

Smith Buss & Jacobs LLP

*Leaks, Fires, & Construction Damages
Are You and Your Co-op or Condo Ready for the
Next Crisis?*

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Are you (shareholders and unit owners) carrying the right insurance?

- ▶ What if your neighbor's toilet overflows due to a burst pipe, or their dishwasher leaks due to a burst hose? What if your dishwasher leaks, damaging your neighbor's property?
- ▶ What if a fire destroys your apartment and you need to live elsewhere for a year?
- ▶ What if a carpet installer trips on your rug? What if the painter falls off a ladder while painting your ceiling?
- ▶ What if a slow leak through the exterior wall finally causes your ceiling to collapse.



Homeowners Insurance Coverage

- ▶ Property insurance covers casualties
- ▶ Liability insurance
- ▶ Housing costs
- ▶ Loss assessments



Property Insurance

- ▶ Casualties v. repairs
- ▶ Damage to personal property, improvements and betterments (alterations)
- ▶ Flash points

Clause Comparison - Insurance

- ▶ Condo: The Board of Managers shall be required to obtain and maintain, to the extent obtainable, the following insurance: fire insurance with extended coverage, water damage, vandalism and malicious mischief endorsements, insuring the Building (but not including floors, subfloors, interior or partition walls, improvements and betterments to individual Units, appliances, built-ins (such as kitchen cabinets), fixtures and HVAC units to the point that they connect to the building systems within the walls, furniture, furnishings, or other personal property of Unit Owner), together with all of the Building's heating, air conditioning and other service machinery contained therein but not covered by a Unit Owner's own insurance, covering the interest of the Condominium, the Board of Managers and all Unit Owners and their mortgagees as their interest may appear, in an amount equal to the full replacement value of the Building.
- ▶ Individual Unit Owners are required to carry homeowners insurance covering damage to their floors, subfloors, interior or partition walls, improvements and betterments to individual Units, appliances, built-ins (such as kitchen cabinets), fixtures and HVAC units to the point that they connect to the building systems within the walls, furniture, furnishings, or other personal property of Unit Owner, and liability insurance covering any personal injury or property damage occurring within their Unit and property damage outside their units caused in whole or in part by such Unit Owner, in such amounts and covering such risks as the Board of Managers may reasonably require. All such policies shall contain waivers of subrogation with respect to the Condominium.

Clause Comparison - Insurance cont.

- ▶ Co-op: **The Lessee**, at the Lessee's own cost and expense, **shall obtain** and keep in full force and effect throughout the term of this lease (a) personal liability insurance against any and all claims for bodily injury, death or property damage (including, but not limited to, loss due to water damage) occurring in, upon, adjacent to or connected with the apartment or any part thereof, with a minimum limit of liability of \$1,000,000 per occurrence for bodily injury (including death) and/or property damage, and (b) Lessee's property damage **insurance** as respects property damage occurring in, upon, adjacent to or connected with the apartment or any part thereof (including, but not limited to, loss due to water damage), **such insurance to include coverage for improvements and betterments made by Lessee or a predecessor in interest, Lessee's personal property, decorations or any other installations that Lessor is not obligated to repair under Paragraph 4,** on a replacement cost basis, with a minimum limit of \$100,000. The insurance required above shall be written in form reasonably satisfactory to the Lessor by good and solvent insurance companies of recognized standing, admitted to do business in the State of New York with an AM Best Rating of not less than A- VII. The Board shall have the right to designate and modify the minimum amounts, coverages, maximum deductibles and related components of such insurance from time to time as amendments to the House Rules.

Clause Comparison - Restoration

- ▶ Condo: In the event of damage to or destruction of the Building as a result of fire or other casualty.... the Board of Managers shall arrange for the prompt repair and restoration of the Building (but not including floors, subfloors, interior or partition walls, improvements and betterments to individual Units, appliances, built-ins (such as kitchen cabinets), fixtures and HVAC units to the point that they connect to the building systems within the walls, furniture, furnishings, or other personal property of Unit Owner), together with all of the Building's heating, air conditioning and other service machinery contained therein but not covered by a Unit Owner's own insurance....
- ▶ Co-op: If the apartment or the means of access thereto or the Building shall be damaged by fire or other cause or casualty covered by multiperil policies commonly carried by cooperative corporations in New York City, the Lessor shall at its own cost and expense, with reasonable dispatch after receipt of notice of the damage, repair or replace or cause to be repaired or replaced (with materials of a kind and quality then customary in buildings like the Building) the Building, the apartment, and the means of access thereto, including the walls, floors, ceilings, pipes, wiring and conduits in the apartment so as to conform substantially to the plans and specifications for the apartment under which the Building was originally constructed. Anything in this Section 4 or the balance of this Lease to the contrary notwithstanding, Lessor shall not be required to repair or replace any appliances, equipment, pipes, conduits, wiring, fixtures, furniture or furnishings installed by the Lessee or any of Lessee's predecessors in title, or any decorations or personal property of Lessee. The term "decorations" in the preceding sentence should be understood broadly to include, without limitation, paint, tile work, wallpaper and flooring, regardless of whether the decorations have been installed by Lessee (or a predecessor in interest) or are part of the original installations of the apartment. Any other damage shall be repaired by Lessor or Lessee pursuant to Paragraphs 2 and 18 of this Lease, as the case may be.



Liability Insurance

- ▶ Personal injury and property damage to others
- ▶ Housing costs
- ▶ Loss assessments by co-op or condo

How much insurance should you carry?

- ▶ What size deductible is right for you?
- ▶ When should you make a claim?
- ▶ Deductible v. pseudo-deductible

Can your Co-op or Condo force you to carry homeowners insurance?

(a) All Lessees shall obtain property and liability insurance covering the furniture, fixtures and equipment in the Apartment, all alterations and improvements made by Lessee (or Lessee's predecessors in interest) to the Apartment, and the Lessee's interest as a Lessee under the Proprietary Lease. The policies shall be written by companies licensed to do business in New York State and shall provide that they shall not be cancelled except upon 15 days notice to the Corporation and its managing agent. The Corporation, c/o its managing agent, shall be designated as the holder of an "Additional Interest" under the policy.

(b) Such insurance shall include the following types of coverages in at least the following limits:

- ▶ Liability insurance for bodily injury and property damage in the combined single limit coverage amount of not less than \$500,000 per occurrence;
- ▶ Personal property insurance, and Improvements and betterments insurance covering the property that Lessee is required to restore in the event of damage to the Apartment, and any alterations made to the Lessee's Apartment by Lessee or Lessee's predecessors in interest, in an amount so as to avoid coinsurance or as otherwise determined by the Board;
- ▶ \$10,000 loss assessment coverage by the Corporation; and
- ▶ (iv) Loss of Use coverage for reasonable additional expense if the Apartment becomes untenable.

(c) The deductible for such insurance shall not exceed \$1,000 or such other amount as the Board of Directors may authorize from time to time.

(d) All insurance shall provide (i) a waiver of rights of subrogation between the Corporation and the Lessee; (ii) that there will be no cancellation of any policy without prior notice to the Corporation; (iii) for a waiver of the invalidity of the insurance because of the acts of the shareholder or the Corporation; and (iv) for a waiver of a pro-rata reduction if the Lessor procures relevant additional coverage.

(e) Each Lessee shall furnish a copy of the policy or a certificate evidencing the policy to the Corporation within thirty days after the date of enactment of this House Rule, and shall furnish a certificate of renewal of the policy upon request by the Corporation, but in any event before the prior policy expires. All new Lessees shall present a policy or certificate showing such insurance at the closing of their purchase.



IS YOUR CONTRACTOR CARRYING THE RIGHT INSURANCE?

- ▶ How do you deal with the insurance for a proposed construction contract, either for the Association or for an alteration by individual owners?

Associations need to check the insurance coverage for all contractors doing work for the building and for individual owners.

What is Risk Rocket?

- ▶ Risk Rocket is a proprietary insurance verification and analysis system designed for General Contractors, Developers and Real Estate Owners that DO NOT want to rely solely on the Certificates of Insurance their Sub Contractors or Contractors provide.





Suggested New York coverages

- ▶ Coverage for lawsuits from injured workers against you [“actions over”].
- ▶ Coverage for injuries or property damage to other units due to acts of contractor.
- ▶ “Completed Operations” coverage post-completion.
- ▶ Workers Comp., Disability
- ▶ Primary and Non-Contributory
- ▶ Indemnity traps

Association needs to check the insurance coverage for contractors doing work for individual owners. Management should have a process in place

Model Indemnification Language

- ▶ ***To the fullest extent permitted by law***, the Contractor will defend, indemnify and hold Owner, the ***Owner's Managing Agent, the Architect*** and their directors, members, officers, employees, representatives, consultants and agents (the "Owner Parties") harmless from and against any and all claims, loss, (including attorneys' fees, witnesses' fees and all court costs), damages, expense and liability (including statutory liability), resulting from injury or death of any person or damage to or loss of any property and caused in whole or in part by acts or omissions of the Contractor or arising out of any negligent or wrongful act, error, omission, breach of any statute, code or rule or breach of contract, in connection with the entry onto or operations of the Contractor, its subcontractors and sub-subcontractors at the premises known as _____, _____, NY. The foregoing indemnity shall include the injury to or death of any employee of the Contractor or subcontractor and shall not be limited in any way by the amount or type of damages claimed, or compensation or benefits payable under any applicable Workers Compensation, Disability Benefits or other similar employee benefits acts, or the basis for the claim of liability on the part of the Owner Party (including, without limitation, liability incurred by reason of the operation of New York Labor Law Section 240 and 241 and statutes of like import). Contractor shall maintain the insurance required by Owner for the term of the Work, and Contractor's insurer shall tender a defense to any claim on behalf of the Owner Parties.
- ▶ ***Notwithstanding the foregoing, Contractor is not required to indemnify a particular Owner Party to the extent it is determined that the Owner Party actual negligence on the part of the Owner Party caused or contributed to the underlying claim. In that event, indemnification will be provided to the extent of any loss or liability imposed over and above that percentage attributable to actual fault of the Owner Party.***
- ▶ The provisions of the Contract Documents relating to the indemnification from one party to the other party shall survive any termination or expiration of the Contract. Additionally, any provisions of the Contract Documents which require performance subsequent to the termination or expiration of the Contract shall also survive termination or expiration.

EXHIBIT "G" – Sample Certificate

SAMPLE CERTIFICATE OF LIABILITY INSURANCE		PAGE 1 DATE (MM/DD/YYYY)
PRODUCER Your Broker Address City, State, Zip	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	
INSURED Sub Contractor's Name Address City, State, Zip	INSURER A: A. M. Best rating of A- or better	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GENERAL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	Policy Number Must include: - Additional Insured – Including Completed Ops - Primary & Non-Contributory - Per Project Aggregate - Waiver of Subrogation	(MM/DD/YY)	(MM/DD/YY)	EACH OCCURRENCE FIRE DAMAGE (Any one fire) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS – COMP/OP AGG	\$ 1,000,000 \$ 50,000 \$ 5,000 \$ 1,000,000 \$ 2,000,000 \$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Policy Number	(MM/DD/YY)	(MM/DD/YY)	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	\$ 1,000,000 \$ \$ \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY – EA ACCIDENT OTHER THAN AUTO ONLY EA ACCIDENT AGGREGATE	\$ \$ \$
A	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION	Policy Number Must follow form of: - GL, Auto & WC Policies	(MM/DD/YY)	(MM/DD/YY)	EACH OCCURRENCE AGGREGATE	\$ 5,000,000 \$ 5,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE <input type="checkbox"/> INCL <input type="checkbox"/> EXCL	Policy Number Must include: - Waiver of Subrogation	(MM/DD/YY)	(MM/DD/YY)	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT E.L. DISEASE – EA EMPLOYEE E.L. DISEASE – POLICY LIMIT	\$ 500,000 \$ 500,000 \$ 500,000
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
All operations performed under Project <Insert Project Name> by or on behalf of Subcontractor. (See attached description)

CERTIFICATE HOLDER General Contractor Name Street Address City, State, Zip	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE SIGNATURE
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INITIAL GC _____

INITIAL SUBCONTRACTOR _____

Certificate of Insurance Warning Signs

SAMPLE CERTIFICATE

PAGE 2

DATE (MM/DD/YYYY)

DESCRIPTIONS (Continued from previous page)

Additional Insured: The following are included as Additional Insureds (per ISO endorsement Form CG2010 0704 and CG 2037 0704) with respects to General Liability.

Primary & Non-Contributory Insurance: As respects the General Liability Policy, the Additional Insured coverage afforded shall be Primary & Non Contributory for all Additional Insureds, and any other insurance maintained by such Additional Insureds shall be excess only and shall not be called upon to contribute with this insurance.

Waiver of Subrogation: Waiver of Subrogation is also provided in favor of the following Additional Insureds with respects to General Liability & Workers Compensation.

Additional Insureds, including their directors, officers, employees, subsidiaries and affiliates:

1. General Contractor
2. Job specific additional insureds (i.e. Owner, Architect, etc.)

Certificate of Insurance Warning Signs

INITIAL GC _____

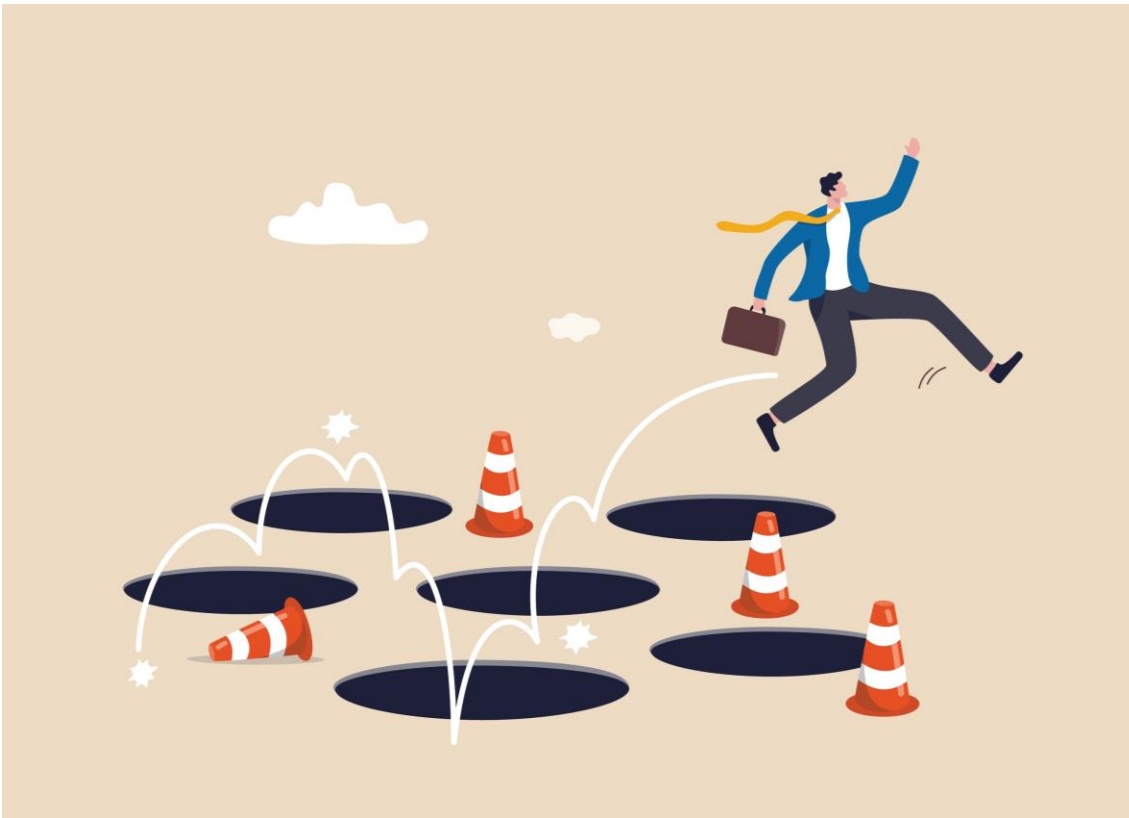
INITIAL SUBCONTRACTOR _____



Is your Co-op or condo association ready for the next crisis?

- ▶ “Actions over” issues
- ▶ Cyber liability
- ▶ Discrimination claims
- ▶ “Surfside” consequences

Emerging risks and ongoing pitfalls



- ▶ Failure to notify insurer of potential claims when applying.
- ▶ Exclusions for frequent leaks/water damage.
- ▶ Carrying business interruption insurance covering adequate time to complete repairs.

Conclusions



- ▶ Find out what property insurance you need to have covered within your own apartment.
- ▶ Get your own liability insurance.
- ▶ Associations should make sure the contractors doing work in the building have “actions over” coverage.