



State-by-State Compendium on Waivers of Subrogation on Condominium Contracts

Alabama Condominium Insurance Subrogation Law

Section 35-8A-313 of the Alabama's Uniform Condominium Act provides:

(d) Insurance policies carried pursuant to subsection (a) must provide that:(1) Each unit owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association;(2) The insurer waives its right to subrogation under the policy against any unit owner or member of his household;(3) No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and(4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

Arizona Condominium Insurance Subrogation Law

Under Title 33, Chapter 9, section 33:1253, the Arizona legislature established a waiver of subrogation. In short, condominium associations must maintain property and liability insurance, but waives its rights to subrogation under these policies against any unit owner or members of a unit owner household.

Arkansas Condominium Insurance Subrogation Law

Arkansas has a "Horizontal Property Act, Section 27-31-10, et seq., which has the following provision related to insurance on properties such as condominiums. It does not specifically address subrogation. The only provision addressing insurance is Ark. Code Ann. § 18-13-117, which states that "The co-owners may, upon resolution of a majority, insure the building against risk, without prejudice to the right of each co-owner to insure his or her apartment on his or her own account and for his or her own benefit.")

California Condominium Insurance Subrogation Law

Chapter 828 of California's Common Interest Ownership Act incorporates language from the Uniform Common Interest Ownership Act, establishing:

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: (1) Property insurance on the common elements and, in a planned community, also on property that must become common elements...; (2) flood insurance in the event the condominium is located in a flood hazard area...; (3) commercial general liability insurance, including medical payments insurance...; and (4) fidelity insurance. (d) Insurance policies carried pursuant to subsections (a) and (b) of this section shall provide that: (1) Each unit owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association; (2) the insurer waives its right to subrogation under the policy against any unit owner or member of his household.

Colorado Condominium Insurance Subrogation Law

Colorado adopted the Uniform Common Interest Ownership Act. Section 38-33.3-313 of that Act is entitled “Insurance” and provides in pertinent part:

(4) Insurance policies carried pursuant to subsections (1) and (2) of this section must provide that:

- (a) Each unit owner is an insured person under the policy with respect to liability arising out of such unit owner's interest in the common elements or membership in the association;
- (b) The insurer waives its rights to subrogation under the policy against any unit owner or member of his household;
- (c) No act or omission by any unit owner, unless acting within the scope of such unit owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and
- (d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

Connecticut Condominium Insurance Subrogation Law

Although there is essentially no Connecticut case law explicitly addressing waivers of subrogation in the condominium context, such waivers are required by statute in all insurance policies procured by a condominium owners’ association. Connecticut has enacted the Common Interest Ownership Act, which is “largely modeled after the Uniform Common Interest Ownership Act.” *Linden Condo. Ass’n v. McKenna*, 247 Conn. 575, 584 (1999). As part of the Act, Connecticut General Statutes § 47-255 details the insurance requirements for condominiums. In addition to mandating that owners’ associations procure certain types of insurance (including property, commercial general liability, fidelity, and where applicable, flood insurance, § 47-255(a)-(b)), the Act requires all insurance policies

procured under § 47-255 to include waivers of subrogation in favor of the unit owners and the members of the unit owners' households. § 47-255(d)(2). Section 47-255(d)(3) establishes that "no act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recover under the policy." Finally, § 47-255(d)(4) explicitly provides that the association's policy will be primary even if a unit owner also has insurance coverage applicable to the loss at issue.

Searches for cases discussing waivers of subrogation in the condominium context returned only one directly applicable case, so the issues involved have not been thoroughly analyzed at this point. However, as the one court construing the statute has observed, "[t]he net result of [§] 47-255 is to make it essentially impossible for a unit owner to protect himself against a claim made against the Association's policy. Even if he is fully insured his policy is secondary so that the Association's policy would pay the claim." *Carriage Park Ass'n v. Emanuel*, No. CV-02-0816706, 2003 Conn. Super. LEXIS 416 (Super. Ct., Feb. 6, 2003, Booth, J.). The plain language of the statute suggests that this observation is correct. Subsection 47-255(d)(4) clearly prevents the association's insurer from arguing that a unit owner's insurance should have paid for any given loss, as the association's policy is primary by statute. Subsection 47-255(d)(3) further precludes the association's insurer from arguing that a waiver of subrogation is unenforceable due to a unit owner's alleged breach of the insurance contract, except under narrow circumstances. As a whole, therefore, § 47-255 should make it difficult for the association's insurer to subrogate against a particular unit owner for any covered loss.

That said, nothing in § 47-255 mandates the *scope* of the waivers of subrogation in the insurance policies procured. In any Connecticut subrogation case, "the insurer can take nothing by subrogation but the rights of the insured, and is subrogated to only such rights as the insured possesses . . . [a] subrogee can obtain no greater rights against a third person than its subrogor had." *Orselet v. DeMatteo*, 206 Conn. 542, 546-547 (1988). "Under Connecticut law, a party to a contract may waive any defenses or rights it has against the other party to the contract, and such a waiver will be enforced if it is clear and unambiguous." (Citations omitted.) *Albany Ins. Co. v. United Alarm Services, Inc.*, 194 F. Supp. 2d 87, 91 (D. Conn. 2002). The validity and scope of the waiver of subrogation depends on construction of the contract language to determine the parties' intent. *Best Friends Pet Care, Inc. v. Design Learned, Inc.*, 77 Conn. App. 167, 179 (2003). Therefore, an ambiguously-worded waiver of subrogation in a condominium contract could leave a unit owner exposed to a subrogation claim by the association's insurer if the waiver is so ambiguous as to be unenforceable or if it fails to waive *all* rights to subrogation. Accordingly, owners' associations should take care to ensure that both the associations' insurance policies and the condominium contracts include clear and broad waivers of subrogation in order to provide maximum protection to unit owners.

Delaware Condominium Insurance Subrogation Law

The Delaware Uniform Common Interest Ownership Act requires the association to maintain property, liability, and fidelity insurance, and requires the insurer waive its right to subrogation under the policy *against any unit owner or member of the unit owner's household*. The Delaware Code of Regulations states However, Delaware courts have found that while a waiver of subrogation agreement bars condominium unit owners from suing other owners, third parties may still sue for damage. See Firemen's Ins. Co. of Washington, D.C. v. Fire-Free Chimney Sweeps, Inc. (Sup. Ct. Del. 1/5/10); 2010 WL 1268158.

Florida Condominium Insurance Subrogation Law

An insurer's right to subrogation does apply to common interest communities and a waiver of those rights is not a necessary component of any insurance policy. Ultimately, the right to subrogation will be determined by the insurer's policy and the applicable association's bylaws and/or declaration. Subject to the provisions contained within individual carrier's policy and the association documents, pursuant to Fla. Stat. § 718.111(11)(j), the costs of maintaining insurance for areas required by Florida law, as well as any attendant costs in repairing or reconstructing damage to insured areas, shall be treated as a common expense of the Association. Pursuant to Fla. Stat. § 718.111(11)(j):

(1) A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of the insurer.

.....

(3) To the extent the cost of repair or reconstruction for which the unit owner is responsible under this paragraph is reimbursed to the association by insurance proceeds, and the association has collected the cost of such repair or reconstruction from the unit owner, the association shall reimburse the unit owner without the waiver of any rights of subrogation.

Georgia Condominium Insurance Subrogation Law

Georgia statute 44-3-107, "Insurance" provides requirements for condominium associations. The statute requires a casualty insurance policy as well as a liability insurance policy. The language included in the statute does not require or suggest that an insurer must waive its right to subrogation.

Hawaii Condominium Insurance Subrogation Law

Hawaii Revised Statute §514B-143, “Insurance,” provides the condominium association must at all times maintain property, commercial general liability, and a fidelity bond. Like most states which have adopted the uniform common interest ownership act, the statutory provisions require the same forms of insurance coverage, but do not explicitly state whether there is a mandatory waiver of subrogation.

Idaho Condominium Insurance Subrogation Law

Idaho Code Title 55, Chapter 15 is entitled the “Condominium Property Act.” 55-1517. The section sets forth the following:

Insurance of individual units by management body. The management body, if required by the declaration, by-laws or otherwise, or at the request of a mortgagee or a beneficiary of a deed of trust having a first mortgage or first deed of trust of record covering a unit or any part of the project, shall have the authority and an insurable interest to insure the project or any portion thereof against loss or damage by fire or other hazard or casualty. Such insurance coverage may be written in the name of the management body, as trustee for each of the condominium owners in the percentages established in the declaration or as otherwise provided in the declaration or provided by the management body, and premiums may be treated as common expenses. Provision for such insurance shall be without prejudice to the right of each condominium owner to insure his own unit for his own benefit. This provision shall not be construed to limit the power of such body to secure and maintain other insurance coverage or to treat the cost thereof as a common expense.

Further, there is no specific language in the Condominium Property Act barring subrogation, which is otherwise permitted under Idaho law.

Illinois Condominium Insurance Subrogation Law

The State of Illinois adopted the Uniform Common Ownership Act, identified under Illinois Chapter 765, Act 605 (the “Condominium Property Act”), which requires the association to purchase property insurance, general liability insurance, and fidelity bonds. With regards to “Insured Parties,” the Condominium Property Act provides:

e) Insured parties; waiver of subrogation. Insurance policies carried pursuant to subsections (a) and (b) must include each of the following provisions:

(1) Each unit owner and secured party is an insured person under the policy with respect to liability arising out of the unit owner's interest in the common elements or membership in the association.

(2) The insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of the unit owner's household and against the association and members of the board of directors.

(3) The unit owner waives his or her right to subrogation under the association policy against the association and the board of directors.

See Ill Stat. Ch. 765 § 605/12.

Iowa Condominium Insurance Subrogation Law

Iowa has the “Horizontal Property Act,” Chapter 499B, et seq., which has the following provision related to insurance on properties such as condominiums , but it does not appear to address subrogation issues. See e.g., Section 499B.16 (Disposition of Property – Destruction or Damage).

Kansas Condominium Insurance Subrogation Law

Kansas’ Chapter 58, Article outlines the Apartment Ownership Act, which outlines insurance obligations of unit owners. Section 58-3125 specifically provides:

The manager of the board of directors, if required by the declaration, bylaws or by a majority of the apartment owners, or at the request of a mortgagee having a first mortgage of record covering an apartment, shall have the authority to, and shall, obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of such manager or of the board of directors of the association of apartment owners, as trustee for each of the apartment owners in the percentages established in the declaration. Premiums shall be common expenses. Provision for such insurance shall be without prejudice to the right of each apartment owner to insure his or her own apartment for his or her benefit.

Notably, the section does not explicitly bar subrogation.

Kentucky Condominium Insurance Subrogation Law

Kentucky extensively revised its condominium law effective January 1, 2011. The Kentucky Condominium Act, Section § 381.9187, addresses subrogation:

(3) Insurance policies carried pursuant to subsection (1) of this section shall provide that:(a) Each unit owner is an insured person under the policy with respect to liability arising out of his or her interest in the common elements or membership in the association;(b) The insurer waives its right to subrogation under the policy against any unit owner or member of his or her household;(c) No act or omission by any unit owner, unless acting within the scope of

his or her authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

Louisiana Condominium Insurance Subrogation Law

Louisiana recognizes waiver of subrogation clauses in condominium contracts. *See LSA-R.S. 9:1123.112 (C)*, which states in pertinent part:

C. Insurance policies carried pursuant to Subsection A must provide that:

(1) Each unit owner is an insured person under the policy with respect to liability arising out of his ownership of an individual interest in the common elements or membership in the association.

(2) The insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of his household.

(3) No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy, and

(4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same property covered by the policy, the policy is primary insurance not contributing with the other insurance.

2. *LSA-R.S. 9:1124.115 (A)* (The condominium declaration and bylaws shall have the force of law between the individual unit owners. The remedies for breach of any obligation imposed on unit owners or the declarant shall be damages, injunctions, or other such remedies as provided by law.)

3. Further Louisiana recognizes that the insurer may waive subrogation *either* before or after the loss. *See LSA-R.S. 22:666* which specifies that the right of subrogation may be waived after loss without invalidating the policy against specific individuals:

“(1) anyone insured under the same policy;

(2) a corporation, partnership or other entity in which the insured owns stock or has a proprietary interest;

- (3) anyone who owns stock or has a proprietary interest in the insured;
- (4) an employee or employer of the insured; and
- (5) anyone having an interest as owner, lessor or lessee of the insured premises or the premises on which the loss occurred and the employees, partners and stockholders of such owner, lessor or lessee; and
- (6) any relative by blood or marriage of the insured ...”

See also LSA-R.S. 9:1124.115 (A) (The condominium declaration and bylaws shall have the force of law between the individual unit owners. The remedies for breach of any obligation imposed on unit owners or the declarant shall be damages, injunctions, or other such remedies as provided by law.)

Maine Condominium Insurance Subrogation Law

Like other states which have adopted the uniform common ownership act, Chapter 33, Section 1603-113, “Insurance,” of the Maine code requires the association to purchase property and liability insurance. Moreover, the statute provides that the “insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of his household.” A unit owner *may* obtain additional insurance, and the code does not explicitly limit the right to subrogation under additional policies.

Maryland Condominium Insurance Subrogation Law

Maryland adopted portions of the uniform common ownership act. See Maryland Condominium Act, Annotated Code of Maryland, Real Property Article, Title 11. Section 11-114, “Required Insurance Coverage; Reconstruction,” states the insurer waives its right to subrogation. Like others, this provision is nuanced by the fact a unit owner may obtain his or her own insurance coverage.

Massachusetts Condominium Insurance Subrogation Law

In general, Massachusetts recognizes waivers of subrogations. See *Haemonetics v. Brophy & Phillips Co., Inc.*, 23 Mass. App. Ct. 254, 257-258, 501 N.E. 524 (1986). However, when an association obtains property, commercial, and crime insurance, the insurer waives its right of subrogation against unit owners and members of their household. See NRS 118.31133.

Michigan Condominium Insurance Subrogation Law

Michigan has enacted the “Michigan Condominium Act, Act 59 of 1978.” The Act does not appear to address issues of subrogation with regards to owner insurance.

Minnesota Condominium Insurance Subrogation Law

An insurer's general right to subrogation does *not* apply to a *common interest community's insurer*. While the Minnesota Common Interest Ownership Act requires condominium associations to maintain casualty coverage for common areas and units (excluding personal property and attached fixtures), the association's insurance policy *must* contain a *waiver of subrogation* rights against the unit owner and the association (including board members):

(d) Insurance policies carried pursuant to subsection (a) and (b) shall provide that:

* * *

(2) the insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of the unit owner's household and against the association and members of the board of directors ...

Minn. Stat. § 515B.3-113(d)(2). There are no reported decisions applying this anti-subrogation provision. *But see Raines v. Boulder Village Townhomes Assoc.*, 2010 WL 2265641 at *3-4 (Minn. App. June 8, 2010) (award of attorney fees to association's insurer would violate section 515B.3-113(d)(2)'s anti-subrogation provision).

Mississippi Condominium Insurance Subrogation Law

Mississippi has enacted the "Mississippi Condominium Law, at Section 89-9-1, et seq. The Act does not appear to address issues of subrogation or insurance.

Missouri Condominium Insurance Subrogation Law

Section 448.3-113 of the Missouri Revised Statutes addresses subrogation:

4. Insurance policies carried pursuant to subsection 1 of this section shall provide that:(1) Each unit owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association;(2) The insurer waives its rights to subrogation under the policy against any unit owner or members of his household;(3) No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and(4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

Montana Condominium Insurance Subrogation Law

Section 70-23-612, "Insurance of Building – Premiums on Common Expenses" establishes that premiums for insurance on the building are common expenses, but does not provide

any other regulations or requirements on insurance and subrogation rights to individual units.

Nebraska Condominium Insurance Subrogation Law

Nebraska's condominium laws require that condominium associations procure property and liability insurance, but prohibit the insurer from asserting a right of subrogation against any unit owner or member of his or her household. See Nebraska Condominium Act, Section 78-871.

Nevada Condominium Insurance Subrogation Law

Nevada Revised Statute Chapter 116, Section 31133 provides that an insurer waives its right to subrogation under policies issued to a condominium association for claims involving the unit owner or member of his or her household.

New Hampshire Condominium Insurance Subrogation Law

New Hampshire R.S.A. Chapter 356-B is the New Hampshire Condominium Act (the "Act"). While the Act does set forth requirements for condominium associations obtaining insurance, and identifying and designating parties whom are to pay for premiums and receive payouts, it does not, in and of itself, bar subrogation.

New Jersey Condominium Insurance Subrogation Law

New Jersey has not adopted the Uniform Common Interest Real Property Act. However, Title 46 of the New Jersey statutes governs property. This portion of the New Jersey code outlines insurance obtained for coverage of condominiums, but does not state whether the insurer waives its right to subrogation.

New Mexico Condominium Insurance Subrogation Law

Chapter 47-7A is the New Mexico Condominium Act. The language of this Title tracks similarly to the Uniform Common Ownership Act, inasmuch as it requires certain insurance (i.e. property and liability), but states the insurer waives its right to subrogation against a unit owner or a member of a unit owners household. See 47-7C-13. Like many others, this chapter does not preclude the unit owner from purchasing their own insurance, and does not preclude the insurer of individually purchased insurance from subrogation.

New York Condominium Insurance Subrogation Law

Section 339-bb of New York's Consolidated Law Service provides as follows:

REAL PROPERTY LAW

ARTICLE 9-B. CONDOMINIUM ACT

The board of managers shall, if required by the declaration, the by-laws or by a majority of the unit owners, insure the building against loss or damage by fire and such other hazards as shall be required, and shall give written notice of such insurance and of any change therein or termination thereof to each unit owner [fig 1] . In the case of a qualified leasehold condominium, such insurance shall be required in any event, and shall be in an amount equal to full replacement cost of the building. The policy or policies of such insurance shall be updated annually to maintain such insurance in such amount. Nothing herein shall prejudice [fig 2] the right of each unit owner to insure his own unit for his own benefit. The premiums for such insurance on the building shall be deemed common expenses, provided, however, that in charging the same to the unit owners consideration may be given to the higher premium rates on some units than on others.

See NY CLS Real P § 339-bb (emphasis added). New York has not incorporated the language from the Uniform Common Interest Ownership Act that requires an insurer to waive its right to subrogation against any unit owner or member of the unit owner's household. Thus, in New York, an insurer's right to subrogation only can be limited by the applicable offering plan and/or bylaws of the co-operative or condominium.

New York courts have held that waiver of subrogation provisions are generally valid and enforceable. *See Federal Ins. Co. v James*, 2011 N.Y. Misc. LEXIS 3490; 2011 NY Slip Op 31939U (N.Y. Sup. Ct. 2011). Moreover, an insured's breach of an agreement to obtain a waiver of subrogation in an insurance policy nonetheless prevents its insurer from maintaining a subrogation action. *Id.*; *see also Greater New York Mut. Ins. Co. v 45 Overlook Terrace Owners Corp.*, 2009 N.Y. Slip. Op. 31420U (N.Y. Sup. Ct. 2009). That said, while parties to an agreement may waive their insurer's right of subrogation, a waiver of subrogation clause cannot be enforced beyond the scope of the specific context in which it appears. *See Kaf-Kaf, Inc. v. Rodless Decorations*, 687 N.E.2d 1330; 665 N.Y.S.2d 47 (N.Y. 1997); *see also Agostinelli v. Stein*, 17 A.D.3d 982; 794 N.Y.S.2d 759 (4th Dep't 2005)(finding no subrogation actions could be maintained where the condominium's bylaws provided that the unit owners "are encouraged to carry other insurance for their own benefit provided that all such policies shall contain waivers of subrogation against the ... Board."); *Schiller v. Community Technology, Inc.*, 78 A.D.2d 762; 433 N.Y.S.2d 640 (4th Dep't 1980)(finding that despite the failure of the condominium's offering plan to specify to whom waivers of subrogation extended, by relying on the Uniform Condominium Act, the court found the reasons for waiving subrogation rights only apply to potential claims against other unit owners, thus plaintiffs were not required to secure waivers of subrogation rights with respect to negligence claims against third parties.).

North Carolina Condominium Insurance Subrogation Law

North Carolina has no statute addressing waiver of subrogation clauses in condominium contracts. Under the common law, generally, a subrogee's rights are derivative, and if the

insured has no right against a third party, neither does the insurer. Therefore, where the insured waives a right of recovery against a third party, the subrogee is bound by this waiver, and may not recover against the third party. *Lexington Ins. Co. v. Tires Into Recycled Energy and Supplies, Inc.*, 136 N.C. App. 223, 522 S.E.2d 798 (1999).

North Dakota Condominium Insurance Subrogation Law

There is no authority, statutory or case law, regarding waiver of an insurance subrogation clause in a condominium contract. Section 47-04.1 of the North Dakota Century Code governs Common Interest Communities but contains only minimal reference to insurance. Section 47-04.1-07 requires that condominium bylaws provide for the “disposition of hazard insurance proceeds.” *See also First Intern. Bank & Trust v. Peterson*, 797 N.W.2d 316 (“individual unit owners who purchased units before the damage to the roof occurred [were] entitled to a portion of the insurance proceeds” despite subsequent foreclosure sale). By their silence on the issue, neither section 47-04.1 nor North Dakota case law requires that a condominium association’s hazard insurance policy contain a waiver of subrogation rights against the unit owners.

Ohio Condominium Insurance Subrogation Law

Chapter 5311 of the Ohio statutes governs condominium property. Section 16, “Condominium Insurance,” provides: Unless otherwise provided by the declaration or bylaws, the board of directors shall insure all unit owners, their tenants, and all persons lawfully in possession or control of any part of the condominium property for the amount that it determines against liability for personal injury or property damage arising from or relating to the common elements and shall obtain for the benefit of all unit owners, fire and extended coverage insurance on all buildings and structures of the condominium property in an amount not less than eighty per cent of the fair market value. The cost of the insurance is a common expense.

The Condominium Property chapter does not, however, outline and set forth regarding the insurer’s right to subrogation.

Oklahoma Condominium Insurance Subrogation Law

The Oklahoma “Unit Ownership Estate Act,” establish in §60-501, provides requirements and regulations for condominium owners and associations. While the act does discuss, in generalities, the allocation of insurance proceeds, it does not address the insurers’ rights to subrogation against unit owners, the association, or third parties.

Oregon Condominium Insurance Subrogation Law

Chapter 100 of the Oregon statutes is entitled “Condominiums.” Section 435 outlines “Insurance for Individual Units and Common Elements.” The statutes provide: If the

bylaws provide that the association of unit owners has the sole authority to decide whether to repair or reconstruct a unit that has suffered damage or that a unit must be repaired or reconstructed, the board of directors shall obtain and maintain at all times and shall pay for out of the common expense funds, the following insurance covering both the common elements and individual units:

- (a) Property insurance...; and
- (b) Insurance covering the legal liability of the association of unit owners, the unit owners individually and the manager[.]

The statute further provides:

- (1) The board of directors shall obtain, if reasonably available, terms in insurance policies under this section that provide a waiver of subrogation by the insurer as to any claims against the board of directors of the association.

No further requirements are included relating to subrogation rights of the insurer.

Pennsylvania Condominium Insurance Subrogation Law

Pennsylvania Title 68, “Real and Personal Property,” Part II, “Real Property,” subpart B contains the general and specific provisions governing condominiums. Section 3312 provides provisions for insurance on condominiums. The section requires property insurance on common elements and units, and comprehensive general liability insurance, it also requires the insurer waive its rights to subrogation against any unit owner or members of his household.

Rhode Island Condominium Insurance Subrogation Law

Rhode Island’s condominium law can be found under Title 34 (“Property”), Chapter 34-36.1 (“Condominium Law”), Article 34-36.1-3.01 (“Management of Condominium”). Section 34-36.1-3.13 (“Insurance”) applies language from the Uniform Common Ownership Act, requiring property and liability insurance to be procured by condominium associations. Likewise, it also requires the insurer to waive its right to subrogation under issued policies against unit owners or members of the owner’s household.

South Carolina Condominium Insurance Subrogation Law

South Carolina has a “Horizontal Property Act, Section 27-31-10, et seq., which has the following provision related to insurance on properties such as condominiums , but it does not appear to address subrogation issues. See e.g., Section 27-31-240 (Insurance); Section 27-31-250 (Repair or reconstruction; vote of co-owners; application of insurance proceeds); and Section 27-31-260 (Sharing expenses in case of fire or other disaster.)

South Dakota Condominium Insurance Subrogation Law

Chapter 43015A of the South Dakota statutes governs condominiums. South Dakota has not adopted the Uniform Common Ownership Act. The current codified law does not state whether an insurer must waive its right to subrogation.

Tennessee Condominium Insurance Subrogation Law

The Tennessee Condominium Act of 2008 was established under Title 66. The act applies language from the Uniform Common Ownership Act, requiring the insurer to waive its right to subrogation under the policy obtained by a condominium association. This insurance refers to property and liability insurance. Still unit owners may obtain their own policies of insurance, which the act does not require waiver of subrogation.

Texas Condominium Insurance Subrogation Law

In Texas, a waiver of subrogation is an affirmative defense in a subrogation action. In order to have a valid waiver of subrogation, two conditions must be met. First, the insured must obligate itself to a waiver pursuant to an underlying contract, and second, it must obtain a separate endorsement from its insurance carrier waiving those rights. With regard to the second requirement, there is no valid waiver of subrogation when an agreement obligates a party to purchase insurance waiving subrogation, but the insurance policy itself contains no waiver of subrogation. Without an express waiver of subrogation by the insurer or a release or waiver of claims by the insured, the insurer's subrogation rights remain governed by its policy with the insured. *Approach Operating, LLC v. Resolution Oversight Corp.*, 2012 Tex. App. LEXIS 5437 (Tex. App. – Austin 2012, n.p.h.); [*Austin Indep. Sch. Dist. v. H.C. Beck Partners, Ltd.*, No. 03-07-00228-CV, 2009 Tex. App. LEXIS 1756, 2009 WL 638189, at *2 \(Tex. App.—Austin Mar. 13, 2009, pet. denied\).](#)

Because a property owner can generally acquire insurance to protect the property against fire and other perils, in the context of a construction contract, the waiver of subrogation clause shifts the ultimate risk of loss resulting from such perils to the owner to the extent the damages are covered by insurance. [*Temple EasTex, Inc. v. Old Orchard Creek Partners, Ltd.*, 848 S.W.2d 724, 730 \(Tex. App.—Dallas 1992, writ denied\).](#) The intent is to avoid disruption during construction and provide certainty and eliminate litigation by having the contracting parties look only to the owner's insurance for protection in the event of loss resulting from fire or other perils. [*Walker Eng'g, Inc. v. Bracebridge Corp.*, 102 S.W.3d 837, 841 \(Tex. App.—Dallas 2003, pet. denied\).](#) A waiver of subrogation clause substitutes the protection of insurance for the uncertain and expensive protection of liability litigation. *TX. C.C., Inc. v. Wilson/Barnes Gen. Contractors, Inc.*, 233 S.W.3d 562 (Tex. App.—Dallas 2007, pet. denied). Waiver of subrogation clauses enforceable in subrogation claims *during* construction have also been held to extend *beyond* the construction period to preclude recovery for proceeds

paid for post-construction loss under a policy voluntarily obtained after the construction period. *Id.*

In the oilfield context, the Texas Oilfield Anti Indemnity Statute does not prohibit waivers of subrogation. Tex. Civ. Prac. & Rem. Code Chapter 127. Where a drilling contractor's rig was damaged by the operator's gross negligence, but the drilling contract limited the parties' waivers of subrogation to the liabilities each assumed under the contract and the drilling contractor had not agreed to assume liability for losses to its rig caused by the operator's gross negligence, the waiver of subrogation clause did not prevent the drilling contractor's insurer from subrogating to the drilling contractor's rights against the operator for gross negligence and seeking recovery from the operator of the insurance proceeds paid to the drilling contractor. *Tesoro Petroleum Corp. v. Nabors Drilling United States*, 106 S.W.3d 118 (Tex. App.—Houston [1st Dist.] 2002, pet. denied).

Utah Condominium Insurance Subrogation Law

Title 57-8-29 of the Utah Code governs condominium insurance. The section sets forth the following: The manager, management committee, or association of unit owners shall obtain insurance against loss or damage by fire and other hazards for:

- (a) all common areas and facilities; and
- (b) all buildings that contain more than one condominium unit, including any improvement which is a permanent part of a building.
 - (1) Insurance coverage shall be written on the property in the name of the manager, management committee, or association of unit owners, as trustee for each of the unit owners in the percentages established in the declaration.
 - (2) Premiums on insurance required by this section shall be common expenses.
 - (3) Provision for insurance shall be without prejudice to the right of each unit owner to insure his own unit for his benefit.

The statute does not discuss whether an insurer must waive its right to subrogation.

Vermont Condominium Insurance Subrogation Law

Vermont's laws governing condominium are established under Title 27, Property, Chapter 15, Condominium Ownership Act. Section 1325 governs insurance. The section provides the following:

The manager or the board of directors, if required by the declaration, bylaws or by a majority of the apartment or site owners, or at the request of a mortgagee having a first mortgage of record covering an apartment or site, shall have the authority to, and shall, obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of such manager or of the board of directors of the association of owners, as trustee for each of the apartment or site owners in the percentages established in the declaration. Premiums shall be common expenses. Provision for such insurance shall be without prejudice to the right of each apartment or site owner to insure his or her own apartment or site for his or her benefit.

The Condominium Ownership Act does not provide language governing an insurer's right against unit owners or members of unit owner's households in subrogation.

Virginia Condominium Insurance Subrogation Law

Under Virginia law, insurers have a statutory right to subrogate against other legally liable parties. With a few exceptions, "when any insurer pays an insured under a contract of insurance which provides that the insurer becomes subrogated to the rights of the insured against any other party the insurer may enforce the legal liability of the other party." Va. Code Ann. § 38.2-207 (2011). The Supreme Court of Virginia has indicated that waiver of subrogation clauses may nevertheless be valid, provided the right is not waived *after* a loss occurs. *See Ins. Co. of North Am. v. Abiouness*, 227 Va. 10, 313 S.E.2d 663 (1984). In that context, the Supreme Court of Virginia has specifically held that the "loss" in question does not occur when the insurer makes payment to the insured, but when there is a loss caused by a covered risk. *Id.* Therefore, if an insured enters into a contract with a waiver of subrogation clause *after* the loss, but *before* payment under the policy, the insurer's right of subrogation is prejudiced and the insured may be barred from recovery under the policy.

West Virginia Condominium Insurance Subrogation Law

West Virginia adopted the provisions of the Uniform Common Ownership Act. Section §36B-3-113 of that Act is entitled "Insurance" provides in pertinent part:

(a) 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:

(1) Property insurance on the common elements and, in a planned community, also on property that must become common elements, insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles must be not less than eighty 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; and

(2) Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and, in cooperatives, also of all units.

(b) In the case of a building that is part of a cooperative or that contains units having horizontal boundaries described in the declaration, the insurance maintained under subsection (a)(1), to the extent reasonably available, must include the units, but need not include improvements and betterments installed by unit owners.

(c) If the insurance described in subsections (a) and (b) is not reasonably available, the association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it considers appropriate to protect the association or the unit owners.

(d) Insurance policies carried pursuant to subsections (a) and (b) must provide that:

(1) Each unit owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association;

(2) The insurer waives its right to subrogation under the policy against any unit owner or member of his household;

(3) No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

Wisconsin Condominium Insurance Subrogation Law

Chapter 703 of the Wisconsin statutes governs condominiums. Specifically, section 17 of chapter 703 outlines insurance requirements. The section and its subparts state:

(1) An association 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. Insurance coverage shall be written on the property in the name of the association as trustee for each of the unit owners in the percentages established in the declaration. Premiums shall be common expenses. Provisions for such insurance shall be without prejudice to the right of each unit owner to insure his or her own unit for personal benefit.

(2) Insurance proceeds shall first be disbursed by the trustees for the repair or restoration of the damaged common elements, and the unit owners and mortgagees shall not be entitled to receive payment of any portion of the insurance proceeds unless the association has determined not to rebuild, or the court has ordered partition of the condominium property, or there is a surplus of insurance proceeds after the common elements have been completely repaired or restored.

The statute does not regulate an insurer's right to subrogation.

Wyoming Condominium Insurance Subrogation Law

Chapter 20 of the Title 34 provides Wyoming's condominium laws. The statute, aptly named the Condominium Ownership Act, does not dictate rules on either insurance or subrogation.

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