

Condominium Insurance Loss Assessment Authority

Condominiums are governed by at least four sets of documents. Those documents are:

N.C. Condominium Act
Articles of Corporation for the HOA
Bylaws for the HOA
Declaration of Condominium (Declaration) for the HOA

Within these documents, there are several areas that are often the primary topic of conversation among homeowners that live in condominium neighborhoods. Those topics include what are common elements, what are Limited Common Elements, what is owned by the unit owner and the process to handle insurance losses and the assessment of routine and non-routine maintenance. The specific legal definitions are in the condominium's Declaration but I have provided a brief definition below:

Definitions:

Common Elements - Common Elements are all portions of a condominium complex except the Unit. This includes the parking lots, the grass and wooded areas around a condominium complex, swimming pools, tennis courts, club houses, sidewalks, stairwells, balconies and the building structure.

Limited Common Elements - Limited Common Elements are those portions of the Common Elements that are enjoyed by a limited number of homeowners. Examples would be the windows, doors, a stairwell, storage closets, sidewalk to one building are all considered to be Limited Common Elements for that building. A unit's windows, exterior doors, balcony or patio would be Limited Common Elements for that one unit owner.

Unit - a Unit is that part of a condominium that is owned by one owner. Vertically this is typically the area within a condominium unit from the finished edge of the ceiling to the heated side of the concrete or wood subfloor. Horizontally this is the finished/heated side of exterior walls, exterior windows and exterior doors. All interior walls are part of the Unit. Plumbing fixtures, light fixtures, floor coverings, fireplaces are typically part of the Unit. Based on this definition, exterior windows and doors are common elements and Limited Common Elements and are not part of the Unit that is owned exclusively by the unit owner.

Negligence - Negligence occurs when a person uses less than **reasonable care** to protect others from harm. Most **personal injury** and similar **tort** cases are based on a claim that one person's negligence has caused another's injury.

A negligence case has four elements:

- a. A **duty of care** that exists between the injured person and the negligent person, requiring the negligent person to act with **reasonable care** to prevent another's injuries;
- b. A **breach** of the duty of care, usually caused by failing to act with reasonable care;
- c. The breach of duty's being the **proximate cause** of the injury. In other words, but for the breach, the injury would not have happened; and
- d. An **injury** caused by the breach of duty. The injury may be physical, mental, emotional, or financial, as long as it is the kind of injury that can be fixed by paying money **damages**.

Note: Definition of negligence found on the internet.

Excerpts from your Declaration of Condominium:

7.1 Common Elements:

7.1 (a). The association is charged with maintaining the common areas of the association. This article grants this power to the homeowners association.

7.1 (b). This article documents that a unit owner would be responsible for damages to common and limited common elements that are a result of negligence on the part of the unit owner or his guests.

7.2. This section addresses common expenses associated with limited common elements or benefiting less than all units. This section basically states that if the association is making repairs to limited common elements, the association shall assess those expenses to the unit owners benefiting from the repairs. The key word is "shall" which means must. This section does give some latitude in not having to assess unit owners for routine maintenance items like pressure washing, building painting.

Assessments for Repairs to Common and Limited Common Elements:

The Declaration usually gives an HOA board of directors the authority to make assessments against homeowners to cover the cost associated with maintaining the Common and Limited Common Elements of the association. This assessment authority could be used to assess every homeowner to help cover the cost of an expense charged against the entire association. There is usually additional language that covers the process in which the Board of Directors can establish an assessment against the entire association membership. This language varies by homeowner association. This authority can also be used to assess less than the entire membership for an expense that is specific to a number less than everyone. The authority to assess a limited number of homeowners is usually due to an expense associated with the repair of a Limited Common Element. This expense could be for one unit, two units or more than two units but less than the entire association.

The Declaration usually states that the Board of Directors “shall” assess a homeowner for repairs or maintenance to a Limited Common Element. Shall means the Board of Directors must assess these homeowners for expenses associated with Limited Common Elements. There is some latitude provided if the expenses are for normal repairs and maintenance such as pressure washing, painting, gutter cleaning, etc.

An example of the board’s authority to assess a homeowner for repairs to a Limited Common Element would be

- a. A unit owner’s entry door has to be repaired or replaced. This door is a limited common element and the unit owner should be assessed for the repairs.
- b. A stairs leading up to the second floor of a condominium building needs repair. These stairs would be considered a limited common element. All owners that use this stairs lot should be assessed for the repairs.
- c. If the association has to make a repair to plumbing, HVAC, or electrical components in the wall, floor or ceiling of a condominium unit, those owners benefiting from those repairs should be assessed for the repairs.
- d. A unit owner’s window has to be replaced or repaired. This window is a limited common element in the unit owner should be assessed for the repairs.
- e. A unit owner’s screen porch screening is torn. This screen porch is a limited common element and the repair expense should be paid by the unit owner.

- f. There is a sewage blockage that is affecting one half of the homes in a condominium building. This sewage line is a limited common element and the repair expense should be assessed to those owners benefiting from the repair (1/2 the unit owners).

If the limited common element that was repaired or replaced was only for the benefit of one unit owner, then that unit owner would bare the entire cost. If the limited common element that was repaired replace was for the benefit of several unit owners (e.g. stairs to 2nd floor), then those benefitting would be assessed for their share of the expense. The Board of Directors would authorize the repair or replacement and the Declaration requires the Board of Directors assess the homeowner for the repair to this Limited Common Element.

Insurance Losses:

An Insurance Loss is defined as damages to a unit as a result of wind, water, fire, vandalism, negligence or theft. Your HOA has purchased a Master Insurance Policy (MIP) for all of the buildings and the common areas of the Association. This policy covers the entire building including the parts of the building owned by the Unit owner. If the Association has to file a claim against this insurance policy, there is a \$5,000.00 (typical) deductible per claim. If the Association is required to file a claim or a unit or units incurs an insurance loss, the unit owner may be responsible for the first \$5,000.00 (typical) in damages. If a unit owner causes damages to adjoining units as a result of negligence or their failure to maintain their equipment in their unit, they may be assessed for the deductible for adjoining units or the total expense to repair all units.

If your home is damaged as a result of a fire or water issue from an adjoining unit AND the damage was not due to negligence by the neighbor, you will be responsible for the repairs to your home less any insurance monies received from the MIP. We have received an attorney's opinion that states the homeowners association does not have the authority to assess your neighbor for damages that may have started in your neighbor's unit but are not considered an act of negligence by your neighbor. The HOA's attorney feels that if you want to pursue legal action against your neighbor for the damages you incurred, it is your responsibility to pursue this with the court system.

Most MIP will cover the contents of your home that were considered to be part of the structure when it was initially built. These contents include but are not limited to appliances, floor coverings, interior doors and trim, cabinets, etc. If you improve your home by installing more expensive appliances or floor coverings (for example), the MIP will not cover these "betterments." Your

personal property is not covered by the MIP. Some examples of personal property would include: furniture, televisions, and clothing.

If you live in a condominium, you should have a "HO6" insurance policy to insure your personal belongings, betterments, provide premises liability and loss assessment coverage in the event of a loss or damage to your property. If you are an investor and rent out your property to a third-party, you should have a policy labeled "Business Owner's Policy (BOP)". BOP's provide the same coverage as HO6 six policies but they typically do not cover the personal property of your renters. The renter should purchase Renters Insurance.

Both homeowner policy types should also provide Loss Assessment Coverage. Loss Assessment Coverage is recommended and may provide you insurance protection in the event your condominium is damaged from wind, water, theft or fire. If your unit incurs an insurance loss, you may be responsible for the MIP deductible. Another example where Loss Assessment coverage would be useful is in the event of a catastrophic loss where the homeowners' association insurance policy does not provide sufficient coverage to repair or replace the building back to its original form. In this case the Board of Directors may vote to assess those unit owners to make up for the shortfall. The amount of this assessment could be unlimited. Please check with your insurance agent on the cost to add loss assessment coverage to your HO6 or Business Owners Policy. Most policies include minimum Loss Assessment Coverage and the amount to increase your coverage is minimal. Most HOAs recommend the minimum Loss Assessment Coverage that you purchase should equal the HOAs MIP deductible. Additional coverage is fairly cheap so you should consider purchasing even more to cover other types of assessments related to insurance losses. Please discuss Loss Assessment Coverage with your insurance agent to ensure your policy will provide you protection for the scenarios listed above.

Loss Assessment Coverage will not provide you any insurance protection for any special assessment the board may assess your home for normal maintenance and repairs.