Queen's Landing Council of Unit Owners, Inc.
Insurance Update, 06/05/2009

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A number of changes have taken place over the past year that affect how insurance coverage is written for condominium associations in the state of Maryland:

1) The return of unit coverage in the Master Policy, absent improvements and betterments made by units owners other than the developer:

This past year was a landmark one in terms of legislative and financial issues affecting condominium associations throughout the State of Maryland, beginning with a decision rendered by the Maryland Court of Appeals (Maryland's highest court) on April 15, 2008, and upheld on appeal on June 10, 2008. The consolidated case involved two condominium associations that sustained similar loss circumstances:

1) Damage was contained to the unit where the loss originated.

2) The affected unit owners attempted first to seek recovery under the Association's Master Policy.

3) The respective Associations declined to file the loss.

4) The Property losses fell below the Associations' master policy property deductible.

5) Each unit owner then went to Erie, the HO-6 carrier for both owners, who paid both losses less the HO-6 policy deductible.

After hearing arguments on both cases, the Court of Appeals ruled "the Maryland Condominium Act does not require the council of unit owners to repair or replace property of an owner in an individual condominium unit after a casualty loss." The basis of the Court ruling is its conclusion that the Maryland Condominium Act requires the unit owner to make all repairs to the unit regardless of the cause of the damage.

Because most Maryland insurance agents, the carriers with whom we write business, and the vast majority of attorneys, believed that the Court's ruling was based less on the Maryland Condominium Act's insurance provision (§11-114,

which calls for coverage of the common elements and units absent improvements and betterments made by unit owners) and more on the maintenance provision (§11-108, the obligation to maintain, repair, and replace being a unit owner's responsibility, notwithstanding the lack of language "following a casualty loss") area representatives from the Maryland Legislative Action Committee, the Maryland Insurance Department, Independent Agents and Brokers, as well as Chris Manougian and myself, began a year-long effort to reverse the Court's decision legislatively.

I am very pleased to report that on May 19, 2009, Governor Martin O'Malley signed both House Bill 287 and Senate Bill 201 which effectively returns the Maryland Condominium Act's insurance provision back to its original intent, to include insurance coverage for the common elements *and units*, absent improvements and betterments made by unit owners. The Maryland Insurance Department considered the law "emergency legislation" and as such, the new law took effect June 01, 2009, rather than this coming October.

(Unit coverage is defined as everything originally conveyed by the developer, including floor coverings, fixtures, cabinets, counters, appliances, but no improvements <u>any</u> owner has made and, of course, contents are never covered.)

2) Automatic shift of the property damage deductible to unit owner*/**

In addition to the return of required unit coverage, the law also allows for an *automatic* shift of the Master Policy deductible (up to $5,000) to the unit owner where a loss originates. It is important that unit owners advise their HO-6 carrier of this important change**, so that if a loss occurs within your unit you can have the deductible covered under your HO-6 policy, less that policy's deductible. Most HO-6 carriers are covering the deductible under the policy's loss assessment coverage form, while some cover it under the Dwelling/Coverage A form; ask your carrier how they can cover your deductible responsibility.

It is important to note, that because the law is new, some HO-6 carriers may not yet fully understand the unit owner's statutory obligation. We encourage you to take a moment to contact your HO-6 carrier now, before you sustain a loss, to make sure that your policy includes loss assessment coverage and that it will cover the Master Policy deductible if you are obligated to pay it. If you have a carrier that is unwilling to cover your deductible, please have them contact us for clarification.

* The Board and management should note that the deductible for losses that originate from a common element should still be paid by the Association as a common expense.

** Because Queen's Landing passed a bylaw amendment several years ago that already makes owners responsible for paying the property damage deductible when a loss originates in a unit, this law does not change how the deductible should be handled, but owners are reminded that through the bylaws and now statutorily, owners are responsible for covering the Master Policy deductible ($5,000) when a loss originates in their unit, and you should still contact your HO-6 carrier to make sure you are covered for your responsibility.

3) Fannie Mae changes/need for HO-6

It is also important to know, too, that Fannie Mae (FNMA) has changed its lending requirements to go one step beyond Single Entity coverage. Because many loans are sold to or are assumed by FNMA, and banks may elect to follow the FNMA Selling Guide, it is important to also note this lending change notwithstanding the new Maryland law explained above.

Effective March 1, 2009, Fannie Mae is requiring (on all new or refinancing loans; existing loans are exempt) Walls-In or what the insurance industry calls "All-In" coverage, which is unit coverage, plus improvements and betterments. Because your bylaws do not call for All-In coverage (and the Maryland Condominium Act requires only Single Entity which is, again, unit coverage absent improvements and betterments), lenders <u>may</u> require that owners procure this type of coverage under the HO-6/Dwelling A form in an amount equal to 20 percent of the appraised value; i.e., a unit that appraises at $750,000 (fair market) would require Dwelling coverage of $150,000.

Regardless of changes in the lending community, we encourage all owners to secure HO-6 coverage to protect themselves against what the Master Policy does not cover (contents, improvements and betterments, loss assessment, loss of use, loss of rental income, personal liability).

4) Increased Fidelity Requirements

Another bill was signed into law during this last legislative session, as well, and as of October 01, 2009, associations in Maryland will be required to carry Fidelity (Crime/Employee Dishonesty) coverage in an amount equal to three (3) months' worth of the gross common charges (assessments), plus 100 percent of the investments (reserves). The community's Fidelity limit will be reviewed and adjusted if necessary at the August 31, 2009, renewal.

Should you have any questions, please contact me:
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