't just skip over and say, "We don't have any coverage for limited common elements." You're covering common elements all way down to the units.

It’s also understood that you'll have limited common elements, but it might also be likely that earlier in this particular contract, it defined common elements to include limited common elements.

If it didn't, there are some state statutes that actually include limited common elements within the definition of common elements. Just because you don't see the term doesn't mean it's not covering it.

You have to look on both sides of it because we're going to cover the unit and the common elements, but we're not going to cover limited common elements. That doesn't make any sense at all.

As a side note and reading this particular example, I find it interesting that the CCR requires essentially very limited property protection. This says, "fire and standard extended coverage." If I had to guess, I would say the person who created this particular wording didn't necessarily understand insurance terminology. I’m saying that's a big

surprise; I'm just pointing it out. It's something you might want to point out to the association – do you really just want this or would you like to have All In as our next example shows.

EXAMPLE 3 – All In

> *"…(a) Property Insured. The Association shall maintain a Master Property Policy ("Master Policy") insuring the Common Elements (including the Limited Common Elements) and the Units of the Condominium, excluding land. The Master Policy shall cover (i) perils, as broadly as reasonably available, under coverage currently known as 'special form' or 'special causes of loss' and include earthquake, (ii) insure the covered property, including personal property owned by the Association, for the full insurable replacement cost based on periodic appraisals, and (iii) cover the entire Unit, including all attached fixtures, systems, and finishes in the Unit at the time of a loss, regardless of when installed, but shall not cover the Unit Owner's personal property in the Unit or elsewhere in the Condominium."*

I like this one. Note that the only property excluded from the association's responsibility is the owner's personal property. I also like the phrase, "the regardless when installed." Again, this extends to common elements, limited common elements, unit property, and unit improvements and betterments. All four types of property are covered. This is an All In situation.

What happens if, for some reason, the association's responsibility isn't addressed in the governing document? What would you do then? That's where statutes fit in.

I have several times mentioned the association's governing documents and statutes. When the governing documents of the association don't talk about who's responsible for what – when we get to Managing Valuation Methods, we'll talk about this topic again – then you have to look to the state statute (see Appendix A). And remember, you have to look at the entire statute; and some states have multiple statutes that relate to condominiums that you have to look at as well.

Remember this – the statutes are secondary to the association's governing documents in regard to associational responsibility, but if you can't find the information in the governing documents, you look at the statute.

I'm going to say it again because it bears repeating – if you can't find the information in the association's governing documents, you look to the statute.

Let's piece all this together. Let's find out who's responsible for what – in other word, who owns what?

Remember that we're basing this on the associational responsibility. To get the unit owner's responsibility, we first must know what the association covers. Once you know one side, you know the other – it dovetails together.

If we have the All In associational responsibility, the association is responsible for common elements, limited common elements, unit property, and unit improvements and betterments – basically all real property. The unit owner is only responsible for their own personal property within the unit.

But if we go to the opposite end of the Real Property Responsibility Coverage Spectrum and look at the Bare Walls association responsibility, the association is essentially only responsible for common elements and limited common elements. The unit owner is then responsible for unit property, unit improvements and betterments, and all of their own personal property.

But, as I mentioned earlier, be warned. There is no universal definition of "unit property." That's a function of the definition of unit boundaries. We're back to reading the governing documents, the CCRs, or even the state statute to find out what the unit owner is responsible for insuring – where does the unit owner's responsibility end? Is it at the unfinished perimeter walls or is it all the way to the studs? As I mentioned earlier, even though it seems simple, I've seen it handled both ways so it is essential that you know where responsibilities lie.

They've got a covered unit property – tell me what unit property is. Where do the unit boundaries begin and end? As I keep recommending, although I'm sure you're all intelligent people, I'm not going to guarantee that we all have the ability to interpret wording like a lawyer might if it ends up in court.

Don't depend on your own skills. Some unit boundaries are clear – and I'll admit that some of them are extremely clear – but some aren't. Don't be too proud to get a second opinion from a legal professional.

In the last level of associational responsibility, Original Specifications, what is the association's responsibility? To reiterate, this is also called single entity coverage.

When we have an Original Specification situation, the association is responsible for common elements, limited common elements, and unit property. The unit owner is responsible for unit improvements and betterments and their personal property within the unit.

Again, Original Specifications covers all but improvements and betterments as the responsibility of the association. The cost of improvements and betterments are the responsibility of the unit owner in addition to their personal property.

Now, this can be dicey when we get to claims time because the association is going to pay to put back certain things, and although we haven't gotten to our “Managing Valuation Methods” section of this document yet, we'll go ahead and touch on the topic here.

The association is going to pay to put back the laminate countertop. That’s a done deal. But if the unit owner wants granite, the unit owner has to pay the difference between the cost of the covered laminate and the cost of the granite which is not covered.

Here is a major “duh” statement – I make “duh” statements every now and then just because I love the look on n people's faces when people look at me and say, "Well, duh." What you'll notice and what we've talked about this whole time is that if the association is no longer responsible, the unit owner is and vice versa. When the unit owner is not responsible, the association becomes responsible, either by the association’s governing documents or the state statutes.

Even if the association is responsible, what happens if the association has a large deductible or a loss that isn't covered and they assess the unit owner? Most unit owner forms have assessment coverage. It may not have enough depending on who is responsible for what and what led to the assessment.

The unit owner's policy may need to be endorsed to increase the assessment coverage limit. The ISO endorsement for Supplemental Loss Assessment Coverage is HO 04 35.

If you are using a carrier that doesn't use ISO forms, you might have a different form number, but pay close attention to the form and make sure that it does, in fact, allow you to increase loss assessment coverage due to a deductible recovery.

ISO form 10/00 edition and prior forms – note that the 10/00 version was in effect until the 05/11 edition became available and some carriers may still be using the 10/00 version – did not allow you to increase the assessment coverage for deductibles, to cover an association deductible. Current form allows you to do it, but is the current form in use by the carrier that you are writing the coverage with, or if it's a proprietary form, do they allow the increase of the assessment to cover the cost of a deductible? Don't just assume.

I want to give you a warning before we leave this particular subject. Don't be lulled into a false sense of security. Just because the association is supposed to be responsible for it does not mean they fulfill their duties. The unit owner may still want or need to purchase some level of real property coverage beyond the automatic amount given in the policy.

Don't assume that the association has all the coverage it needs to have or has covered everything they are supposed to cover. You might want to protect suggest to the unit owner to protect him/herself or at least recommend those protection now.

PROPERLY EXTENDING REAL PROPERTY COVERAGE FOR THE UNIT OWNER

With that in mind, how do we properly extend property coverage to the unit owner? As I said earlier, I never actually thought it would be necessary to discuss this.

I never thought I would have to tell anybody how to properly extend real property coverage to the unit owner, whether for the unit property or the unit's improvements and betterments or whatever.

However, it has come to my attention recently that some agents and even some claims adjusters don't realize that in order to garner the real property coverage that the unit owner needs, they have to increase Coverage “A” as necessary.

I know this seems like another “duh” statement, but as I said, some agents and e claims adjusters are looking for coverage for unit property under the Loss Assessment section of the policy.

For some reason, and I really can't figure out why, some folks seem to think that if Coverage “A” in the HO-6 isn't enough to cover the unit owner's responsibility, that they can garner the limits from the loss assessment which is just wrong.

I don't know where this idea came from. As we've already discussed, this loss assessment coverage isn't for the property of the unit owner the unit owner is responsible for insuring. Loss assessment covers just what it says it covers – an assessment made as a result of damages to collectively owned property. That comes directly from the form, well, Boggs’ form anyway; but that’s essentially what it says, loss assessment covers assessments for damages to collectively owned property, not for the unit owner's own property.

Hopefully, you didn't need me to dispel this myth, but I wanted to mention it just in case there was some confusion. I would hate for anybody to misconstrue the use of loss assessment coverage.

THE NFIP “MUDDIES” THE WATER

Now, once we have all this other stuff straight as it relates to who owns what and who's responsible for what and who buys what policy and what coverage, along come the Feds, "I'm from the government, I'm here to help." The Feds come along in the form of the NFIP and essentially muddy the water, so to speak (a bad pun, I realize).

First, we have to understand one thing before we start talking about the NFIP policy. There are two flood forms that dovetail together to cover the association and the unit owner – the RCBAP or Residential Condominium Building Association Policy and the dwelling form purchased by the unit owner.

There is a special RCBAP rule that we have to remember. FEMA Rule IV reads:

> *"The entire building is covered under one policy, including both the common as well as individually owned building elements within the units, improvements within the units, and contents owned in common. Contents owned by individual unit owners should be insured under an individual unit owner's Dwelling Form."*

Basically, the RCBAP is an All In form. The HO-6 policy and the flood policy may have different limits and cover different property. But what happens if the limits provided by the RCBAP – remember the max is $250,000 per unit – aren't enough?

For example, let's say we have a 10-unit building that has a value of $3.5 million. The most you can get on that building is $2.5 million because it's a $250,000 per unit max. You've got $1 million that's not going to be covered by the NFIP.

According to FEMA and the NFIP, the association has to buy excess coverage because the unit owner's coverage won't kick in. That's what NFIP has told me. Yet there are some people who disagree with that and rightfully so based on their explanations.

Let me ask the next question – should the unit owner limit flood coverage to just their contents as is suggested by the RCBAP wording and as is suggested by the NFIP, because the NFIP says, the dwelling form won't kick in?

If the dwelling form won't kick in, why would I buy any dwelling coverage? Why would I buy any building coverage if it is not going to kick in anyway? There are some reasons for that which means you may still want to consider buying or recommending that the unit owner buy some dwelling coverage.

What if something happens to the association's flood policy? Maybe they don't pay their premium or they don't have enough limits? I don't know what the problem is, but something happens to it. If the unit is no longer tenable due to flood damage, the unit owner could maybe get at least something out of their own policy.

What if the RCBAP doesn't cover the property that it should? They didn't, say, include the value? This comes out to the same problem – you might get something on your dwelling form. One of the last things from the dwelling form is loss assessment protection.

You would need to have the dwelling form coverage in order to get the loss assessment if you are assessed for flood. Now, there are several limitations to getting the assessment coverage that we are not going to be discussing, but just know that is one of the provisions in the dwelling form; it gives you assessment coverage.

My recommendation, do with it what you want, is to go ahead and at least match the HO-6 Coverage “A” limits under the building coverage, or at least offer it and then have them sign on the dotted line saying, "No, I'll give you my firstborn son if I sue you over this, because I didn't take your advice." At least make it available and let them make the decision.

MANAGING VALUATION METHODS

Now for our second key property question, we are going to move on to values. This question revolves around the values at risk and how we manage the value or what it's worth or how does valuation apply?

Do the association documents address value? Well, guess what? If they don't, you go back to statute.

How much protection is provided by the association? That depends on the valuation method being used. Associations may insure to one of three values:

1. Actual Cash Value (ACV)
2. Replacement Cost (RCV)
3. Market Value

Actual cash value and replacement costs are common insurance values. We deal with those almost on a daily basis. We know what those mean. But market value? Not so much. We'll come back to that one in just a moment.

1. Actual Cash Value (ACV)

Actual cash value, on the condominium side, is actually the valuation method recommended by the Uniform Common Interest Ownership Act. In fact, most statutes apply actual cash value. It's generally defined for insurance purposes as "replacement cost new on the date of a loss minus physical depreciation." That's how, from an insurance perspective, we define it. Let me repeat – actual cash value is defined as “replacement cost new on the date of a loss less or minus physical depreciation.”

Black's Law Dictionary defines it as, "replacement cost minus normal depreciation", whatever “normal” means. Aha! Whatever “normal” means! Guess what? Black's Law Dictionary goes ahead and defines what “normal” means – “normal” means "according to a regular pattern" but um, that doesn't help us, does it?

Actual cash value? We understand what that means. We are not going to get full replacement cost. We are not going to get...I hate to use this phrase because I'm getting ready to discount it…new for old. We are going to have a form of physical depreciation applied in the amount that gets paid, but we understand that. We deal with that.

2. Replacement Cost (RCV)

Replacement cost is the cost to replace with new materials of like kind and quality. Now, this is a whole different discussion for a different day, but this is something that I believe we as an industry do a very bad job of explaining. As a matter of fact, I’ll go so far as to say that we improperly explain replacement cost. We like for people to think that they are going to get new stuff for old junk. That is a very over simplified definition and application of replacement cost.

Yes, replacement cost means you are going to get something new for something that's not new or something that's old, but there are all sorts of qualifying factors to that which we won’t be digging into and are really outside the scope of our current discussion.

I want you to keep it in mind, though, when you are thinking about replacement cost. Anytime you think about replacement cost, it's not new stuff for old junk. There are all types of qualifiers.

On a condo side, you may have an ordinance or law issue – building codes, for a better way to put it. The building might not be up to code. The insurance carrier, if they want replacement cost, is only going to put back what was there.

Unless you have ordinance or law coverage, then they are not necessarily going to put back what you must have to in order to meet the law so you are not getting new for old. You are getting newer old for old because you are not getting the new stuff paid for.

Just because we understand the definition of replacement cost doesn’t mean we understand replacement cost because of the other factors that apply. You might not always get new for old. There are some additional issues you have to deal with.

3. Market Value

We now have reviewed actual cash value and replacement cost and can, to some extent, explain it to our clients. What about market value?

Like I said earlier, this is the one we are not generally used to dealing with when it comes to insurance values. You get a lawyer involved, or you get the government involved, and things like this occur.

Market value, by definition, means a willing buyer and a willing seller. That means, I want to buy this and you want to sell it to me. Neither one of us is under duress. We are doing this willingly. I'm willing to give you money. You are willing to take my money and give me something in return.

Like I said, it's not generally an insurance value. Some state statutes and even some governing documents – CCRs again that were probably drafted by a lawyer unfamiliar with insurance – use this valuation method.

I hate to say it, but Black's Law Dictionary might actually be partially to blame for this because if you look at the definition of actual cash value, it actually says, "See fair market value," but then goes on to define market value the same way we just did.

Again, please remember that actual cash value, we understand, is replacement cost at the time of loss less physical depreciation. Replacement cost, new for old, is subject to general conditions and provisions that we won't be discussing in great detail here.

And market value? A willing buyer and a willing seller? We know what it might mean today, but we don't know what it's going to be next week or what it was last year or what it will be next year. It fluctuates too greatly.

If you ever see a CCR, a governing document that references that you need to insure it on market value or fair market value, you really need to get clarification of what they mean by that – if they understand and know what they mean by that. You need to express your concerns when you see that, because you want to make sure that you are insuring it correctly. As I said, because market value is a willing buyer and a willing seller, there can be wide fluctuations here.

Think about it. Let's say you have a building in 2006 that was worth X when everything was on the up. That same building at the end of 2008 wasn't worth nearly as much as it was worth in 2006 if you're using a market-value basis.

Now, there might be slight fluctuations in replacement cost and actual cash value, because contractors are looking for work, but it won't sway as widely as market value.

Whenever you see that in any document that relates to a condo, ask, "What do you mean by this and what are you after?" Now, to me, the better recommendation is just insuring replacement cost.

Find out what the replacement cost is because you can always do more than the statute. And while you can always do more than governing documents, you can't do less than that.

The same goes for the unit owner. Regardless of the association's valuation method, go with replacement cost. You've got to endorse the policy for that. We'll talk about that again in just a moment.

Go with replacement cost. It might avoid some problems at the time of rebuilding, but remember, if the valuation method is not in the association's governing documents – Covenants, Conditions, and Restrictions or CCRs – look to the statute. And we're back to statutes again.

Statutes are the backstop. Preferably, you see this in the governing documents, because then the association gets the control, but if it's not, you know you need to come back to statute and see what they say.

Here are three examples just to show you how widely these can vary from state to state.

1. Alabama

   "The total amount of insurance after application of any deductibles shall be not less than the greater of 80 percent of the ***actual cash value*** *of the insured property at the time the insurance is purchased or such greater percentage of such actual cash value as may be necessary to prevent the applicability of any coinsurance provision and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies…"*

"The total amount of insurance" is an interesting phrase. And I find it interesting that that this statute specifically mentions coinsurance. That state isn't actual cash value statutorily. Again, the association has precedent, but the state, if it comes back to statute, would say it is actual cash value.

2. North Carolina

   "Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the ***replacement cost*** *of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies…"*

In my home state of North Carolina, "...property insurance on the common elements insuring against all risks of direct physical loss..." – I like hearing that. And "…The total number of insurance after application of any deductibles shall not be less than 80 percent of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date…" – this phrase is going to become important in just a moment – "... exclusive of land, excavations, foundations and other items normally excluded from property policies." They look alike, except we've got actual cash value and replacement cost.

3. Ohio

> *"Unless otherwise provided by the declaration or bylaws, the board of directors shall insure all unit owners, their tenants, and all persons lawfully in possession or control of any part of the condominium property for the amount that it determines against liability for personal injury or property damage arising from or relating to the common elements and shall obtain for the benefit of all unit owners, fire and extended coverage insurance on all buildings and structures of the condominium property in an amount not less than eighty per cent of the* ***fair market value****. The cost of the insurance is a common expense."*

Ohio is the first one that has specifically said, "unless otherwise."

As you can see based on these three examples, depending on the state – Alabama is actual cash value, North Carolina is replacement cost, and Ohio is using fair market value.

Once again, we understand actual cash value and replacement cost. But fair market value? I start getting a little antsy when I see that.

And remember that these are just examples. You've got to look at your own state or the state that you were working at the time. The statute applies only if the association does not address it.

Let's now answer this question – how does associational responsibility relate to property values and are there any problems that could come up?

If we have an All In – and remember All In, from the association's perspective, means the association is responsible for limited common elements, unit property, and unit improvements and betterments, or otherwise stated as all real property.

If we have an All In situation, the real problem arises from the requirement to insure unit improvements and betterments, especially if the association or the agent does not know what has been updated and the values that are involved.

Do you think that might lead to a coinsurance problem? I can see that being the case if you have half the unit owners that go from laminate to granite and put up cherry cabinets or whatever and the association doesn't know about it.

You are going to have a real problem at the time of a loss because the limits of coverage might be well under what is required by the governing documents or what's required by statute if it's not discussed in the governing documents.

Obviously, a lot of associations' governing documents require the unit owner to notify the association of any changes or upgrades. That's great, but did they put it in the documents?

Do all the unit owners know that? And as ridiculous as this sounds, is it enforced? The board of directors or staff people might say, "I'm not too worried about it. I don't think about it," or the owner might simply forget to tell them.

We're all busy. We might forget to tell and since we live in the world of insurance, we think about insurance – how does this effect my insurance; how does this affect liability; what does this do; and what does this cost?

Even my wife, who's not in the insurance business, now is starting respond to things with, "How is this going to affect my coverage?"

Most people don't live in our insurance world and don't think about, "Hey, this might affect the insurance for this association." Or "This might affect my insurance." "I'm just up-bidding my unit because I want to." They might just simply forget. They don't see the importance.

This probably happens more than we want to admit. The association doesn't know what to do with the information once they have it. The unit owner actually calls them and says "Hey, I just replaced all the carpets in my 1,500-square-foot condo and put hardwoods down."

What that does to the value, they don't know, but they tell the association and the person on the phone says, "Thank you for telling me. That's interesting. I'd love to come see it," and the association person doesn't tell anybody else. They don't call the agent to tell him or her what's going on.

There could be a real problem with All In and the fact that the carrier never finds out about it because the agent doesn't find out about it, because the association doesn't find out about it, or the association doesn't provide the information once it does find out about it.

There are some issues that could happen there on an All In basis. A required question every year at renewal is, "Have you polled your unit owners to see if there have been any upgrades of the units, any unit improvements or betterments?" because we must, as the association, insure all this new stuff.

On the opposite end of the spectrum, Bare is Walls. Now Bare Walls, since the association is only responsible for common elements and limited common elements and the unit owner is responsible for the unit property and unit improvements and betterments, a conflict can arise at the time of a loss because of where the unit property ends and the association picks up and also the values involved.

Let's go back to our phone call at the beginning of this discussion, "Hey I'm buying this unit, can you insure me?" You answer, "Oh, absolutely," but then you don't go to find out exactly how much property coverage they need, how much building coverage they need under Coverage “A”, because you assumed they were buying this unit?

You assumed it's in a condo. You assumed they're buying a box of air. We've all heard, "You're just buying a box of air." On one side, it’s true. On the other side, not so much.

You're buying location. You're buying view. You're buying all that stuff, but depending on what the association is responsible for, you might actually be responsible for more than just a box of air.

If you, the agent, don't ask the right questions, the unit owner may not have enough coverage because nobody commenced to find out what they were responsible for.

If they don't have enough coverage or enough personal resources, there may be a partially finished unit sitting there without finished walls, without finished floors, without a finished roof. It creates a conflict between the two.

When we're dealing with Bare Walls, there are essentially three problems or three questions that we deal with and we have to answer.

1. Who deciphers the definition of unit and thus unit property which allows each party to decide who is responsible for what property?

As I said, you could take a shot at it. You might be qualified, but if you're not qualified or if you feel uncomfortable, definitely find a legal opinion and get the association to invest that time and money in getting a legal opinion for everybody.

It doesn't benefit just that unit owner. It benefits all unit owners, and it benefits the association.

2. Who calculates the ultimate amount of coverage?

That gets a little close to home. I find out that the association's responsibility is a "Bare Walls" responsibility. I've got the definition of unit and where my responsibility as the unit owner begins and ends. Now, who decides how much coverage to purchase? Do you as the agent say, "Hey, because you're responsible for these perimeter walls and all this other stuff, here's the limit you should purchase"?

I'd be very careful with that if I were you. In fact, I probably wouldn't do it. I'd let the unit owner find out, but that's just my recommendation.

3. How do you accurately subtract out the value of unit property for the association?

We've found out what the unit owner is responsible for. How do you come up with a Bare Walls value? That's the association's problem. Again, should you do that? If you're a builder, maybe. If not, be very careful with that. The unit owner has to obviously increase Coverage "A", because the HO-6 provides only a small amount of coverage, $5,000.

Another issue we haven't talked about yet is the coverages provided. There might be a gap in coverage. There might be a loss that's covered by the association because they bought a special form, a direct physical loss policy, but the condo policy, unless you endorse it, is named perils only.

If you don't endorse it to match the association's open peril policy special form, you might have a gap in coverage as far as a covered cause of loss, so make sure that you also not only match responsibilities but you match coverage.

Now, I do not recommendation that the association goes with named peril that the unit owner go with named peril. I'm still going to recommend you go with open peril risk of fiscal loss.

How about Original Specifications? Are there any problems with Original Specifications? Original Specifications may actually be the easiest value to develop because the property valuation and the association requirements of Original Specifications, to some extent, overlap.

Ask a builder and you can use a building evaluation tool, whatever you want to do to put back what was there when it was designed. Don't forget ordinance or law. You might want to buy ordinance or law coverage. That might be the easiest because then you're only paying and you're only looking for the value to put back what was there. What would the builder take to put back everything as it was designed in the current building code?

One fascinating truth about replacement cost valuations is that they already include the cost to rebuild to current federally mandated building codes, but not state building code or local building code.

Even though the valuation develops a value that includes building code, unless you've endorsed the policy ordinance or law, you don't have that coverage. That's a big deal. Remember ordinance or law. That's a whole different subject for a whole different day, but while we're on it, I want to talk briefly about it since Original Specifications might be the easiest for the association.

The unit owner still has a little bit of work to do because even though the association is taking care of all the real property, the increased value of putting back granite countertops and hardwood floors and cherry cabinets may be left out. The association is going to put back laminate counter tops and not granite. They're going to put back carpet and not hardwood. You know what I'm talking about – the inexpensive flooring and cabinets. That's what they might pay, but the unit owner must pay the difference to put back the stuff they had before. Therefore, you have a little bit more work on the unit owner side to come up with a value.

Now, when it comes to values and valuation, annual adjustment is often required. It's not just necessary; it's required. We just reviewed the statute that says, "and at each renewal day" so it's not just an E&O recommendation. If the statute says "and at each renewal day" or if the CCRs or the government document says "at each renewal day," it's not just a good recommendation that you need to update the values; it is required. You can't just renew as-is. You have to make sure the values are what they're supposed to be.

MANAGING THE LIABILITY EXPOSURE

So now that we've answered who owns what and what it is worth, let's move on to assigning blame. We're moving from the property side to the liability side. We're going to discuss the liability exposure in a condo. Who is legally liable? Is it the unit owner or the association? First is legal liability, and what follows here is a very, very short course on legal liability.

Legal liability is liability imposed by the courts or statute on any person or entity responsible for injury or damage to another party. Those obligations can arise from intentional acts, unintentional acts, or contract. Now, obviously not all those are insurable or fully insurable, but those are where legally liability can come from.

Understand that legal liability is not the same thing as being negligent. You can actually be negligent without being legally liable because in order to be legally liable, there have to be damages. There must be cause and effect – a lack of a superseding event – so you

can actually do something that is negligent or considered negligent, but you might not, depending upon the events that follow that act, be held legally liable.

On the opposite side of that, you can actually be held legally liable without being personally being negligent. It's called vicarious liability. I'm responsible for the actions of my children; employers are responsible for the actions of their employees; and so on and so forth. So even if I didn't do it myself, I could be held responsible and legally liable for the actions of someone else.

When we're looking at legal liability and we're looking at who we can assign blame to, the association and the unit owners are mutual beneficiaries. That being said, problems can arise because of who is assigned the blame. For example, if liability is placed on the association, there is a potential assessment problem. We had the assessment problem on the property side, but we also have an assessment potential under the liability side.

The association may assess the unit owners when there is a deductible in the CGL or there is insufficient coverage. But the unendorsed HO-6 limits assessment on the liability side to $1,000.

But remember, the policy can be endorsed to increase the assessment coverage; but check your edition dates and check the wording on the policy to make sure that it will cover a deductible assessment. Prior to the 05/11 edition of the loss assessment endorsement, the amount to cover an assessment due to a association deductible could not be increased.

If liability is placed on and assigned to the unit owner, there might be a limits problem. How much coverage did the unit owner purchase? Did they have $100,000 in coverage or $300,000? Maybe it’s $500,000? Do they have an umbrella policy? Did they have enough to cover the liability assignable to them?

The fun part is joint liability – what if the association and the unit owner are jointly liable? How might the association management manage it? Can they require higher limits of all unit owners? It might depend on how much liability is assignable to each party and the coverage limit gap between the association and the unit owner.

Let's assume a loss of $750,000, where the unit owner and the association are found to be jointly liable for the injury. If the association has $1 million coverage and the unit owner has $300,000 coverage, the unit owner is underinsured by $75,000. They're only going to get $300,000 but they owe $375,000 based on that 50-50 split of $750,000.

The association, in this situation, is OK except they might have the situation where they have a deductible in assessing the unit owners, but the unit owner might not have

enough coverage and some of that joint liability might depend on the concept and the application of the concept of joint and several liability.

With joint liability, any tortfeasor, any wrongdoer can be held responsible for the entire loss. Several liability means that each party is responsible for each share of fault. That way, they don't get overcharged, they don't get hit with somebody else's fault, and they also don't escape their own fault. Again, joint means one party can be held responsible for all, and several means that each party is responsible for its own.

There are seven states known as pure joint and several liability states which means that each defendant is responsible or can be held responsible for the entire amount – the deep pockets. The design or the hope behind pure joint and several liability is that the injured party is made whole. They don't care from whom – they get it from the party that has the deepest pockets – but there are only seven states with this.

There are 29 states that have modified joint and several liability laws where one tortfeasor could potentially be held responsible for the entire amount if they're liable beyond a certain point. And then there are 14 states that have pure several liability which means that each party shares the cost based on their percentage of fault.

If we are in a state that's a pure several liability state and it's determined that they are at fault 50-50 on a $750,000 loss, the unit owner, from the example above, is underinsured by $75,000. That way, they're not relieved of their actions. Now the injured party might have to go after them personally because they don't have enough insurance, but insurance is to finance what you are responsible for personally.

As we've mentioned before, Appendix A links to all the state condo laws. And there is also Appendix B which lists which states are pure joint and several liability, purse several liability, and modified joint and several liability.

And I know now you're going to tell me, "Yeah, but they are additional insureds on the CGL policy, using CG 20 04." Yes, you're correct about that. When you read the additional insured endorsement, it covers liability arising out of the ownership maintenance and repair. There's not necessarily anything about use, there is no particular extension for the actions of the unit owner, even on behalf of the association. There could still be joint liability even with the attachment of the additional insured endorsement.

Now let's discuss to whom we can or might assign blame. This is based on two questions:

1. Where did the injury occur?

2. Who caused the injury?

Regarding the first question – where did the injury occur – a large percentage of the time, the answer will point to who will most likely be held liable.

The second question – who caused the injury – may actually change the result of the assignment of liability when we ask, where did the injury occur? If the injury occurred on a common element – remember that a common element is owned in common by and beneficial to all members of the association – liability will most likely, I won't say for sure every time, but will most likely be assigned to the association because it occurred on property on which they are responsible.

Remember, the additional insured endorsement extends protection to the unit owner for ownership, maintenance, or repair; that's all they have coverage for. What if the unit owner causes the injury? That's a whole different question.

If it's just something the association didn't do like they didn't properly maintain the property, didn't keep it up, or whatever – causing somebody to trip and fall, or if the association left a hole unprotected and somebody falls into it on common elements, that is going to be an association problem.

When dealing with limited common elements, this is where it gets a little fuzzy. It's somewhat the same as common elements, but there are some gray areas. What about those elements that qualify as limited common elements that serve only one unit owner? Remember when we learned earlier about stairs and stoops and balconies and patios and decks? The association is responsible for the care and maintenance of those limited common elements which could make for a reasonable argument that the association is responsible for any liability or any injury that occurs on them, but that is going to depend on the situation.

You can't say for sure simply because it's on the common element or limited common element that it is going to be the association. What happens if it's on the balcony? Remember that picture of the balcony?

Here are a couple of examples to think about:

1. You have guests over? Years ago, in the house I lived in – for our purposes, let's say it's a condo – we had some friends over and were out on the deck. Their little boy was going inside, and on his way in, he trips on something on the deck and falls into the house. Who is responsible for that?

2. Let's say we're all on that same balcony and one of your guests who's had a beer or two or twelve, is walking from the deck into the unit, and they trip and fall. Who is responsible for that?

The fact is that I can't tell you for sure. It might be joint liability, but I don't know and neither do you. It depends on the specifics of the case, but as these examples show, there are some gray areas that must be considered.

If the injury occurs within the unit property, it is more than likely going to be the unit owner's responsibility which leads us back to the question, "Did the unit owner buy enough coverage and did you offer them the coverage they needed to buy?" And asking the next question – who caused the injury – could ultimately change the answer as well.

A quick disclaimer here – this cannot be construed as legal advice. Every claim is different, this is but an overview of the possible assignment of fault/negligence. Dependence should not be placed on this review. As I've stated before, you need to check the specific situation and every situation is different.

As I mentioned throughout this discussion, there are two appendices at the end of this document – Appendix A listing the condo statutes for every state and Appendix B listing all of the pure joint and several liability, pure several liability, and modified joint and several liability states. Also included at the end of this document is a list of questions asked during a recent Virtual University webinar about condos which you might find interesting.

I appreciate the time you've taken to read this document, and if you have any questions about what we've covered, please feel free to visit www.independentagent.com/VU to research the topic further. If you are a member of the Big "I", you can use the Virtual University's Ask An Expert service to ask your condo question, or you can reach out to us at VirtualUniversity@iiaba.net.

APPENDIX A – CONDO LAWS BY STATE

Alabama	35-8 and 8A
Alaska	34.08
Arizona	Title 33; Chapter 9
Arkansas	18.2.13
California	Civil Code; Div. 4, Pt. 5
Colorado	38.33
Connecticut	47.825 and 47.828
Delaware	25.22 and 25.81
Florida	Title XL Chap. 718
Georgia	44.3.3
Hawaii	3.28.514A, 514B, 514C
Idaho	55.15
Illinois	765.605, 610, 615
Indiana	32.25
Iowa	Title XII; Chapter 499B
Kansas	58.46
Kentucky	Title XXXII; Chap. 381.8--(Horizontal Property Law)
Louisiana	RS9:1122 to 9:1124
Maine	33.10
Maryland	Real Property; Title 11
Massachusetts	Part II; Title I; Chap. 183A
Michigan	Chapter 559
Minnesota	Chapters 515, 515A, 515B
Mississippi	89-9
Missouri	Title XXIX Chap. 448
Montana	70.23
Nebraska	76-801 to 76-894
Nevada	Title 10; Chaps. 116, 116A, 116B, 117
New Hampshire	Title XXXI; Chap. 356B
New Jersey	46:8B
New Mexico	47. 7, 7A, 7B, 7C, 7D
New York	RPP 9-B.339-D to 339-KK
North Carolina	47C
North Dakota	47-04.1
Ohio	Title 53; Chap. 5311
Oklahoma	60-501 to 60-530
Oregon	Vol. 3; Ch. 100
Pennsylvania	Title 68; Part II; Subpart B
Rhode Island	34-36; 34-36.1
South Carolina	27-31
South Dakota	43-15A
Tennessee	66-27
Texas	Property Code; Title 7.82
Utah	57-8
Vermont	27-15 and Title 27A
Virginia	Title 55; Chaps. 4.1 and 4.2
Washington	64-34
West Virginia	36A and 36B
Wisconsin	Property; Chapter 703
Wyoming	34-20

Links provided through Justia Law.

APPENDIX B – JOINT AND SEVERAL STATES LISTING

Pure Joint and Several Liability	Pure Several Liability	Modified Joint and Several Liability
Alabama	Alaska	California
Delaware	Arizona	Colorado
Maryland	Arkansas	Hawaii
Massachusetts	Connecticut	Idaho
North Carolina	Florida	Illinois
Rhode Island	Georgia	Iowa
Virginia	Indiana	Louisiana
	Kansas	Maine
	Kentucky	Minnesota
	Michigan	Mississippi
	Tennessee	Missouri
	Utah	Montana
	Vermont	Nebraska
	Wyoming	Nevada
		New Hampshire
		New Jersey
		New Mexico
		New York
		North Dakota
		Ohio
		Oklahoma
		Oregon
		Pennsylvania
		South Carolina
		South Dakota
		Texas
		Washington
		West Virginia
		Wisconsin

Pure Joint and Several Liability

Each tortfeasor is responsible for the entire amount of the damage regardless of the percentage of fault. The impetus is on the tortfeasors to gain contribution from other at-fault parties. This is the least common rule of contribution.

Pure Several Liability

Each tortfeasor is responsible only for his/her/its percentage of liability. The injured party is responsible for pulling in all the potentially at-fault parties.

Modified Joint and Several Liability

The middle ground between Pure Joint and Several and Pure Several. In these states, a tortfeasor can be held responsible for the entire amount of the damages only if he/she/it is at fault beyond a certain percentage. This is the most common rule of contribution.

ABOUT THE AUTHOR

Christopher J. Boggs, CPCU, ARM, ALCM, LPCS, AAI, APA, CWCA, CRIS, AINS, is the executive director of the Independent Insurance Agents & Brokers of America (the Big "I") Virtual University. He joined the Big "I" team in November 2016. His current duties involve researching, writing, and teaching property and casualty insurance coverages and concepts to Big "I" members and others in the insurance industry.

During his 29-year insurance career, Boggs has authored nearly 1,000 insurance and risk management-related articles on a wide range of topics as diverse as Credit Default Swaps, the MCS-90, and enterprise risk management. Additionally, Boggs has written 15 insurance and risk management books:

- *The Insurance Professional's Practical Guide to Workers' Compensation: From History through Audit*, now in its second edition;
- *Business Income Insurance Demystified: The Simplified Guide to Time Element Coverages*, now in its third edition;
- *Property and Casualty Insurance Concepts Simplified: The Ultimate 'How to' Insurance Guide for Agents, Brokers, Underwriters and Adjusters;*
- *Wow! I Never Knew That! 12 of the Most Misunderstood and Misused P&C Coverages, Concepts and Exclusions;*
- *Insurance, Risk & Risk Management! The Insurance Professional's Guide to Risk Management and Insurance;*
- *Workers' Compensation: How You Can Effectively Answer Your Clients 12 Most Commonly Asked Questions;*
- *Workers' Comp: Practical Answers to the Most Common Workers' Comp Questions*
- *Homeowners' Coverage: Managing Your Client's Most Valuable Asset*
- *Glossary of Insurance Terms;*
- *Choosing the Best Risk Financing Option;*
- *Writing Property and Liability Coverage for Condos;*
- *The Truth about Enterprise Risk Management;*
- *The Experience Mod Worksheet;*
- *What has ISO Done to us Now?* and
- *Cancellations, Non-Renewals & Conditional Renewals: THE Insurance Professional's Guide to Statutory Insurance Carrier Notification Requirements for All 50 States!*

In addition to his responsibilities at the Big "I", Boggs is a regular speaker at industry events including the National Association of Mutual Insurance Companies (NAMIC), the National Society of Insurance Premium Auditors (NSIPA), the American Association of Managing General Agents (AAMGA), the Institute of Work Comp Professionals (IWCP), and the Chartered Property Casualty Underwriter (CPCU) Society. He has also earned numerous professional accolades including the 2017 Institute and Faculty of Actuaries (IFoA) Brian Hey Prize and the 2019 Casualty Actuarial Society (CAS) Charles A. Hachemeister Prize as part of a of collaboration with a diverse group of industry professionals.

His professional background includes work as a risk management consultant, loss control representative, insurance producer, claims manager, journalist and columnist, and quality assurance specialist.

Boggs earned a Bachelor of Science degree in journalism at Liberty University in Lynchburg, Virginia, and holds nine professional designations.

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