

Association Property Insurance: Who is insured?

The Association is the named insured for an Association's property insurance policy.¹ In the case of condos, there is a statutory presumption that every unit owner is also an insured under the policy.^{2 3} In addition, the Washington Court of Appeals has clarified that a commercial or residential tenant in a condo is also presumed to be an insured under the policy.⁴

A unit owner and tenant are presumed to be named insureds even if the insurance policy is maintained by a condo Association instead of by the unit owner.⁵ Washington courts appear to provide an opportunity for landlords and tenants to change this result through their rental contracts. However, it is unclear why any landlord would wish to do so, as this action could result in the landlord's liability for uninsured damage.

Washington law prohibits an insurer from suing its insured and requires an insurer to waive its right to subrogation (reimbursement) under the policy against a unit owner or any lessee of the owner.⁶ A tenant in a unit covered by an owner's insurance policy is covered by the owner's policy unless the parties specifically agree otherwise.⁷ The *Kalles* case expands this to include condo policies.

In *Kalles*, the particular property policy at issue covered real property owned by the Association and the unit owner, but there could be variations to this type of coverage. Individual insurance policies should be carefully reviewed.

¹ Most insurance provisions in an Association's Governing Document are broad and vague, giving the Board some discretion to obtain insurance that it deems to be prudent. Others will specifically state the quality of

insurance company that must be used, and specific policy minimums, or obligations to comply with some industry standards for insurance.

² RCW 64.34.352(3)(a),(c)(Insurance).

³ Note that although the unit owner may be insured, the unit itself may not be covered property under the Association policy. See RCW 64.34.352. For example, the policy could extend coverage to common areas only, and not cover the interior of the units.

⁴ *Comm'y Ass'n Underwriters of America v. Kalles*, 164 Wn. App. 30, 36 (2011). A tenant was alleged to have started a fire that damaged the condo unit and common areas. The insurance company covered the loss but sued the tenant to recover its cost of repair. The court held that the insurance company could not recover from the tenant, who was deemed an insured under the Association's policy.

⁵ *Kalles*, 164 Wn. App. at 36-37.

⁶ RCW 64.34.352(3)(b).

⁷ *Cascade Trailer Court v. Beeson*, 50 Wn. App. 678, 686 (1988). A landlord has an ownership interest in the premises, and a tenant has a possessory interest in the premises, so the tenant should reasonably expect to be covered by the insurance.