

Insurance Guide

Prepared by Covington & Burling LLP, in collaboration with the Housing Cooperative Preservation Initiative of Neighborhood Legal Services Program, for educational purposes only.¹

¹ This document is intended to be a reference guide on insurance and risk management for co-op boards. It is not legal advice and does not create an attorney-client relationship between Covington & Burling LLP and anyone who uses this guide.

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Insurance Basics

What is insurance and why do I need it?

- **An “insurance policy” is a contract between the insured (you) and an insurance company.** It says that if you pay the insurer a certain amount of money (the “premium”) then the insurer will pay you if certain things go wrong on your property or at your business. Those bad events can be things like damage to your property, a lawsuit against you, or an injury to one of your employees.
- **Insurance is a way to share risks.** Everyone in a large group of people (“insureds” or “policyholders”) pays a certain amount of money (called a “premium”) to the insurance company. Then, when a policyholder experiences an event that is covered by the policy (for example, a car accident or damage to a roof) the insurance company uses the combined premiums to help pay for the loss, injury or damage.
- Of course, it is always best to try to prevent things from going wrong. Some things, like hail damaging your roof, are outside your control, and that is why you have insurance. But when things are in your control, like repairing a staircase so no one is hurt, you should do what you can to make sure nothing bad happens. **It is better to prevent bad events from happening when you can rather than assuming the insurance company will always pay when you need them to.**

Insurance Basics

What are the different kinds of insurance and which ones do I need?

- **What insurance policies you need depends on what might go wrong with your co-op, your business, or your employees.** The best way to figure out what you need is to make a list of your risks, meaning things that have gone wrong and the things that could go wrong, then work with an insurance broker to pick insurance policies that cover your risks.
- Some of the different kinds of insurance, and what they generally cover, are:
 - **General Liability:** General liability insurance is, basically, litigation insurance. It's insurance for when you are facing a lawsuit. General liability coverage has two parts: a duty to defend and a duty to indemnify. Under the duty to defend, the insurer has to pay for the lawyer defending the lawsuit for you. Under the duty to indemnify, the insurer has to pay for any judgement against you or settlement with the person suing you.
 - **Property:** Property insurance policies cover damage to your property ("property damage"). It may also cover loss of income to your business, if the loss of income is caused by property damage ("business interruption").
 - **Auto Insurance:** Auto insurance is similar to property insurance, but it covers vehicles instead of buildings. It covers damage to your vehicle and injury to people in an accident caused by your vehicle.
 - **Directors and Officers:** This insurance, also called "D&O" is for when someone sues you over how the people in charge are running the business. This would include a co-op board of directors.
 - **Errors and Omissions:** Errors and Omissions insurance, also called "E&O" is for professional liability. It is for malpractice committed by a professional, like a doctor, lawyer, or accountant. This type of insurance might be relevant if you employ a lawyer or accountant to do work for you. You can ask professionals you hire to confirm that they have this insurance.

- **Workers' Compensation:** This insurance is required by state law if you have employees and provides coverage when one of your employees is injured while doing work for you. If you have a property manager or work with independent contractors then they are required to have this insurance for their own employees and you can confirm with them that they do.
- **Employer's Liability Insurance:** This insurance covers lawsuits from your employees regarding injuries in the workplace. If you hire independent contractors, like a management company, then they should have this insurance to cover their own employees.
- **Employment Practices Liability Insurance:** This insurance covers lawsuits brought by employees claiming that you did something wrong relating to their employment, for example discrimination, harassment, or retaliation. It would apply to your own employees; independent contractors would have their own insurance for their own employees.
- **Cyber Liability Insurance:** This insurance covers damages to your business because of hacking and lawsuits from people who say they were harmed because you were hacked. For example, if you have a database storing resident information that gets hacked, this insurance can help.
- **Environmental/Pollution Insurance:** Many policies exclude pollution. However, certain specialized policies cover damage to your own property caused by pollution or liability to others related to pollution on your property. This could be relevant if your property is next to an industrial or formerly industrial area. It is important to understand whether pollution is a concern at your property. If so, you should discuss what insurance you need with your broker.

NOTE:

There are many other kinds of insurance. An individual might want renters or contents insurance to protect their own unit and possessions. An individual might also have health insurance, in case they need to see a doctor, or life insurance, to help their beneficiaries if they pass.

- All the different types of insurance discussed above also fall into other categories. Understanding these categories can help you better understand your insurance and better communicate with your insurer or broker.

- **First Party vs. Third Party**

- First party insurance is for when *you* suffer a loss, for example if there is damage to your property.
- Third party insurance is for when *someone else* was harmed and they are now asking you for money or even suing you. Third party insurance is also called “liability insurance.”
 - Liability insurance can be thought of as “litigation insurance.” The insurer typically pays for a lawyer to defend you against the claim or lawsuit. This is called the “duty to defend.” The insurer also has to pay for any settlement with the person suing you or judgment reached by a court. This is called the “duty to indemnify.”
- One insurance policy might have both first party and third party insurance. For example, homeowners’ property insurance policies have both first party insurance for when there is damage to your property *and* third party insurance for when someone else is injured while on your property.

- **Claims Made vs. Occurrence**

- The trigger of the policy is the event that “activates” the insurance policy. Policies are triggered in two main ways – by a claim or an occurrence.
- **Claims Made Insurance**
 - Claims made insurance is triggered by a third party making a claim against the insured.
- **Occurrence-Based Insurance**
 - An occurrence policy is triggered if the “bad thing” or “occurrence” actually happened during the policy period, even if a claim is made after the policy ends.

EXAMPLE:

Imagine someone was injured on your property three years ago, but they waited to sue you until today. If you had an occurrence-based policy three years ago, then that one is triggered. If you have a claims made policy today, then that one is triggered. If you have both, then they might both be triggered, but each insurer will likely try to make the other insurer pay.

Insurance Basics

What does my insurance policy say?

- Insurance policies aren't always easy to read. **It is important to read the entire policy, because one part of the policy might change another part.**
- **All of the people who pay premiums have the same basic policy.** However, there might be changes to your policy that are specific to you. These changes, sometimes called "endorsements" can increase or decrease coverage.
- Parts of the insurance policy:
 - **Declarations Page**
 - The declarations page gives basic information about the policy, **it can answer all of these questions:**
 - Who is the insurer?
 - Who is the policyholder (also called the "insured")?
 - What time period does the policy cover?
 - What is the policy number?
 - How much coverage does the insurer provide? This is also called the "limits". Your policy might have different limits for different losses (called "sublimits"). For example, your limits could be \$100,000 for hail damage but only \$50,000 for sewer backup.
 - How much (if anything) the policyholder might have to pay before the insurer pays anything. These amounts are called deductibles or retentions.
 - How much is the premium?
 - **Coverage Grants**
 - The coverage grants (also called "insuring agreements") say **what is covered.**

- The coverage grants may be very broad - for example, they might say that all “property damage” is covered. But, the definitions, endorsements, or exclusions might limit what is covered.
- **Definitions**
 - The definitions section tells you what the words in your policy mean.
 - The definition of a word in the policy might be different from how you would normally use that word.
 - **The definitions may change what the policy covers, so it is important to read them.** For example, the policy will define “insured” or “policyholder” to tell you who is (and is not) covered under the policy.

NOTE:

Your property manager or onsite facility managers may, or may not, be covered under your policy. Outside contractors, like plumbers or electricians you hire, should have their own insurance. You can ask to be covered by a contractor’s policies for losses or damage caused by that contractor. This means you are an “additional insured” under the contractor’s policy and you have the right to get coverage from the contractor’s insurance.

- **Exclusions**
 - Exclusions say what is ***not covered***. If the coverage grant is an entire pie, exclusions are pieces cut out of that pie.
 - Insurers sometimes exclude: flood damage, normal wear and tear, pollution, lead, and/or asbestos.
- **Conditions**
 - Conditions explain what you have to do in order to get coverage. For example, you may have to tell the insurer promptly if you think the insurer should pay for something. Generally, you cannot spend insurance money without telling your insurer about it first.
 - **Your policy might have important deadlines, including when you have to tell the insurer about a bad event that has happened.** If you miss a deadline the insurer might say that it doesn’t have to pay. We

explain below how the insurer might respond to a claim under a policy and what you can do about it. ***Keep in mind that the insurer is not always right.***

- **Endorsements**

- An endorsement is an attachment to a policy. It can change ***any*** part of the policy and can increase or decrease coverage. It is important to read endorsements.
- Endorsements can change what the declarations say, how a word is defined, what an exclusion excludes, the policy limits, or anything else. An endorsement can even change another endorsement.

Insurance Claims

How do I know whether I should make a claim?

- **Anytime anything goes wrong, consider making a claim.** Better to make a claim and be denied than lose coverage by not making a claim.

TIP:

Make a cheat sheet saying what your policy covers, when your policy requires you to give notice, and who you need to contact.

When do I make a claim?

- You should tell your insurer about any potential claim as soon as possible, even if you do not yet have all of the information or know what repairs might cost.
- The policy will probably have language telling you when to make a claim and what information you need to include. **You should read this carefully and follow it exactly.**

Which insurers should I tell about my claim?

- If you're not sure, notify all insurers that might possibly have to provide coverage. This is also a good question to ask your broker.
- Remember that more than one policy can cover the same event, and different policies might cover different parts of the same event. So, you might have to notify more than one insurer.

Insurance Claims

What do I put in my notice?

- When making a claim, you send a written letter to your insurer, telling it about the issue and asking for coverage. This letter is called a “notice.”
- The notice should always be in writing. You may be able to send it by email, but your insurer might also require a hard copy. Sometimes you need to provide notice by telephone; this typically happens if there is a cyber event like a hacking.
- Your notice should say what you know about what happened. You should say what happened, how it happened, when it happened, and where it happened. You should describe the type and location of any damage. You should also include names and contact information for any injured people or witnesses.
- **Always be honest in all communications with your insurer**, including in the notice. *But, do not guess about things you don't know.* If you don't know what caused the injury, how bad the injury is, or why someone is suing you, don't guess. Stick to the facts only.
- If there is a lawsuit filed against you, you should include copies of all legal documents along with the notice.
- If there is a lawsuit, make sure to ask for an attorney in your notice letter.

NOTE:

In addition to giving notice to your insurer, you should also contact the police, if there has been a crime.

You should also do whatever is needed to prevent more damage or injury. **Make sure to keep track of any costs because the insurer may be required to pay for those costs!**

- Pick one person, and make them responsible for all communications with the insurer(s). They should be in charge of all information about the claim. If you have conversations with the insurer (or someone called “an adjuster”) you should keep notes of that discussion.

- **Keep track of all documents and expenses.** That includes receipts, letters, calls, invoices, and emails. When in doubt, keep something. Always ask all vendors for the most detailed receipt, information, or quote that they can provide in writing and keep it in your files.
- In addition to the notice, your policy may also require you to send a “proof of loss.” This may need to be notarized. Your policy probably lists the information that needs to be included in the proof of loss. This likely includes: time of loss, cause of damage, what other insurance you have, repair estimates, and a list of property damaged.
- In some cases, the insurer may be entitled to interview you, the policyholder, under oath about the loss.

Interacting With Insurers

What happens after I make a claim?

- After you send the notice letter to make an insurance claim, your insurer will do one of three things:

1. Accept Coverage

- Your insurer may respond to your letter and agree that you have coverage. If they do this, they will agree to pay for the damage or cover defense costs for the lawsuit.

2. Reserve Rights to Deny Coverage

- Your insurer may write you a letter saying that they will cover the claim for now *but* they reserve the right to deny coverage later, either in whole or in part. **This is the most likely response from your insurer.**
- You may want to respond to this letter and ask your insurer to reconsider.
- If your insurer reserves the right to deny coverage for a lawsuit, you may have the option to choose your own defense counsel, but you should still confirm your choice with your insurer.
- If the insurer says that you might have to reimburse them for defense costs, you should write back and object to that in writing.
- Your insurer may say that the repairs should cost less than your contractor's estimate. You should ask your insurer to give you the name of a licensed contractor who will provide a lower price in writing.

3. Deny Coverage

- Your insurer may write you a letter and say that your claim is not covered by the policy. You should read their letter carefully and check to see if it has any errors. **Don't assume that the insurer is correct on the facts or on the language in your insurance policy.**
- You may want to respond and ask the insurer to reconsider its position. If your insurer denies coverage but they do not give any reasons, you should write back and ask for their reasons in writing.

- **Information Requests**

- Unless your insurer denies the claim, they are likely to ask you for more information. **You should provide the information that they request unless your lawyer tells you not to.** Make sure to keep a copy of what you provide to your insurer and a record of when you provided it.
- Do not give an insurer who has denied your claim any information unless they accept coverage. The insurer is supposed to investigate the claim and then make a decision. The insurer can't deny the claim first and then gather more information to support the denial.

Will my premium go up?

- Maybe. **But you should make a claim regardless.**
- When you get an insurance policy, you have to fill out application forms. Those forms will ask for information about past events whether or not you made a claim to an insurer about that event. So, since the insurer will learn about what happened either way, the best choice is to make the claim and get coverage. That is why you pay premiums!
- Remember: **Always provide complete and truthful answers on all insurance applications.**

Interacting With Insurers

How do I buy insurance and what is an insurance broker?

- You can buy insurance directly from the insurance company. You may have seen ads on TV advertising specific insurance companies, like the GEICO gekko. You should call around to a few insurance companies to get quotes. If you call an insurance agent (like your “State Farm” or “Allstate” agent), that agent only works for one insurance company and will only sell you that company’s insurance.
- You can also work with an insurance broker to buy insurance. An insurance broker works for you, not for the insurance company. The broker’s job is to understand what types of policies are available and how much they cost to find the one(s) that best match your needs. The insurance broker receives a percentage of your premium (a “commission”) as payment for arranging the insurance.
- **You may or may not be able to negotiate over what is in the policy.** If you increase your coverage (for example, get a higher limit, or insure two buildings instead of one) then you might pay a higher premium. If you decrease coverage (for example, by accepting an exclusion) you might be able to pay a lower premium. But there may be parts of the policy that you cannot negotiate over.