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Condo Unit Owners - Why Carry Building Coverage

By [David Thompson](#), CPCU

It's a bizarre statement, but here goes anyway: "Condo unit owners, even those on upper floors, should consider purchasing a dwelling flood policy that includes both contents coverage and **building** coverage."

Insurance professionals who provide insurance for condo dwellers know that explaining and selling the proper coverages can be quite a challenge. The first major hurdle is to convince the condo unit owner that they need **any** property coverage at all. After all, many condo unit owners are under the mistaken notion that the association covers all of the buildings items and they may feel like, "Certainly I don't need to worry about the building coverage." That notion is of course mistaken, from both a homeowners coverage perspective as well as a flood insurance perspective. This article examines the insurance needs and coverages provided by both the dwelling flood policy purchased by the unit owner, as well as the condo "master" flood policy, the Residential Condominium Building Association Policy, or RCBAP for short.

The RCBAP

The RCBAP is written on the condo building in the name of the association and is available when at least 75% of the floor space is used for residential purposes. The maximum limit available for the RCBAP is \$250,000 multiplied by the number of units, or the replacement cost, whichever is less. For example, a 10-unit condo building could purchase a maximum of \$2.5 million of building coverage on any one building. The policy has an 80% coinsurance feature, and if coverage is at least 80% (or the maximum available) then building flood losses are paid on a replacement cost basis. Coverage for personal property owned by the association (such as furniture in a clubhouse) is paid on an actual cash value (ACV) basis.

The RCBAP covers all building items, regardless of who installed them, when they were installed, or whether they are like kind replacements or upgrades. Florida insurance agents are accustomed to thinking of Florida Statute 718.111(11)(b) which spells out the insurance responsibility of unit owners to cover items such as carpet, paint, wallpaper, appliances, cabinets, and air conditioning units. Remember, this is a Florida statute and the National Flood Insurance Program (NFIP) policy is not bound by a state statute. Therefore, items inside a unit such as paint, cabinet upgrades, wallpaper, air conditioners, and even newly installed interior

walls are all covered by the RCBAP. For more on this issue, check our on-line Education Library article titled "[Flood Policies, Condo Units, and Additions and Alterations.](#)"

The Unit Owner Dwelling Flood Policy

If the RCBAP provides such broad coverage, why then should unit owners consider purchasing their own flood policy providing dwelling coverage? Several reasons: 1 > Control of their own insurance coverages, and 2 > Loss assessment protection.

Control of their own insurance: When unit owners rely on the association to purchase flood coverage they, in effect, trust their insurance protection to someone else – not a good thing to do. What happens when the association, for whatever reason, decides not to continue the RCBAP? Are all the unit owners properly advised of this action? It is very possible, if not likely, that many unit owners will never get the word about the RCBAP not being continued. That leaves unit owners thinking that someone else is covering their building items, when in fact such is not the case. By purchasing their own building coverage they control their own coverage. The cost for building coverage varies based on flood zone and base flood elevation, but in many cases the cost for some coverage is only a few hundred dollars. Even if the unit owner is purchasing coverage that may duplicate what the RCBAP covers, isn't it better to have double coverage as opposed to no coverage?

Loss assessment protection. The summer of 2004 in Florida proved many things, one being that all the old rules went out the door. Things that were never supposed to happen, did happen – over and over again. Condo unit owners, even those on higher floors, could have been assessed by the association for losses that were not covered because of the absence of an RCBAP. Remember, an assessment presented to the HO-6 (homeowners) carrier for a flood loss won't be covered because the cause of loss (flood) isn't a covered peril under that policy. The only way for a unit owner to cover an assessment for flood damage to the condo building is via a dwelling flood policy that includes building coverage. When the unit owner selects a limit of building coverage, that limit also doubles as the loss assessment limit. When a loss assessment claim is presented to unit owners and covered by their dwelling flood policy, there is no deductible. The assessment must be made because of direct physical damage by flood, during the policy period, to the building's common elements. Not all loss assessment claims are covered though. Those not covered are:

- Assessments due to a deductible on the RCBAP.
- Assessments for damage to personal property owned by the association.
- Assessments due to the RCBAP being written for an amount less than 80% of the building's replacement cost, or the maximum permitted (\$250,000 multiplied by the number of units) under the flood act.
- Assessments when the amount paid under the RCBAP plus the any other coverage for loss assessments under the dwelling policy exceeds a total of \$250,000 for one person. (More on this later)

What assessments then would be covered if a unit owner were to purchase his own dwelling policy including building coverage? Several examples include:

- Situations where the RCBAP had been written for an amount of at least 80% of the replacement cost of the building, but less than 100% to value.
- Assessments due to there being no RCBAP in place at all.
- Assessments for damage to a non-covered building. For example, after major flood damage to the stand-alone condo clubhouse, it is learned that there was no flood policy covering the structure and each unit owner is assessed \$6,000 for damage.

The \$250,000 Limitation and Loss Assessments

Recall from the discussion above that the RCBAP can be written at a maximum limit of \$250,000 multiplied by the number of units. In the example of a 10-unit condo, that was \$2.5 million of building coverage available. Suppose that a unit owner in that condo building had taken it upon himself to purchase his own dwelling flood policy with \$60,000 of personal property coverage and \$100,000 of building coverage. Further suppose that due to a total loss of the condo building, the RCBAP paid the limit and the association board met to approve an assessment of \$50,000 per unit owner to rebuild the condo. Such assessment to the unit owner who purchased the building coverage is not covered because that unit owner has already benefited for \$250,000 under the RCBAP payout. Regardless of how many unit owners had purchased dwelling flood coverage, none of the dwelling flood policies will cover the loss assessment because no combination of flood policies is permitted to pay out more than \$2.5 million for the damage to this particular building. Therefore, does this mean that in such a "RCBAP maxed out" situation that no unit owner should purchase dwelling flood coverage? Absolutely not, for all the reasons cited above. It's very possible that the RCBAP was no longer in place, this fact being unknown to the unit owners who occupied the condo units. This coverage analysis applies for all unit owners, whether they be on the ground floor or the 15th floor. For an insurance professional to tell a condo unit owner, "You don't need to purchase building flood coverage" is little more than an open invitation to a future E&O claim.

Summary

Several FAIA members have reported that they have heard various "other people" make statements of:

- "A condo unit owner should never purchase building flood coverage in his own name."
- "There is no loss assessment coverage available to a condo unit owner."
- "The only way to cover interior building items in a condo unit is via the RCBAP."

Clearly these statements are incorrect. There are very valid reasons why condo unit owners, regardless of their floor of occupancy, should consider purchasing building flood coverage. At times the coverage may not respond, but at other times it clearly will respond.

Finally, consider the hypothetical (but very possible) conversation during a trial:

PLANTIFF'S ATTORNEY: "So Mr. Smith, did you have a flood policy in your own name that provided building coverage?"

PLAINTIFF: "No sir, I did not."

PLANTIFF'S ATTORNEY: "Will you please tell the court why you didn't have such policy Mr. Smith?"

PLANTIFF: "Because he didn't offer me one, plus he told me it was a waste for me to buy my own flood policy because there was this RCBAP thing out there."

PLANTIFF'S ATTORNEY: "Mr. Smith, who is that gentleman that you are pointing to the one who told you these statements?"

PLANTIFF: "He is my insurance agent and it's all his fault. If he had given me all the facts about why I should have considered buying my own flood policy, I would have done it. I see now how much better off I would have been if my insurance agent had only explained it to

me. I've been wiped out and now I don't have any insurance money coming in. This just isn't right...I trusted my agent to advise me correctly."

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