

MANN REPORT

A LESSON IN CONDOS & CO-OPS

RESIDENTIAL

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No Insurance = No Entry

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As a property owner, there are many things you can do to manage risk. Contractors are one of the most common causes of property damage and large general liability claims for co-op, condominium, and building owners. How do you manage the risk posed by hiring a contractor?

1. Hold Harmless Agreement

Each contractor, whether hired by the Board of Directors, individual homeowner, or building owner, should be required to sign a Hold Harmless Agreement. This is an agreement that the contractor will be responsible for any bodily injury or property damage resulting from the contractor's negligence. In New York State, you can be sued by injured employees of contractors you hire and held liable under New York State Labor Law, which places almost total liability on the building owner(s). If you have a contract with the contractor, then generally it will contain Hold Harmless wording. You can visit www.AIA.org for sample contracts or have an attorney draw something up. Please check with your attorney, but generally Hold Harmless wording will include:

- Contractor shall indemnify, hold harmless, and release the Owner from any and all liability from any cause whatsoever that results directly or indirectly or arising from the work or services pursuant to this agreement.

2. Certificate of Insurance

Never hire an uninsured contractor. Contractors or repairpersons on your premises are a significant source of liability. They are responsible for properly protecting their workers, other subcontractors, and members of the public while performing their work. They are also responsible for securing the work area during non-work hours. A Certificate of Insurance should contain the policy types in effect, the insuring companies, the effective and expiration dates of coverage, and the policy numbers and limits. The main coverage to look for is General Liability. General Liability will provide coverage for Bodily Injury and Property Damage. Bodily Injury would be someone getting injured as a result of the work or work area. Property Damage would be damage to the building or someone else's property because of the work being performed. The General Liability limit should be at least \$1,000,000 per Occurrence with a \$2,000,000 Aggregate. Depending on the type and extent of the job, a Commercial Umbrella should be required. A Commercial Umbrella provides excess liability coverage. Another very important coverage to look for on the Certificate of Insurance is Workers Compensation. New York State Law requires an employer to maintain Workers Compensation in the event that they have any employees on payroll. If the contractor does not carry Workers Compensation and your Workers Compensation Company audits you, the contractor's

payroll may be added to your payroll. The Workers Compensation costs for contractors can be somewhere along the lines of \$10 per \$100 of payroll, so a \$50,000 payroll could increase your Workers Compensation premium by \$5,000. In addition, if an employee of the contractor is injured and they do not maintain Workers Compensation, you may be responsible for their injuries. In either of the above cases, your costs increase substantially.

In a co-op or condominium, not only should the Board of Directors require a contractor to supply a Certificate of Insurance prior to beginning work, but so should each individual shareholder or unitowner. Just the other day in a co-op that my agency insures, a plumber removed a toilet bowl in one of the units and forgot to turn off the shut off valve. At some point, the flushometer activated and flooded an entire line of units and the lobby. The contractor does not have insurance. The bylaws contain a Waiver of Subrogation Clause, which restricts the co-op from subrogating against the shareholder. To make matters worse, the claim may also have mold consequences. One of the shareholders expressed concerns that the water penetrating the ceiling and walls might have created a mold condition. The shareholder contacted the health department and they are requiring the co-op to test the apartment to ensure a clean environment. The co-op cannot test that one unit without testing the other four units that were affected by the water. The testing is going to cost approximately \$2,500. In the event that it is determined that mold has resulted, the clean-up costs could easily range into the \$25,000 range. What should have been covered under the plumber's insurance policy is now being covered by the co-op's insurance policy. You can bet that their insurance premiums will increase next year!

3. Additional Insured Status

On any Certificate of Insurance, the property owner and management firm should be listed as an Additional Insured on the General Liability policy. This is critical. Obtaining a Certificate of Insurance is just proof that the contractor has insurance. In the event of a claim in which the property owner is not listed as an Additional Insured, there is a good chance that they will have to seek reimbursement from their own insurance company and then their insurance company would have to subrogate against the contractor's insurance company. This could take years and the claim will be on the property owner's record until the insurance company subrogates successfully.

If you forget everything else, remember No Insurance = No Entry. ■

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