



MATTHIESEN, WICKERT & LEHRER, S.C.
Hartford, WI ❖ New Orleans, LA ❖ Orange County, CA
❖ Austin, TX ❖ Jacksonville, FL ❖ Boston, MA
Phone: (800) 637-9176
gwickert@mwl-law.com
www.mwl-law.com

CONDOMINIUM/CO-OP WAIVER OF SUBROGATION LAWS IN ALL 50 STATES

The development of condominium and cooperative housing arrangements has accelerated over the years following the Fair Housing Act of 1968, which authorized the use of mortgage insurance on one-family units in multi-family structures. With ever-increasing real estate prices and the proliferation of these housing arrangements, property insurance claims involving fire and/or water damage to multi-unit dwellings such as *condominiums* (“condos”), *cooperative apartment units* (“co-ops”), and *planned unit developments* (“PUDs”) are becoming commonplace. Effective subrogation of those claims requires a working understanding of the biggest obstacle to successful recovery efforts – a waiver of subrogation provision contained either (1) in the building’s by-laws and/or property insurance policy, and/or (2) in the unit owner’s insurance policy.

A condo is a multiple-unit dwelling in which there is separate and distinct ownership of individual units and joint ownership of common areas. A cooperative apartment house, on the other hand, is usually owned and managed by a corporation, and the “shareholders” are tenants who lease their apartments from the corporation. While they are different, each is a form of multiple-unit dwellings, with independent owners or lessees of the individual units comprising the multiple-unit dwelling who share various costs and responsibilities of common areas. Most states have laws which prescribe the property insurance coverage which must be included in a policy covering a multi-unit dwelling such as a condo or co-op.

Condo and/or co-op association boards often require all unit owners to purchase liability insurance. If Unit A suffers water damage from a leaking water supply valve in Unit B that is above it and the damage is repaired by Unit A’s insurance company, Unit A’s insurance company will want to subrogate against the liability carrier for Unit B. However, if the lease or by-laws contains a clause by which each unit agrees to waive subrogation against other units, successful subrogation becomes problematic. A waiver of subrogation clause may be included in a condo or co-op proprietary lease or by-laws. A waiver of subrogation endorsement may also be included in the insurance policy of a unit owner or a condo or co-op corporation. These waivers are usually given effect, but not beyond the extent of its plain meaning. Quite often, a waiver of subrogation is only effective when both the lease/by-laws and the subrogating insurance policy contain effective waiver of subrogation language. Not all condo/co-op leases and by-laws require waivers of subrogation and, where they do, the parties covered by the waiver are not always the same.

In 1982, the National Conference of Commissioners on Uniform State Laws (“ULC”) promulgated the Uniform Common Interest Ownership Act (“UCIOA”), a model set of laws to govern condo, co-op, and PUD communities in the U.S. The UCIOA succeeded and subsumed the earlier Uniform Condominium Act (1977), the Uniform Planned Community Act (1980), and the Model Real Estate Cooperative Act (1981). In 2008, the ULC established amendments to UCIOA, along with a new Common Interest Owners Bill of Rights Act (“UCIOBORA”), which was meant to serve as a stand-alone Act which states could pass when it was not feasible to enact all of the UCIOA. The UCIOA is a comprehensive Act that governs the formation, management, and termination of common interest communities, whether that community is a condo, planned community, or real estate co-op. In 1994, the ULC promulgated a series of amendments to UCIOA. The 1994 amendments did not change the general

structure or format of the original Act but were designed to reflect the experience of those states that had adopted UCIOA (or one or more of its predecessor Acts), and scholarly commentary and analyses surrounding the Act.

After the origin and cause of damage to a condominium unit has been ascertained, it is necessary to review the applicable insurance policies, the association’s by-laws, and the applicable state’s condominium association laws. These will allocate the responsibility between liability between unit owners and the association, as well as outline the applicable coverages.

This chart contains a general overview of state law regarding waivers of subrogation in condo and/or co-op by-laws, leases, and insurance policies.

STATE	INSURANCE REQUIREMENTS RE: WAIVERS	STATE STATUTORY / CASE LAW INVOLVING WAIVERS OF SUBROGATION
ALABAMA	Association’s insurance policy must contain waiver of subrogation against any unit owner or member of household.	Alabama’s Uniform Condominium Act § 35-8A-313(d)
ALASKA	Associations must maintain property and liability insurance, but the insurance policy must waive subrogation against a unit owner or member of the household of a unit owner.	Alaska Stat. § 34.08.440(d)(2)
ARIZONA	Associations must maintain property and liability insurance, but the insurance policy must waive subrogation against a unit owner or member of the household of a unit owner.	A.R.S. § 33-1253(d)(2)
ARKANSAS	No language barring condo associations’ right to subrogation.	A.C.A. § 18-13-117 of the Horizontal Property Act
CALIFORNIA	Condo associations are responsible for maintaining common areas. Unless otherwise provided by the condo declaration, each unit owner is responsible for maintaining their own interest. No waiver of subrogation requirement. Section 4775 currently states that unless otherwise provided in the covenants, conditions & restrictions (CC&R), a community association is responsible for repairing, replacing, or maintaining the common area, other than exclusive use common area. The homeowner of each separate interest is responsible for maintaining their separate interest (their unit or home) and any exclusive use appurtenant (attached or next to) their separate interest. Statute has addressed who is responsible for maintenance, repair, and replacement of the common area. “Exclusive use common area” is merely common area which an owner has the exclusive right to use. Unless otherwise provided in the declaration, the association is responsible for maintaining, repairing, and replacing the common area, the owner of each separate interest is responsible for maintaining, repairing, and replacing the separate interest, and the owner of the separate interest is responsible for maintaining the exclusive use common area appurtenant to the separate interest while the association is responsible for repairing and replacing the exclusive use common area.	West’s Ann. Cal. Civ. Code § 4775

STATE	INSURANCE REQUIREMENTS RE: WAIVERS	STATE STATUTORY / CASE LAW INVOLVING WAIVERS OF SUBROGATION
COLORADO	Associations must maintain property and liability insurance, but the insurer must waive its rights to subrogation against a unit owner and any member of his/her household.	Colorado Common Ownership Act, C.R.S.A. § 38-33.3-313(d)(b)
CONNECTICUT	Associations must maintain property, commercial general liability, fidelity, and sometimes flood insurance, but the insurer must waive its rights to subrogation against a unit owner and any member of his/her household.	Connecticut Common Interest Ownership Act, C.G.S.A. § 47-255(d)(2)
DELAWARE	Associations must maintain property insurance, liability insurance, and fidelity insurance, but the insurer must waive its right to subrogation against a unit owner and any member of his/her household.	Del. Uniform Common Interest Ownership Act, 25 Del. C. § 81-313(d)(2) Courts, however, have said that anti-subrogation agreements do not bar third parties from suing negligent condo owners as joint tortfeasors. <i>Firemen's Ins. Co. of Washington, D.C. v. Fire-Free Chimney Sweeps, Inc.</i> , No. 2010 WL 1268158 (Del. Super. 2010).
DISTRICT OF COLUMBIA	Unless condo instruments expressly state otherwise, the association will provide property insurance and liability insurance. However, the insurer waives its rights to subrogation under the policy against the unity owner or any member of his/her household.	D.C. Code § 42-1903.10(e)(2)
FLORIDA	Every property insurance policy that is intended to protect the condo must provide primary coverage for all portions of condo originally installed and any alterations. Subrogation is determined by the insurer's policy and applicable association's by-laws. Any portion of the condo property that must be insured by the association against property loss that is also damaged by an insurable event must be repaired as necessary by the association as a common expense.	Fla. Stat. § 718.111(11)(f) and exceptions in (j). Every property insurance policy intended to protect the condominium is required to provide primary coverage for all portions of the condominium property as originally installed or any alterations of like kind and quality. The condominium master policy or association bylaws govern subrogation of property insurance claims. The association must repair any portion of the condominium property insured by the association and damaged by an insurable event. Section 718.111(11)(j) does not provide a condominium unit owner with a private right of action against another unit owner for the tortious conduct of the latter's tenants. <i>Universal Property & Casualty Ins. Co. v. Loftus</i> , 276 So.3d 849 (Fla. App. 2019).
GEORGIA	Associations must have casualty insurance policies and liability insurance policies. Subrogation waivers are not mentioned in the statute.	O.C.G.A. § 44-3-107
HAWAII	Associations must maintain property, commercial general liability, and a fidelity bond. Waiver of subrogation is not discussed in the statute.	Haw. Rev. Stat. § 514B-143
IDAHO	No language barring condo associations' right to subrogation.	Idaho Code § 55-1517

STATE	INSURANCE REQUIREMENTS RE: WAIVERS	STATE STATUTORY / CASE LAW INVOLVING WAIVERS OF SUBROGATION
ILLINOIS	Associations are required to maintain property insurance, general liability insurance, and fidelity bonds. Each unit owner is an insured person under the policy. Additionally, the insurer waives its right to subrogation under the policy against any unit owner or members of the unit owner's household and against the association and members of the board of directors. The unit owner also waives his or her right to subrogation under the association policy against the association and the board of directors.	765 I.L.C.S. § 605/12
INDIANA	Associations must have a general casualty policy and a liability policy that shall cover unit owners and those entitled to occupy units. The statute does not contain language regarding waiver of subrogation rights.	I.C. § 32-25-8-9
IOWA	Statute on condo insurance does not mention subrogation.	I.C.A. § 499B.16
KANSAS	Statute on condo insurance does not mention subrogation.	K.S.A. § 58-3125
KENTUCKY	Associations shall maintain property insurance and liability insurance. These insurance policies require that: each unit owner is an insured person with respect to liability arising out of their interest in the common elements in the association, the insurer waives its right to subrogation under the policy against any unit owner or member of their household, no act or omission by any unit owner, unless acting within the scope of his/her authority on behalf of the association, will void the policy or be a condition to recovery, and the association's policy provides primary insurance.	K.R.S. § 381.9187
LOUISIANA	Associations shall maintain property insurance and comprehensive general liability insurance. These insurance policies require that: each unit owner is an insured person with respect to liability arising out of their interest in the common elements in the association, the insurer waives its right to subrogation under the policy against any unit owner or member of their household, no act or omission by any unit owner, unless acting within the scope of his/her authority on behalf of the association, will void the policy or be a condition to recovery, and the association's policy provides primary insurance.	La. R.S. § 9:1123.112
MAINE	Associations must maintain property and liability insurance for the common elements. Additionally, it is required that the insurer waive its right to subrogation under the policy against any unity owner of the condo or members of their household.	33 M.R.S.A. § 1603-113

STATE	INSURANCE REQUIREMENTS RE: WAIVERS	STATE STATUTORY / CASE LAW INVOLVING WAIVERS OF SUBROGATION
MARYLAND	Associations must maintain property of common elements and general liability insurance. Additionally, the statute requires the insurer waive subrogation rights against any unit owner of the condo and members of their household. The statute also says that a unit owner may obtain insurance for their own benefit.	Md. Code Real Property § 11-114 (adopting parts of the Uniform Common Ownership Act).
MASSACHUSETTS	Rebuilding of the common areas due to fire or other casualty loss shall be carried out in the manner set for by the condo by-laws. No subrogation waiver requirement. Waivers of subrogation in by-laws do not apply to tenants.	M.G.L.A. 183A § 17 <i>Pacific Indemnity Company v. Deming</i> , 2016 WL 3607028 (1 st Cir. 2016) (applying Massachusetts law).
MICHIGAN	Association by-laws may contain provisions for insuring the co-owners against risks affecting the condo but must also allow each unit owner to obtain their own insurance. There is nothing in the Michigan Condominium Act pertaining to waiver of subrogation.	M.C.L.A. § 559.156
MINNESOTA	Associations shall maintain property insurance and general liability insurance as to the common elements. Insurance policies must waive rights to subrogation against any unit owner or members of their household and against the association and the board of directors.	M.S.A. § 515A.3-112(c)(2)
MISSISSIPPI	Mississippi condo law does not address insurance requirements or waivers of subrogation.	M.C.A. § 89-9-1
MISSOURI	Associations shall maintain property insurance and general liability insurance on the common elements. Policies covering condo properties must waive subrogation against unit owners and members of their household.	Mo. Rev. Stat. § 448.3-113.4(2)
MONTANA	Premiums for insurance on the building are common expenses and the association must allow unit owners to obtain their own insurance. However, nothing in the statute mentions waiver of subrogation.	Mont. Code Ann. § 70-23-612
NEBRASKA	Associations shall maintain property insurance and general liability insurance on the common elements. The insurer must waive subrogation rights against unit owners and members of their households.	Neb. Rev. Stat. § 76-871(d)(2)
NEVADA	Associations' insurance policies must insure each unit owner in regard to the common elements. The insurer also must waive right of subrogation against unit owners and members of their household.	N.R.S. § 116B.570

STATE	INSURANCE REQUIREMENTS RE: WAIVERS	STATE STATUTORY / CASE LAW INVOLVING WAIVERS OF SUBROGATION
NEW HAMPSHIRE	Associations must maintain master casualty policy for common areas. However, nothing in the statute requires a waiver of subrogation.	N.H. Rev. Stat. Ann. § 356-B:43
NEW JERSEY	New Jersey has not adopted the Uniform Common Interest Real Property Act. Title 46 discusses the responsibilities of a condo association; however, subrogation is not mentioned. See N.J.S.A. § 46:8B-14 Duties of the Association and § 46:8B-24.	<p>Condo owner sued association for water damage from leaking pipe in common area. By-laws required unit owners to carry insurance with waiver of subrogation. The court denied recovery because the by-laws contemplated that there would be no litigation between unit owners and the association based on damage to the condo units or the personal property contained in them. <i>Schoolhouse Commons at Union Ave. Condo Assoc. v. CCTS Tax Liens I, LLC</i>, 2012 WL 95593 (N.J. App. 2012).</p> <p>Subrogation waiver in condo by-laws precluded unit owner’s insurer from subrogating against uninsured upstairs neighbor and condo association. <i>Skulskie v. Cepenon</i>, 962 A.2d 589 (N.J. Super. A.D. 2009).</p> <p>N.J.A.C. § 46:8B-14 Duties of the Association and § 46:8B-24.</p>
NEW MEXICO	Associations must maintain property insurance and liability insurance as to the common elements. Each unit owner must be an insured person under the policy and the insurance company must waive subrogation rights against any unit owner or member of their household.	N.M.S.A. § 47-7C-13 (1978)
NEW YORK	Associations shall, if by-laws or majority require, insure the building against loss or damage. There is no waiver of subrogation requirement in the statutes, but it has been somewhat addressed through case law.	<p>Requirement in condo by-laws that, if individual owners acquired insurance “for their own benefit,” such insurance had to contain waivers of subrogation against condo board of managers, was enforceable, and even if individual owners breached by-laws by acquiring insurance lacking waiver provisions, insurers were precluded from subrogating. <i>Agostinelli v. Stein</i>, 794 N.Y.S.2d 759 (N.Y. App. 2005).</p> <p>Where provision in by-laws provides that: “[a]ll policies of physical damage insurance” that the board is required to obtain and maintain under this section of the by-laws “shall, if possible, contain waivers of subrogation,” did not require waivers and did not prevent subrogation by the condo association against the unit owners. <i>Admiral Indemnity Co. v Johnson</i>, 137 N.Y.S.3d 331 (N.Y. Sup Ct. 2020).</p> <p>N.Y. C.L.S. Real P. § 339-bb</p>
NORTH CAROLINA	Associations shall maintain property insurance and liability insurance on the common elements. The insurance policy must waive subrogation rights against any unit owner and member of their household.	N.C.G.S.A. § 47C-3-113
NORTH DAKOTA	No waiver of subrogation required.	N.D.C.C. § 47-04.1

STATE	INSURANCE REQUIREMENTS RE: WAIVERS	STATE STATUTORY / CASE LAW INVOLVING WAIVERS OF SUBROGATION
OHIO	Unless otherwise provided by the by-laws, the board of directors shall insure all unit owners and their tenants against liability for personal injury and property damage relating to the common elements. There is no requirement of waiver of subrogation.	Ohio Rev. Code Ann. § 5311.16
OKLAHOMA	No waiver of subrogation required.	60 Okla. Stat. Ann. § 526
OREGON	If association by-laws require unit owners to obtain insurance for their units, the by-laws also must contain a provision requiring the association to maintain property insurance and liability insurance. The association's insurance shall also waive subrogation as to any claims against the association.	O.R.S. § 100.435
PENNSYLVANIA	Associations must maintain property insurance and general liability insurance on the common elements and units. Insurer must waive rights to subrogation against any unit owner and member of their family.	68 Pa. C.S. § 3312
RHODE ISLAND	Associations shall maintain property insurance and general liability insurance on the common elements. Additionally, the insurance policy must waive its rights to subrogation against unit owners and members of their household.	R.I.G.L. § 34-36.1-3.13 (1956)
SOUTH CAROLINA	No waiver of subrogation required.	S.C. Code Ann. § 27-31-240
SOUTH DAKOTA	No waiver of subrogation required.	No statute regarding condominium insurance.
TENNESSEE	Associations shall maintain property insurance and general liability insurance as to the common elements. Additionally, the insurer must waive rights to subrogation against any unit owner or member of their household unless it can be shown that the individual intended to cause the loss.	T.C.A. § 66-27-413
TEXAS	Associations shall maintain property insurance and general liability insurance on the common elements. The insurance policy must waive its right to subrogation against the unit owner.	Tex. Prop. Code Ann. § 82.111
UTAH	Associations shall maintain blanket property insurance and liability insurance as to the common areas and facilities. Additionally, the insurer must waive subrogation rights against the unit owner and any members of their household.	U.C.A. § 57-8-43 (1953)
VERMONT	No waiver of subrogation required.	Vt. Stat. Ann. Tit. 27 § 1325

STATE	INSURANCE REQUIREMENTS RE: WAIVERS	STATE STATUTORY / CASE LAW INVOLVING WAIVERS OF SUBROGATION
VIRGINIA	<p>Condo instruments may require association to obtain a master casualty policy and master liability policy. Waiver of subrogation not required.</p> <p>In a recent Supreme Court decision the insurance policy, the residential lease, and the Association's governing documents all show that the Association did not intend to assume or absolve liability for the negligent acts of a unit owner's tenants that caused the Association to suffer a loss. It is equally clear that the Association did not intend to subvert Erie's ability to thereafter recover from a tenant whose purported negligence necessitated the insurer's payments for that loss. Therefore, the unit owner's tenant was not an implied insured of the Association.</p>	<p>Va. Code Ann. § 55-79.81</p> <p><i>Erie Insurance Exchange v. Alba</i>, 2020 WL 2763588 (Va. 2020)</p>
WASHINGTON	<p>Associations shall maintain property insurance and liability insurance. Additionally, insurers must waive rights of subrogation against any unit owner, member of their household, or lessee of unit owner.</p>	<p>R.C.W.A. § 64.34.352</p>
WEST VIRGINIA	<p>Associations shall maintain property insurance and general liability insurance as to the common elements. Additionally, the insurer must waive its rights to subrogation against any unit owner and member of their household.</p>	<p>W. Va. Code § 36B-3-113</p>
WISCONSIN	<p>Associations shall obtain insurance for the property against loss or damage by fire and such other hazards for not less than full replacement value of the property insured and a liability policy covering all claims commonly insured against. There is no required waiver of subrogation rights.</p>	<p>Wis. Stat. § 703.17</p>
WYOMING	<p>No waiver of subrogation required.</p>	<p>Wyo. Stat. § 34-20-101 (1977), <i>et seq.</i> "Condominium Ownership Act"</p>

These materials and other materials promulgated by Matthiesen, Wickert & Lehrer, S.C. may become outdated or superseded as time goes by. If you should have questions regarding the current applicability of any topics contained in this publication or any publications distributed by Matthiesen, Wickert & Lehrer, S.C., please contact Gary Wickert at gwickert@mwl-law.com. This publication is intended for the clients and friends of Matthiesen, Wickert & Lehrer, S.C. This information should not be construed as legal advice concerning any factual situation and representation of insurance companies and/or individuals by Matthiesen, Wickert & Lehrer, S.C. on specific facts disclosed within the attorney/client relationship. These materials should not be used in lieu thereof in anyway.