Subrogation Issues Arising Within the Condominium Context

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Condominium claims present some interesting twists on issues familiar to the subrogation practitioner as well as new issues that are peculiar to the condominium system. It is difficult to make broad legal generalizations because each case is limited in its scope to the particular governing organizational structure. The most common issues to arise recently relate to standing and other aspects of the condominium association/owner relationship.

HISTORY OF THE “CONDOMINIUM”

The condominium concept is not new, despite its relatively recent introduction to United States sometime in the late 1950’s. Roger A. Cunningham et al., The Law of Property § 2.2, at 34 n.26 (2d ed. 1993). Ownership interest of individual units in buildings can be traced back to ancient Babylon and was quite common in ancient Rome and in medieval Europe. Id. The earliest condominium statute can be found in Article 664 of the Code Napoleon of 1804. Id.

A condominium is contemporarily defined as a single real estate unit in a multi-unit development in which a person has both separate ownership of a unit and a common interest, along with the development’s other owners, in the common areas. Black’s Law Dictionary 291 (7th ed. 1999). Each purchaser, by deed, receives an exclusive interest in an apartment and a joint interest in the common areas of the building. Administration and management duties are typically regulated through an agreement amongst an association of unit owners.
CONDOMINIUM LAW

Today, condominiums remain creatures of statutory enabling acts that vary from state to state just as governing bylaws vary from condominium to condominium. The hybrid form of exclusive and joint property ownership does not readily fit into established common-law schemes. One is more likely to find a robust amount of law in condominium heavy states such as California and Florida. Given the variety of statutory and condominium management schemes, broad legal generalizations are difficult to make. However, there are some trends that the subrogation professional will find noteworthy.

STANDING TO SUE

Because of the mixed joint and separate form of ownership, difficult problems arise when determining the proper party to bring an action involving the condominium real property. Let’s assume that several units in a large condominium complex are damaged and the loss is covered by the homeowners’ association’s insurance policy. The loss is adjusted and proceeds are paid to the policy’s only named insured, the association. If an individual owner is disgruntled with the amount paid for repair of his unit his options may be limited.

Generally, a party may not maintain a legal action unless they are the “real party in interest.” A seminal California case, Gantman v United Pac. Ins., 284 Ca. Rptr. 188 (Cal. Ct. App. 1991), held that individual members of a homeowners’ association, who are neither named insureds nor express beneficiaries, do not have standing to maintain an action against insurers on policies issued to their managing association. Although the Gantman case is limited to its facts and the California Code, it is instructive in that it reinforces the notion that a condominium association may exist apart from its members.

Since the condominium is a creature of statute, individual states’ enabling statutes may also be instructive in determining who has standing to sue. For example, § 9.1(b) of the Illinois Condominium Property Act provides the condominium association with the standing and capacity to act on behalf of unit owners in relation to matters involving the common elements or more than one unit. 765 Ill. Comp. Stat. 605/1 et seq.

PRO-RATA LIABILITY OF INDIVIDUAL OWNERS

Generally, individual unit owners are liable for contracts and torts committed within areas under their exclusive possession and control in the same manner and to the same degree as the owner of a house. However, one reported case recognizes personal liability for individual condominium owners for property damage sustained by a third party due to a condition existing in a common area. In Dutcher v Owens, 647 S.W.2d 948 (Tex. 1983), an action was brought to recover damages from the owner of a condominium unit for property loss caused by a fire which originated in an external light fixture in a common area. The court held that the unit owner was personally liable for his pro-rata undivided ownership in the common areas of the project.

CONDOMINIUM ASSOCIATIONS LIKENED TO “LANDLORDS”

A recent trend in condominium law places tort liability upon condominium associations with respect to common areas under the association’s exclusive control. See Martinez v. Woodmar IV Condominiums Homeowners Assoc., Inc., 941 P.2d 218 (Ariz. 1997) (guest of tenant of condominium unit owner, after being shot in
condominium complex parking lot, sued condominium association). The rationale is that condominium associations, like landlords, are responsible for the maintenance and security of common areas.

This trend is significant to the subrogation professional because courts have been increasingly inclined to find implied waivers of subrogation in the traditional landlord/tenant context. Many jurisdictions presume that a tenant is a co-insured under the landlord’s policy. See Sutton v. Jondahl, 532 P.2d 478 (Okla. Ct. App. 1975) (subrogee was not entitled to bring action against tenant to recover for amounts paid to landlord for fire damage to rental premises allegedly caused by tenant’s negligence, since, in absence of express agreement between landlord and tenant to contrary, landlord and tenant were co-insureds under fire policy). Because both parties have an insurable interest in the property, courts have rationalized that it is equitable to place the risk on the insurer under the theory that landlords use at least a portion of the rent proceeds to pay the insurance premiums. By analogy, since individual unit owners and condominium associations have an insurable interest in the property, unit owners may seek to argue that they are relying on the association to provide insurance, paid for in part by regular membership dues.

The question whether an individual condominium owner is an implied co-insured under a condominium homeowners’ association’s policy remains an open one. The emerging body of law that imposes landlord duties upon an association seems to open the door for implied waiver of subrogation arguments within this context.

CONCLUSION

Condominiums are unique forms of real property that require special consideration by the subrogation professional. The presence of varied statutory enabling acts and organizational structures requires a case specific approach to subrogation issues. While it is difficult to make broad legal generalizations with regard to the state of condominium law, enabling statutes should be the subrogation professional’s first stop for information. Practitioners should continue to look toward state developments with regard to standing, the division of liability among individual unit owners and condominium associations, and implied waivers of subrogation.

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