

# TECHNICAL ADVISORY

**TA 342**

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**SUBJECT:** Condominium Loss Assessment Coverage ... E&O ... Ethics Dilemma?

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**BACKGROUND:** Certain endorsements are essential for condo or homeowners' associations. The endorsement adding additional loss assessment coverage is ALWAYS discussed, as is the endorsement to amend the condo policy from named perils to open perils. Enhancing the range of perils allows the insured a greater opportunity to access their loss assessment coverage. Increasing loss assessment coverage permits an insured protection for larger assessments.

## **MAIN POINTS:**

### **How Much Loss Assessment Coverage is Enough?**

How much of ANY coverage is enough, is the real question? When I was an agent, we ALWAYS added the HO 04 35 Loss Assessment Coverage endorsement to increase the \$1,000 provided under the policy to whatever the current ISO "maximum" amount obtainable was. All three of the ISO HO editions – 91/2000/2011 only provide a base coverage of \$1,000 for property loss assessments and \$1,000 for liability loss assessments. All editions of the ISO HO policy use the same endorsement number: HO 04 35. The HO-91 and 2000 call it Loss Assessment Coverage and the HO-2011 calls it Supplemental Loss Assessment Coverage. With any of the ISO HO editions, it seems that the average limit available is \$50,000 but I "hear" some carriers allow \$100,000 for cheap money.

Increasing loss assessment coverage is very inexpensive, considering the alternative. In the last few years I have read about huge association property AND liability claims that were not covered effectively through the commercial policy. If the commercial policy is not sufficient, then we know that some of the uncovered expense will be assessed to the unit owners.

If you are not offering the maximum amount of loss assessment coverage available under your carrier's rate filing, then you are not proficiently servicing your clients.

Whether the bylaws tell the association to cover the building as a "whole" regardless of whether areas are individually owned or commonly owned or the master policy has an "all in" endorsement, I believe that most associations are underinsured. Underinsured losses will result in loss assessments. These loss assessments can generally be covered by the HO-6 Unit Owner policy if both the increased loss assessment endorsement and open perils endorsements are added.

Loss assessment coverage provides "peace of mind" for the unit owner as well as the insurance agent. Not offering the maximum amount of coverage could result in an E&O claim, as that coverage is widely available and affordable and WHY didn't THIS client HAVE it!

### **Loss Assessment Coverage and ...Ethics**

What does loss assessment coverage have to do with ethics? Consider two claim examples:

A large agency that specializes in condo associations insures an association that had a huge loss. My agency insures three unit-owners in that association. Each owner accepted our offer and have \$100,000 loss assessment. They just received a letter from the association board relaying a message from the large agency.... you should increase your loss assessment coverage now even though the loss happened back in 7/2017. Is the loss assessment coverage trigger the association's assessment or the fire that resulted in the need for an assessment?

A client owns a condo that was totally destroyed by fire. At the time of the fire our insured had no property or liability coverage in place. They, along with other condo owners, are involved with a lawsuit to settle the claim with the insurance company and they are likely to receive an assessment from the condo board soon. They are being told by their fellow condo owners that they can and should buy a liability only condo policy with \$50,000 loss assessment NOW (there is no property to insure, the rebuild has not started) so that they will have coverage when the assessment (expected to be \$20,000) is levied. I think I could sell them a condo policy now easily, but I think there is no chance that condo policy will pay a loss assessment caused by a fire years ago. What do you think?

It is "interesting" that the unit owners are being told to add or increase loss assessment coverage...because the agent for the condo association didn't insure the association properly.

If the unit owner increased or added loss assessment coverage TODAY and was assessed a few months or a few years later, could the loss assessment coverage respond?

**HO-2000/2011 Language:**

- 7. Loss Assessment. We will pay up to \$1000 for your share of loss assessment charged during the policy period against you by a corporation or association of property owners, when the assessment is made as a result of direct loss to the property, owned by all members collectively, caused by a Peril Insured Against under COVERAGE A – DWELLING, other than earthquake or land shock waves or tremors before, during or after a volcanic eruption.**

**c. Paragraph P. Policy Period under Section I – Conditions does not apply to this coverage.**

**HO-91 Language:**

- 7. Loss Assessment. We will pay up to \$1000 for your share of loss assessment charged during the policy period against you by a corporation or association of property owners, when the assessment is made as a result of direct loss to the property, owned by all members collectively, caused by a Peril Insured Against under COVERAGE A – DWELLING, other than earthquake or land shock waves or tremors before, during or after a volcanic eruption.**

**Condition 1. Policy Period, under SECTIONS I and II CONDITIONS, does not apply to this coverage.**

The “coverage” language doesn’t care WHEN the actual loss to collectively/commonly owned property happened. The coverage activation date is the date of ASSESSMENT. All the editions require the assessment be a Coverage A – Dwelling peril, hence the need to make Coverage A open perils with the Special Form Coverage A Endorsement HO 17 32.

So, could one buy a policy or increase coverage AFTER a situation to make sure they have loss assessment coverage? The policy language would allow as the activation date is the date of assessment and the coverage states that the Condition of “policy period” which generally requires a LOSS occur during the policy period doesn’t apply to the additional coverage loss assessment.

However, there is another condition in the ISO HO policy called concealment or fraud.

### **ISO HO-2000/2011 Policy:**

#### **Q. Concealment Or Fraud**

**We provide coverage to no "insureds" under this policy if, whether before or after a loss, an "insured" has:**

- 1. Intentionally concealed or misrepresented any material fact or circumstance;**
  - 2. Engaged in fraudulent conduct; or**
  - 3. Made false statements;**
- relating to this insurance.**

### **ISO HO-91 Policy:**

**Concealment or Fraud. The entire policy will be void if, whether before or after a loss, an "insured" has:**

- a. Intentionally concealed or misrepresented any material fact or circumstance;**
- b. Engaged in fraudulent conduct; or**
- c. Made false statements; relating to this insurance.**

If the insured is honest with you, stating what they had been told to buy coverage before the actual assessment by either the condo board, condo association agent, or fellow condo owners, would this clause apply?

#### **Ethics or E&O?**

What if you KNEW the circumstances and still endorse the policy or ISSUE a policy without identifying the clients' conversation of why they wanted such coverage to the insurance company, could that ultimately end up as an E&O claim against your agency? You "knew" the circumstances and never acknowledged the impending loss assessment claim. *Hmmmm...*

And, disregarding a potential EO claim, is it ethical to arrange coverage for such a probable loss assessment claim without duly advising the insurance company?  
*Hmmmmm...*

#### **Problem Solved**

If we ALWAYS propose the maximum loss assessment coverage available, then our insureds won't have to worry when they receive letters from the condo board or

elsewhere regarding increasing coverage to alleviate an inadequately or underinsured condo association.

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