

BLOOMINGTON CHAPTER ONLY JANUARY 10
SJJ LAW PRESENTATION



**HOA LEADERSHIP
NETWORK**

By Board Leaders. For Board Leaders.

Agenda

- ▶ Corporate Transparency Act – Update
- ▶ Insurance Overview for Common Interest Communities
 - ▶ Pre-Loss
 - ▶ Post-Loss

The Corporate Transparency Act

- ▶ **January 1, 2024** – all nonprofit corporations to register Beneficial Owner Information (i.e., HOA Board members) by January 1, 2025
- ▶ **December 3rd**- Texas Federal Court ordered a nationwide injunction of the CTA, halting enforcement of the act, including the Jan 1, 2025, reporting deadline
- ▶ **December 23rd**- Fifth Circuit Court of Appeals stayed the injunction, reinstating the Jan. 1 reporting deadline
- ▶ **December 26th**- the Fifth Circuit reversed its order and vacated the stay of the injunction, once again halting the reporting requirements.



The Corporate Transparency Act

- ▶ As of today, the CTA's reporting requirements are on hold
- ▶ This is not the end of the story, as there will be ongoing developments in the courts, and the incoming Congress and executive branch

Main Take Away

- ▶ Patience & Updates
- ▶ Register Now



Insurance for Common-Interest Communities

► Types of Insurance

- **Property**
- D&O
- Liability
- Workers' Comp.

Two Stages of Insurance

► Pre-Loss

- Setting your community up for success in future claims
- What to look for when buying insurance
- How to pay increasing rates

► Post-Loss

- Knowing how to proceed
- Knowing who to contact
- Performance of the Project
- Paying the Deductible

A grayscale photograph of a hand holding a small, detailed model of a two-story house with a chimney and a balcony. The background is a soft-focus image of a person's face.

Pre-Loss

A PLAN FOR MAINTAINING YOUR PROPERTY.

Understand Your Community

- ▶ INSURANCE OBLIGATIONS PER GOVERNING DOCUMENTS
- ▶ CONDITION OF PROPERTY (PMP)
- ▶ LONG TERM PLANNING (RESERVE)
- ▶ MAINTAINING RECORDS

Who Insures the Property?

- ▶ **Insurance obligations may be different from maintenance obligation**

- ▶ Check Declaration
- ▶ Make sure the insurance coverage properly coincides with Association's responsibilities

- ▶ **MCIOA—515B.3-113**

- ▶ Replacement cost of Common Elements (a)(1)
- ▶ Often replacement cost of Units (b)
 - ▶ If contains units, or structures within units, sharing or having contiguous walls, siding or roofs (i.e. not single-family associations)
 - ▶ Shall include those units, or structures within those units
 - ▶ The insurance need not cover the following items within the units: (i) ceiling or wall finishing materials, (ii) finished flooring, (iii) cabinetry, (iv) finished millwork, (v) electrical, heating, ventilating, and air conditioning equipment, and plumbing fixtures serving a single unit, (vi) built-in appliances, or (vii) other improvements and betterments, regardless of when installed.



Insurance Coverage of Units

- ▶ Can be confusing—even to an insurance agent
- ▶ Insurance will often reference "required by Governing Documents"
 - ▶ Review Declaration
 - ▶ Get attorney opinion if necessary
 - ▶ May require amendment to Declaration
- ▶ Provide resolution from Board clarifying
- ▶ Put, in writing, clear intention and wish of the Board to insurance agent



Understanding Your Insurance Policy

- ▶ DEDUCTIBLE
 - ▶ Base
 - ▶ Wind/Hail
- ▶ COMMON INCLUSIONS/ENDORSEMENTS
 - ▶ Matching
 - ▶ Wear and Tear
 - ▶ Ordinance and Law
 - ▶ Interest Exclusions
- ▶ DEADLINES
 - ▶ Apparent:
 - ▶ 2-year limit to bring suit
 - ▶ Hidden:
 - ▶ Recoverable Depreciation
 - ▶ Notice requirement



How to Pay for Increasing Premiums

- ▶ MAXIMUM ANNUAL DUES INCREASE
 - ▶ Typically, around 5%
 - ▶ Increase dues every year
 - ▶ Inflation, increasing costs
- ▶ SPECIAL ASSESSMENT
 - ▶ Often requires homeowner approval
- ▶ GOVERNING DOCUMENT UPDATE
 - ▶ Increase Annual Cap
 - ▶ Separate Insurance from annual dues cap





Post-Loss

THE PATH TO RESTORATION.

The Claim: Discovery

- ▶ DISCOVERING THE LOSS
 - ▶ Unit Owners
 - ▶ Management Company
 - ▶ Contractors
 - ▶ Public Adjusters
- ▶ WRITTEN NOTICE TO INSURER ASAP

The Claim: Discovery

- ▶ HAVE AN EXPERT INSPECT
 - ▶ Contractor or Public Adjuster
 - ▶ Do your research
 - ▶ Compare to Records
 - ▶ Historical Weather Data
 - ▶ Maintenance History of Building
 - ▶ Personal Knowledge

The Claim: Adjustment

- ▶ ONCE THE CLAIM IS IDENTIFIED:
 - Coordinate adjuster inspection with Property Management or Attorney
- ▶ CONTRACTOR V. PUBLIC ADJUSTER V. ATTORNEY
 - ▶ Preferable to run through management company
 - ▶ Every Claim is different, some require one, some require all three

The Claim: Adjustment

- ▶ BENEFITS OF USING A CONTRACTOR:
 - ▶ Every Claim needs a Contractor
 - ▶ They do the work
 - ▶ They cost the least
 - ▶ Insurance Proceeds Contract
- ▶ Understanding the Coordination of Work
- ▶ Provide a "Counter-Point" to the Insurance Adjuster
 - ▶ Insurance Company will not do the work
 - ▶ Its job is to pay the minimum allowed
 - ▶ Unlike the commercials, they do not always have your best interest in mind
 - ▶ Their shareholders care about the balance sheet
- ▶ Contractor is limited to negotiating price – cannot discuss the policy



The Claim: Adjustment

- ▶ BENEFITS OF USING A PUBLIC ADJUSTER
 - ▶ Can prepare a cost and scope for the loss
 - ▶ Can negotiate the claim and discuss policy language and coverage with the carrier
 - ▶ Expertise in the interplay of damage to the policy coverage
 - ▶ Standard Industry rate is 10% contingency fee on the value of the claim



The Claim: Adjustment

► BENEFITS OF USING AN ATTORNEY:

- Attorneys outsource the price and scope estimate
- The attorney wields the most power
 - Can negotiate the claim
 - Can discuss the policy with the carrier
 - Enforces the policyholder's rights in court
- Standard Fees are a sliding scale on a contingent basis – depending on the dispute
 - 10% if the claim is resolved short of a coverage litigation
 - 30% if there is legal action taken over the claim that we can resolve in the court system
 - Occasionally hourly engagement for discreet tasks



The Claim: Adjustment

- Simple Claim = Contractor
- Coverage Issues, Date of Loss Issues, or Timing issue = Public Adjuster or Attorney
- Most Claims Have all Three



Negotiation, Appraisal, or Litigation

- Negotiation:
 - Price - Contractor
 - Price and Scope of Work - Public Adjuster
 - Price, Scope of Work, and Legal Issues - Attorney
 - Parties work together towards an agreement



Negotiation, Appraisal, or Litigation

- ▶ APPRAISAL:
 - ▶ Can be handled by Contractor, Public Adjuster, or Attorney
 - ▶ Policy and Statutes allow for disputes over the value of the loss to be resolved
 - ▶ Faster and less expensive than court
 - ▶ Panels of experts resolve the dispute
 - ▶ Each side selects its appraiser (contractors, adjusters, or engineers)
 - ▶ Appraisers select an Umpire
- ▶ In Minnesota:
 - ▶ Parties disclose all evidence before appraisal
 - ▶ Inspect the Property
 - ▶ Bring witnesses to testify
 - ▶ Present the claim to a panel
 - ▶ 3-person Panel deliberates
 - ▶ Award is valid with the signature of 2 of 3



Negotiation, Appraisal, or Litigation

► INTEREST:

- Handled by an Attorney
- 10% interest on the award – minus previous payments and the deductible
- Poehler Case

Negotiation, Appraisal, or Litigation

► LITIGATION:

- Handled by an Attorney
- Forces the insurance company to:
 - Appraisal
 - Name an umpire
 - Address a situation in which the carrier won't pay
- Time and Cost may be difficult but will result in the most comprehensive outcome for the policyholders
- Having an attorney from the beginning may avoid contentious litigation
- Let's avoid the courtroom together

ACV or RCV

- ▶ POLICYHOLDER RELEASE
- ▶ CLAIMS PAID ON ACTUAL CASH BASIS
 - ▶ Age, Wear and tear
- ▶ CARRIER WILL REMOVE THE DEDUCTIBLE
 - ▶ Assessments to HO6 Carriers
- ▶ CARRIER WILL PAY THE RECOVERABLE DEPRECIATION UPON COMPLETION OF PROJECT
 - ▶ Time frames and Deadlines
 - ▶ Attorneys can negotiate these deadlines.



Resale Disclosures

- ▶ Resale Disclosure
 - ▶ Statutory Required form when selling a Unit
 - ▶ Contains snapshot of the Association at time of purchase
 - ▶ Minn. Stat. §515B.4-107
 - ▶ In addition to the above, the following matters affecting the occupancy or use of the unit, or the unit owner's obligations with respect to the unit, are deemed material:
- ▶ If there is an ongoing insurance claim, new purchaser should know
 - ▶ Update immediately after making a claim



Deductible Assessments

- ▶ Associations (usually) have the right to assess its Master Deductible to Units (Declaration & Minn. Stat. 515B.3-113)
 - ▶ The association may... assess the deductible amount against one or more of the units affected in any reasonable manner
- ▶ HO-6 (Owners' Policies) often cover this assessment
 - ▶ Important when Master Deductibles are HUGE (5%)



Thank You!

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