



# Public Adjusters

## Holding Their Feet to the Fire

**T**he processing of property claims on behalf of condominium associations after a casualty loss is not for the weak-kneed or faint of heart. The condominium association is, of necessity, forced into an arena not of its own making—the context and the order of battle, so to speak, are dictated more or less by the insurance company covering the claim.

The insurer lays the ground rules on how the claim is to be formatted, what it can and cannot include and the pricing structure that is acceptable to the insurer. In addition, the condominium association is dealing with people with whom it has had no previous working relationship and whose self-interest radically departs from that of the association.

The whole scenario is ripe for misunderstanding and confrontation with a potential for a lot of foot dragging and finger pointing. To prepare for a reasonable resolution of the claim, certain guiding principles have to be in place:

- First, the unit owners have to receive a consistent and uniform message on what insurance policies will be responding to the damages sustained.
- Second, the insurance claim has to be formulated so it marries all of the coverage provisions of the policy to the facts on the ground.
- Third, the claim itself has to be in such a format that the insurance company is used to dealing with its premises and scope.
- Fourth, all of the unit owners have to be aware of what is being claimed by the association for the damages sustained to their units.
- Fifth, communication has to be put in place so that the unit owners are aware of the progress of the claim.

- Sixth, the insurance company has to be pressured to make interim payments of the claim to fund some of the restoration work even though the claim may not be finally settled.

- Seventh, any settlement has to reflect the current conditions of the marketplace as far as construction costs are concerned so that a reasonable scope of work can be accomplished.

These are not easy tasks in dealing with an entity for whom customer satisfaction is not even on the radar screen and who doesn't care about continuing relationships. And, when you take those two components out of any consensual business relationship, you have grounds for trouble.

How does the public adjuster factor into the equation and ease the process along? Any well-schooled public adjusting firm has had plenty of experience in dealing with both condominium-coverage insurance policy forms and the contingent of claims adjusters that the insurers put in place to process the claims.

The public adjuster is also familiar with the manner in which insurance companies require the claim to be structured as far as compiling the costs to repair or rebuild the condominium building. Of course, this method and format differs markedly from the way that most general contractors estimate their work. In order to forestall any extensive delays, however, the translation must be made from the contractor's methodology into the insurers' format without losing the relevance to current day market pricing.

And while the accumulation of the loss figures are being compiled, the public adjuster is in communication

with the unit owners to inform them of the scope being developed for the repair of their unit, and with management to appraise it of the claim for the common areas and the condominium as a whole.

In the give and take between the consultants engaged by the insurer and the public adjuster to resolve the claim, the end purpose is never out of sight (i.e. to deliver a settlement that accomplishes all the requisites for maintaining the physical integrity and attractiveness of the condominium).

### Hot Topics

There are a few hot button issues that frequently crop up in adjusting condominium claims. Different insurers have certain idiosyncrasies when it comes to interpreting their policies that can contribute to resolving or not resolving these hot button issues.

One insurer that is very active in this area perceives that its condominium policy does not cover testing for mold if there is a sustained water loss that leads one to rationally explore the possibility of the propagation of mold on the premises. Of course, it would be helpful to know that this insurer took that position before the purchase of the policy. Nevertheless, by persuasion, a careful reading and dissection of its policy form or threatened arbitration, it is possible to convince this recalcitrant insurer to include the employment of a biotechnical firm in its final adjustment figures.

Another issue that often causes contention and controversy is the application of the ordinance and law coverage endorsement. Property insurance policies are supposed to be policies of indemnity. In other words, they give

you back what you had. However, the ordinance and law coverage gives you something that you never had: it covers you for the code upgrades forced on you by the building codes.

Insurance company adjusters are conditioned by the concept of indemnity and find it hard to pay for something you never had, but that is exactly what this endorsement requires. Nevertheless, it is a struggle to get them to admit to the requirements of the various building codes and to collect for upgraded electrical, HVAC and structural systems.

Another persistent issue is the compensation for management fees in the rebuilding and restoring of the condominium from the damage sustained. Quite frequently, one finds a provision in the contract between the management company and the condominium association that sets a management fee at 6 percent to 8 percent of the cost of any “capital” improvements or building repairs. This fee should be included in any settlement of the property loss, but many insurers resist paying it.

The argument of the insurers is that they are probably paying a general contractor a fee for overhead and profit and, perhaps, an architect’s fee, so why does should it pay for a management fee.

The counter argument: that is the

nature of a condominium association—it acts through its management company who oversees and arranges for both the architect and the general contractor and is responsible for the performance of both. Therefore, it should be compensated for its services. It is helpful if the management company is also named on the association policy as an insured.


### Required Skill Set

What are the types of skills needed by a public adjuster to properly process a property claim on behalf of a condominium association? First, patience and perseverance are required—patience and perseverance both with the members of the condominium association and also with the insurer and its representatives.

No sizeable property loss is settled without a great deal of effort in cataloging and assembling the damages and persistent advocacy to advance the interests of the policyholder.

Knowledge and familiarity with building construction and current day building costs are also requisite. A considerable number of the negotiations that transpire essentially revolve around the methodology and costs of repair or restoration, and it is absolutely essential that arguments are made from a position of intimacy about those exact details.

All of the concepts and costs involved in the building reconstruction have to be wedded to the coverage provisions of the insurance policy. One has to know what those obscure and densely worded provisions import to the facts on the ground and how they play out in the context of a condominium association loss. Experience in dealing with those provisions of the policy is especially helpful as is the awareness of the expression by insurance commentators, as contained in insurance loose-leaf services, of how they are supposed to apply.

The above skills are brought to effectiveness and fruition by adeptness in communication and negotiation to bring a favorable resolution to the claim. What public adjusting firms are uniquely qualified to manage sizeable condominium claims can be best ascertained by asking for references of past representations. Just like a surgeon, you don’t want to engage someone who is doing it for the first or second time. It doesn’t happen without “holding their feet to the fire.” 

*Marvin Milton Sr. is vice president of Swerling Milton Winnick Public Insurance Adjusters Inc. and has been a public adjuster for more than 45 years. He is the author of numerable published articles on property and time element insurance subjects.*