



## UMBRELLA LIABILITY INSURANCE

Catastrophic losses are neither particular to specific areas of exposure nor to certain types of industries—and they can happen anywhere, at any time. Umbrella liability insurance closes the gap between underlying limits of coverage and possible settlements, defense costs, and judgments in excess of that coverage.

In recent years, it has become common for businesses, associations, and individuals to purchase this type of coverage, partly because today's juries often award huge sums of money to litigants. Prior to 1962, jury verdicts for a million dollars did not exist; since then however, thousands of verdicts for a million dollars or more have been awarded.

Umbrella liability insurance originated sometime in the 1940s when it was known as "blanket catastrophe liability insurance." The primary reason for its existence was to provide an extra layer of protection for companies or individuals who needed to have the gap closed between their standard coverage and the possibility of a catastrophic claim.

Umbrella liability insurance is tailored to each community association, and the risks covered are generally negotiated. Because no "standard" umbrella policy exists, it is important for a community association to work closely with an insurance professional in designing such a policy. Because of market forces, umbrella liability policies are becoming more expensive, and higher limits in some cases are more difficult to obtain.

Umbrella liability insurance can be purchased as a personal and/or commercial policy with high limits of coverage for catastrophic losses. Sometimes these policies are called "excess liability," "catastrophe liability," or "blanket catastrophe liability" insurance. Whatever name is used, the primary function remains the same: to close the gap between underlying limits of coverage and possible claims in excess of that coverage.

### We Already Have Insurance—Why Do We Need More?



Anyone who has read the fine print in most insurance policies has probably noticed a paragraph dealing with exclusions and another with policy limits. Frequently, liability contracts are limited to bodily injury or property damage. Although this may cover most typical insurance claims, community associations also face the possibility of injury to an individual that does not necessarily cause bodily harm, such as mental anguish, mental injury, shock, fright, humiliation, false arrest, invasion of privacy, or discrimination. Such exclusions could prove costly to a community association.

Business catastrophes can and do happen anytime—be prepared by having umbrella liability insurance.

January 2005

Volume 18

Number 1



An umbrella liability policy serves two primary functions: 1) to provide higher excess limits of liability than those typically covered by underlying policies, and 2) to provide coverage for losses that may not be covered by standard underlying liability policies.

Although the whole point of insurance coverage is to shift the burden of payment of a claim from the business or individual to the insurance company, insurance companies will not pay more than the policy limits. The typical community association primary liability policy, for example, might have limits of \$1,000,000, which may not provide adequate protection against claims made by someone who had an accident on association property. A standard liability policy might not provide coverage under certain circumstances.

Filling in these significant gaps is the reason for obtaining umbrella liability coverage.

### What Is the Difference Between Excess and Umbrella Liability?

An excess liability policy provides coverage up to its limit of insurance for a covered loss above a specified amount. If, for example, a community association has a primary liability policy with a \$1,000,000 limit of insurance for bodily injury and an excess liability policy with a \$5,000,000 limit that includes bodily injury claims, the excess liability policy will only pay after \$1,000,000 of a bodily injury claim has been paid by the primary policy. An excess liability policy only extends coverage to claims

covered by the primary, underlying insurance policy.

An umbrella liability policy, on the other hand, is broader than a straight excess policy because it extends or expands liability protection by covering some losses that would be excluded under the underlying insurance. Umbrella coverage is generally a “follow form” policy, which means it follows the insuring agreements and conditions of the primary insurance policy and also extends coverage beyond that provided by an excess liability policy.

Because no “standard” umbrella policy exists, it is important for a community association to work closely with an insurance professional in designing such a policy.

### Parts of the Policy

The Declarations page of a typical umbrella liability policy lists the name of the individual or business being insured and the policy’s coverages, limits, and premiums. The policy period for most umbrella policies is usually one year. Such policies also list what the company agrees to do for the insured party, such as paying for defense or indemnification costs a business or community association may incur.

Umbrella liability policies often include a self-insured retention, which like a deductible, requires the association to meet certain specified

retained limits for some coverages. Often, the retained limits are the same as the required limits for the underlying policies. A Self-Insured Retention (SIR) is similar to a deductible and applies to events that are not covered by the standard policy. For example, if an umbrella liability policy is subject to a \$10,000 SIR, a community association would be responsible for paying the first \$10,000 of a covered claim when the umbrella liability policy provides primary coverage.

The \$10,000 SIR generally would not apply when the umbrella liability

policy responds on an excess basis. Community association umbrella liability policies should provide coverage for indemnification and defense costs. The umbrella liability policy insuring agreement

should specify that these expenses are to be paid on behalf of the insured. It is preferred that defense costs be paid outside of the policy limits.

### Exclusions

Although umbrella coverage is considerably broader than most underlying standard insurance policies, a few exclusions exist. For instance, intentional injury or damage might not be covered by an umbrella liability policy.



Some catastrophes, such as pollution disasters, are so great as to be ruinous to the insuring company, and these are sometimes listed as exclusions.

Compensatory obligations under workers compensation laws are routinely excluded, because the law mandates such coverage anyway. Generally speaking, property

should be insured through property insurance, not umbrella coverage, although policies vary with regard to property under the care, custody, and control of the insured.

ASK THE EXPERT

“Ask the Expert” is a regular column in *Insurance Focus*, featuring an interview with an expert about an important insurance issue facing community associations. This month our expert is Susan DeCarlo, senior production underwriter for The Distinguished Programs Group in New York City. DP pioneered the country’s first Real Estate Umbrella Liability Purchasing Group in 1987. Today their program is among the largest in the country. Ms. DeCarlo has held positions at Distinguished Programs in both accounts servicing and new business development. She can be reached at [SDeCarlo@distinguished.com](mailto:SDeCarlo@distinguished.com).

**Q:** Are all umbrella policies the same and how much coverage is enough?

**A:** Insurance is your protection against the uncertainties of day-to-day living.

Because of the many risks that businesses face, lawsuits are becoming more unpredictable. If your community association is forced to pay a large settlement, its primary insurance may not provide the protection needed. Extra liability protection (umbrella liability) is an increasing necessity for all businesses, as judgments in excess of a million dollars are becoming more common. Purchasing an umbrella liability policy will help better protect your association.

The particulars of umbrella liability insurance varies from carrier to carrier, but the concept is similar. There is no standard umbrella policy. The insurance coverages, as well as the exclusions, will vary by company. It is important to know the coverages that the policy provides, but it is more important to know what is *excluded* from the policy. Some umbrella liability policies may provide coverage that is broader than the primary insurance. This insurance provides coverage in million-dollar increments above the liability limits of your primary insurance.

Umbrella Liability insurance has three functions:

1) To provide increased protection when the limits

in the insurance provided by the primary insurance scheduled in the umbrella policy are insufficient.

- 2) To take the place of primary insurance when the primary limits are eroded or exhausted because of claim settlements.
- 3) To provide coverage for unforeseen events resulting in a loss not covered or otherwise excluded by the primary and/or umbrella insurance.

Umbrella liability insurance is limited in terms of a maximum amount of insurance provided. Umbrella policies can be written with several different variations of the aggregate limits.

Lack of knowledge and an effort to save money often leave businesses in a financial bind when disaster strikes, from not having enough insurance. Today, liability is not strictly assessed based on the injury suffered or even the amount of negligence involved. The courts and juries vary greatly when assessing damages. A building owner may be held liable by the negligent action of a tenant, because the tenants insurance lapsed or was insufficient.

Your community association should purchase as much umbrella liability insurance as it reasonably can afford to buy. The additional premium for higher limits is reasonable.



**An Umbrella That Fits**

As previously mentioned, because no "standard" umbrella liability policy exists, it is important for community association boards of directors and managers to work closely with an insurance professional in designing such a policy.

All major loss exposures should be identified so that appropriate coverage can be procured. It is very important that the underlying policy coordinates as much as possible with the umbrella policy. A community association umbrella liability policy should extend over the underlying general, auto, employers, and Directors and Officers liability coverages.

A community association should study its risks, safety record, business operations in general, and current insurance coverage. In this way, the possible vulnerabilities or exposures to loss can be determined and either corrected or insured against.

**For More Information**

Increasingly, community associations are finding it necessary to cover all their bases with regard to risk exposure. Although a standard insurance policy is

obviously the front line in this defense, umbrella liability insurance is becoming the bottom line. Lawsuits are commonplace and juries are unpredictable when rendering judgments or awards, making the type of coverage provided by umbrella liability insurance a necessity.

It is critical to review your association's legal responsibilities and insurance needs with qualified

professionals, including your association's legal counsel. If you have any questions or need further information, please contact Steve Dickerson (703-739-2346 or Steve.Dickerson@usi.biz) or Theresa Swan (703-684-4369 or Theresa.Swan@usi.biz).

**COULD YOUR ASSOCIATION AFFORD...**

Owning property today can be hazardous to your financial health, particularly if anyone—resident, visitor, salesperson, contractor, or guest—is injured on your property. The following recent losses bear that out. Community associations owe it to their members to obtain appropriate umbrella liability insurance coverage for their specific situations.

**Jurisdiction:** Maine  
**Description:** Tenant in a condominium complex fell down an improperly lit interior stairwell. Plaintiff suffered ankle, knee, and back sprains, chronic pain syndrome, inflammatory back disease, and also suffers from depression.

**Case Result:** Verdict of \$765,000 for multiple injuries.

**Jurisdiction:** Nevada  
**Description:** A person was shot and killed in the parking lot of an apartment complex. It was alleged that the owner's general manager was aware of drug deals being conducted on the premises and failed to provide sufficient security.

**Case Result:** Verdict of \$12,600,000 for wrongful death due to negligence in providing proper security. The verdict included \$2,600,000 for punitive damages.

USI • 110 South Union Street • Suite 300 • Alexandria, Virginia 22314  
703-683-5880 • Fax: 703-549-1114 • www.usicondo.com  
Editor: Shannon R. GaNun

The information in this newsletter is taken from sources which we believe to be reliable, but is not guaranteed and is not necessarily a complete statement of all the available data. Conclusions are based solely upon our best judgment and analysis of technical factors and industry information sources.