



STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
ADVISORY OPINION

Subject: Association insurance requirements for common-interest communities with units divided by horizontal and/or vertical boundaries.	Advisory No. 20-03	3 pages
	Issued By:	Real Estate Division
	Amends/Supersedes	N/A
Reference(s): NRS 116.3113, NRS 116.31133, NRS 116.31135, NRS 116.2102	Effective Date: 04/02/2020	

QUESTION:

What is the extent of an association's obligation to maintain property insurance in common-interest communities with shared horizontal or vertical boundaries separating units?

SHORT ANSWER:

With few limitations, NRS 116.3113(2) requires an association to maintain property insurance coverage on units within the community if they are divided by horizontal boundaries described in the declaration, or by vertical boundaries that comprise common walls. The insurance must be reasonably available and does not need to include improvements installed by owners, but must be subject to reasonable deductibles.

ANALYSIS OF THE ISSUE:

From the inception of NRS 116 in 1991, association insurance requirements included an obligation to insure not just the common element building in a condominium project, but also the unit itself. In 2011, NRS 116.3113(2) was amended to incorporate changes made to the Uniform Common Interest Ownership Act (Uniform Act) from which NRS 116 comes. NRS 116.3113(1)(a) and (2) state as follows:

1. Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available and subject to reasonable deductibles, all of the following:

(a) Property insurance on the common elements and, in a planned community, also on property that must become common elements, insuring against risks of direct physical loss commonly insured against, which insurance, after application of any deductibles, must be not less than 80 percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land,

excavations, foundations and other items normally excluded from property policies.

...

2. In the case of a building that contains units divided by horizontal boundaries described in the declaration, or vertical boundaries that comprise common walls between units, the insurance maintained under paragraph (a) of subsection 1, to the extent reasonably available, must include the units, but need not include improvements and betterments installed by units' owners.

The inclusion of vertical boundaries to Subsection 2 was part of Senate Bill 204 (2011) (SB204). SB204 was a massive bill presented to the Nevada Legislature as an update to NRS 116 to include changes made to the Uniform Act in 2008. There was no discussion about this particular change in the 2011 legislative minutes. However, the Uniform Act does include comments about what it means. The comments to the Uniform Act describing Subsection 2 above state as follows:

[The change] significantly expands the mandatory property and casualty coverage that associations must carry on units. The original Act mandated that units be covered by the association's policy only if they were separated by "horizontal boundaries" - that is, where units in a building were "stacked" above or below one another, as in a high rise building. The 2008 amendment extends this mandatory coverage to townhouse projects or other units that share a common wall between units.

Based on this comment, it is clear that units are intended to be covered by association policies for condominiums and for projects with only a vertical shared wall between units. The requirement to insure the unit means the association does not only insure the common element building or wall, but also the interior unit. The statute does say the insurance must be "reasonably available." The insurance may not be reasonably available if there are problems with the building, which makes the units difficult to insure. If the insurance is not reasonably available, the association must notify the owners promptly pursuant to NRS 116.3113(3). Insurance requirements are mandatory under NRS 116, so any decision by the association that required insurance is not "reasonably available" must be documented and supported.

NRS 116.2102 provides for the boundaries of a unit and provides that all spaces, interior partitions and other fixtures and materials constituting any part of the finished surfaces within the boundaries of a unit are a part of the unit. All of the unit should be included in the association's insurance. The Uniform Act provides that personal property items that are easily moveable within the unit or easily removeable from the unit would not be included, like a vase, table or other furnishings.

The insurance for the units does not need to include "improvements and betterments installed by units' owners." This typically refers to upgraded flooring installed by the owner, but could include any improvement made by the owner after the unit was built and sold. The coverage for the unit must include the unit's original construction as it

existed when it was sold by the declarant. Owners will still want to maintain their own insurance for their personal property and any improvements they made themselves.

The Uniform Act comments support the approach of one policy for the building and the units saying “it will greatly simplify claims procedures, particularly where both common elements and portions of a unit have been destroyed.” Noting that when “common elements and units are insured separately, the insurers could be involved in disputes as to the coverage provided by each policy.”

NRS 116.31133(1)(a) further requires that each unit owner is an insured person under the policy with respect to liability arising out of the unit’s owner’s interest in the common elements or membership in the association. The insurance policy must waive rights to subrogation against a unit owner or household member, and the association’s policy is primary to the extent other insurance in the name of the owner covers the same risk as the association policy. NRS 116.31133(1)(b) and (d). An insurer shall issue certificates or memoranda of insurance to any unit owner upon request and the policy may not cancel or not renew until 30 days’ notice to the owners. NRS 116.31133(3).

The law does not require the association to provide a schedule about the specific insurance coverage provided, but a prudent association would make it very clear to the unit owners what its policy will cover in terms of fixtures, improvements, and betterments in the units, including standard coverings for walls, floors and ceilings. This sort of disclosure will make it easier for the unit owner to obtain insurance to cover what is not covered and avoid any dispute about coverage in the event of a covered loss.

ADVISORY CONCLUSION:

To the extent reasonably available and subject to reasonable deductibles, associations must maintain property insurance on buildings and units when the units are separated by horizontal boundaries, as in a condominium, or vertical boundaries, i.e. a common wall. Pursuant to NRS 116.31135(1), with minimal exception, “any portion of the common-interest community for which insurance is required under NRS 116.3113 which is damaged or destroyed must be repaired or replaced promptly by the association.” If, at the time of a loss under the policy, there is other insurance in the name of a unit’s owner covering the same risk covered by the policy, the association’s policy provides primary insurance. Coverage for the unit must include restoring the unit to its condition when it was sold by the declarant. Associations need not include coverage for improvements or betterments installed by the owner or the personal property of the owner. If damage to the unit is proven to have been caused by the willful misconduct or gross negligence of the unit’s owner, tenant or invitee, the association may assess that expense exclusively against the unit, even if the association maintains insurance with respect to that damage. Associations would be wise to make it very clear to all owners what is included in the insurance coverage to avoid confusion.