

Loss Assessment Coverage

By [David Thompson](#), CPCU

The 2016 Community Association Fact Book reported that countrywide there are 342,000 community associations, and 21.6 percent of Americans live in some type of community association. Florida alone has 47,900 community associations composed of 9,664,000 residents. These include condominium associations, homeowners associations, and cooperative associations. Along with the many benefits of HOA living come some disadvantages, one being that HOA living creates the possibility of being assessed by the association. For some assessments, loss assessment coverage provided by the standard homeowners policy can provide a “financial security blanket” for the resident. This article examines the loss assessment coverage provided by the industry standard homeowners policy written by Insurance Services Office (ISO). Since policies differ, it’s imperative that the specific policy in question be read to determine coverage. The state of Florida has a statute relating to loss assessment that is specific to HO-6 policies; that will be discussed later in this article.

Coverage Limits: All homeowners policies (HO-3, HO-4, HO-5, HO-6, etc) provide \$1,000 of loss assessment coverage built into the form. The HO 04 35 - Loss Assessment Coverage endorsement allows for increased limits (up to \$50,000 under ISO rules) as well as the ability to extend the coverage from the “residence premises” to another location such as a secondary home owned by the insured. The limit of \$1,000 is referenced in Section I of the policy, as well as in Section II of the policy. Any resident who lives in an association should increase the \$1,000 limit to a higher limit, especially considering the very inexpensive cost to do so.

Section I Loss Assessment Coverage

The current version of the ISO homeowners policy is dated 05/2011. Earlier edition dates are 10/2000 and 04/1991, and all three edition dates are used by carriers around the country.

04/91 Edition:

7. Loss Assessment.

We will pay up to \$1000 for your share of loss assessment charged during the policy period against you by a corporation or association of property owners, when the assessment is made as a result of direct loss to the property, owned by all members collectively, caused by a Peril Insured Against under COVERAGE A – DWELLING, other than earthquake or land shock waves or tremors before, during or after a volcanic eruption.

This coverage applies only to loss assessments charged against you as owner or tenant of the "residence premises."

We do not cover loss assessments charged against you or a corporation or association of property owners by any governmental body.

The limit of \$1000 is the most we will pay with respect to any one loss, regardless of the number of assessments.

Condition I. Policy Period, under SECTIONS I AND II CONDITIONS, does not apply to this coverage.

10/2000 Edition

7. Loss Assessment

a. We will pay up to \$1,000 for your share of loss assessment charged during the policy period against you, as owner or tenant of the "residence premises", by a corporation or association of property owners. The assessment must be made as a result of direct loss to property, owned by all members collectively, of the type that would be covered by this policy if owned by you, caused by a Peril Insured Against under Coverage A, other than:

(1) Earthquake; or

(2) Land shock waves or tremors before, during or after a volcanic eruption.

The limit of \$1,000 is the most we will pay with respect to any one loss, regardless of the number of assessments. We will only apply one deductible, per unit, to the total amount of any one loss to the property described above, regardless of the number of assessments.

b. We do not cover assessments charged against you or a corporation or association of property owners by any governmental body.

c. Paragraph P. Policy Period under Section I – Conditions does not apply to this coverage.

This coverage is additional insurance.

05/2011 Edition

Wording in the 2011 edition is almost identical to the 2000 edition.

During the Policy Period: The triggering event for the coverage is an assessment by an association of property owners taking place during the policy period; the date of the occurrence that generated the assessment is not a factor. If the assessment is made during the policy period, even if the actual occurrence causing the damage took place before the effective date of the homeowners policy, then the triggering criteria has been met.

Example #1: Bill has a HO-3 policy with effective dates 1/1/17 to 1/1/18 with Company A. On 9/25/17 a windstorm damaged his HOA clubhouse and it was

found there was no commercial property coverage in place. Bill's policy for the 1/1/18 to 1/1/19 term is renewed with Company B. On 3/1/18 the HOA assesses Bill \$900 for this loss. The Company B policy responds to the assessment, less the all peril deductible.

Example #2: Same as above, but Bill sells his home on 11/1/17 and cancels his policy. He moves into a new home and purchases a homeowners policy on that home. An assessment is made on 3/1/18 for his old home because he lived in the association when the windstorm caused damage. Bill has no coverage for this assessment under his new policy because the assessment was made under his current policy and it was for his old "residence premises." The old policy will not respond because the assessment was not made during the policy period.

Example #3: (An actual claim.) Bill moves to Florida and buys a home on 11/1/04 in a homeowners association area that suffered hurricane damage on 9/25/04. The home he purchased was not damaged and unknown to Bill the HOA property sustained damage from the hurricane. Bill obtains a homeowners policy the day of closing (HO-3) 11/1/04. On 1/10/05 the HOA assesses all owners (including Bill) for damage to the HOA property. Even though Bill didn't own the home on the date of the hurricane, and even though Bill's homeowners policy was not effective until after the hurricane, his policy covers the loss assessment less his all peril deductible. The key is the date of the assessment; Bill's policy was in effect at that time.

Type Property Damaged:

The 1991 version of the ISO homeowners policy requires only that the assessment be made because of damage to property owned collectively by the association.

Example: A hurricane causes major damage at an HOA or condominium association. The HOA/COA owns a golf cart used by members to drive around the association property. They also own several maintenance trucks that are not required to be registered. Additionally, numerous trees are damaged by windstorm. It is learned that the association had no physical damage coverage on the golf cart or trucks.

Under the 04/91 form there is no requirement that the damaged property be "covered property" under the homeowners policy. The only requirement is that there be damage to property owned by the association. Even though the golf cart and trucks would not be "covered property" under the HO-6, and even though trees are not covered for damage caused by windstorm under the homeowners policy, if an assessment is made against a unit owner the HO-6 responds after the application of the all peril deductible. The golf cart, trucks, and trees fit the category of "property owned collectively" by the association.

However, under both the 10/2000 and 05/2011 form there would be no coverage for the golf cart because the golf cart is "property not covered" by the HO-6 since

it is not used solely to service the residence premises. The same applies for the trees since they are not covered for damage caused by windstorm under the homeowners policy.

As long as the property is owned collectively by the HOA, coverage is triggered under the homeowners policy. As mentioned above, the 04/91 form can provide broader coverage than the 10/2000 and 05/2011 forms

Covered Perils: In order for the assessment to be covered by Section I of the policy the peril causing the loss must be a covered peril under the homeowners policy.

Example #1: Sue has an HO-3 policy and is assessed for fire damage to the HOA clubhouse. Since fire is a covered peril under her HO-3 her policy responds less the all peril deductible.

Example #2: Sue is assessed for flood damage to the same clubhouse. Since flood is not a covered peril under her HO-3 there is no coverage. (See discussion concerning flood loss assessment coverage later.)

Example #3: Sue has an HO-3 written “excluding windstorm” and the HOA clubhouse is damaged by a hurricane. Her HO-3 does not respond because windstorm is not a covered peril under her policy.

Example #3: Sue is assessed \$1,800 by her HOA for her share of the cost to replace the roof on two HOA buildings. The roof on each building was old and had simply worn out; it was time to replace the roof after 18 years. Sue’s homeowners policy does not cover this assessment since “routine maintenance” is not a covered peril under her homeowners policy.

Number of Assessments: The \$1,000 limit (or higher limit if increased) is all that the policy will pay for assessments resulting from one loss, regardless of how many assessments are made by the HOA. For example, if a clubhouse were damaged by fire and the HOA made an initial assessment of \$3,500 the homeowners policy pays the \$1,000 limit (assuming it has not been increased). If, three months later, another assessment is made for the same fire loss there is not an additional \$1,000 available for another assessment.

Increased Limits/Deductible Limit Issue: Via the HO 04 35 endorsement a limit higher than \$1,000 may be selected by the insured. This is a prudent move for all HOA residents to make, however there is still a coverage concern in such cases. The HO 04 35 endorsement has this wording:

3. Special Limit

We will not pay more than \$1,000 of your assessment per unit that results from a deductible in the policy of insurance purchased by a corporation or association of property owners.

Two examples will serve to illustrate this limitation.

Example #1: Sue has increased her loss assessment to \$10,000. Her association's clubhouse is damaged by a fire and it is learned that the deductible on the commercial property policy was \$100,000. Each member of the HOA is assessed their share, \$4,500. Sue's homeowners policy only pays \$1,000 because she was assessed to cover an association deductible. ($\$4,500 - \500 Section I deductible = $\$4,000$ payable, but limit is $\$1,000$. The deductible applies to the loss, then apply the internal limit).

Example #2: Sue has increased her loss assessment to \$10,000. Her association's clubhouse is damaged by a fire and it's learned that there was no coverage at all for the clubhouse. Sue is assessed \$4,500 (her share) in order to rebuild the clubhouse. Her policy covers the assessment in full, subject only to her policy all peril deductible.

The issue of an assessment due to an association is addressed differently under the ISO 05/2011 form. In that edition date of the homeowners policy, ISO removed the internal limit of \$1,000 for an assessment due to an association deductible. Therefore, if the insured had (as an example) \$25,000 of loss assessment coverage and was assessed \$9,000 for an association deductible, the full \$9,000 is paid less the all peril deductible. Note, again, this is only in the 05/2011 program.

Which Deductible Applies: It is very common for homeowners policies to have an all-other-peril (AOP) deductible and a percentage hurricane deductible. The question is raised then, "If the assessment is made by the association because of hurricane damage to common property, what deductible applies, the AOP or the hurricane?" Insurance experts agree that the all peril deductible applies, not the hurricane deductible.

The assessment is a completely separate loss under the homeowners policy. The policyholder may or may not have suffered damage when the HOA property was damaged. The trigger for loss assessment coverage, as pointed out earlier, is the assessment by the HOA. The cause of loss that damaged the association property is not material to the assessment being made. The homeowner suffered loss when the HOA passed along an assessment for damage to common property. Their loss did not result from the peril of windstorm during a hurricane, it resulted from an assessment made by the HOA. Keep in mind, too, the assessment is a separate loss to the insured, a separate occurrence, and a separate all peril deductible applies.

Example: Bill's HO-3 has a \$500 AOP deductible and a \$2,200 hurricane deductible, which is 2% of his \$110,000 Coverage A limit. His policy runs 1/1/17 – 1/1/18. On 9/25/17 a hurricane damages his home and he is paid for the \$25,000 in damage less his 2% hurricane deductible. On 11/1/17 he is assessed \$900 for damage to the HOA clubhouse which was damaged in the same hurricane. His policy pays this assessment less his \$500 AOP deductible. As is

evident, Bill has had two claims and has suffered two deductibles during the term of his policy.

In all cases the AOP deductible applies to Section I loss assessment claims.

Section II Loss Assessment Coverage

Loss assessment in Section II of the homeowners policy is stated as follows in all three editions of the form:

D. Loss Assessment

1. We will pay up to \$1,000 for your share of loss assessment charged against you, as owner or tenant of the "residence premises", during the policy period by a corporation or association of property owners, when the assessment is made as a result of:

a. "Bodily injury" or "property damage" not excluded from coverage under Section II – Exclusions; or

b. Liability for an act of a director, officer or trustee in the capacity as a director, officer or trustee, provided such person:

(1) Is elected by the members of a corporation or association of property owners; and

(2) Serves without deriving any income from the exercise of duties which are solely on behalf of a corporation or association of property owners.

2. Paragraph I. Policy Period under Section II – Conditions does not apply to this Loss Assessment Coverage.

3. Regardless of the number of assessments, the limit of \$1,000 is the most we will pay for loss arising out of:

a. One accident, including continuous or repeated exposure to substantially the same general harmful condition; or

b. A covered act of a director, officer or trustee. An act involving more than one director, officer or trustee is considered to be a single act.

4. We do not cover assessments charged against you or a corporation or association of property owners by any governmental body.

During the Policy Period: Just like under Section I, the triggering event for the coverage is an assessment by a HOA taking place during the policy period. The date of the occurrence that generated the assessment is not a factor. If the assessment is made

during the policy period, even if the actual occurrence causing the damage took place before the effective date of the homeowners policy, then the criteria has been met.

Covered Perils: While liability losses are not generally viewed as “perils” for the sake of discussion here such could be the case. The loss assessment coverage under Section II of the homeowners policy is triggered by an assessment for “bodily injury” or “property damage” as defined in the homeowners policy. The claim for “bodily injury” or “property damage” must not be excluded by the homeowners policy.

Example: Sue’s homeowners policy assesses her \$900 for a liability claim that exceeded the association’s general liability policy limits. The claim resulted from a child diving into the HOA swimming pool which had been drained of water the night before. The assessment is covered by Sue’s homeowners policy without application of a deductible.

The homeowners policy also provides coverage for the policyholder if the assessment is made as a result of action of a HOA board member who was elected by the HOA members and derives no income from the position.

If increased limits of coverage are elected via the HO 04 35 endorsement, these increased limits apply to loss assessment claims that are covered under Section II of the policy.

Deductible: There is no deductible for loss assessment claims that are covered under Section II of the homeowners policy.

Contractual. It might be argued that an assessment against a homeowner is the result of a contractual provision in the purchase agreement, and thus the loss assessment coverage provisions discussed above would not apply. For this reason, Section II contains the following exclusion:

“Coverage E does not apply to:

1. Liability:

- a. For any loss assessment charged against you as a member of an association, corporation or community of property owners, except as provided in D. Loss Assessment under Section II – Additional Coverages.”*

Condominium Units in Florida

During the 2010 legislative session the following statute was added, applicable to admitted insurers only. Note, please, this statute applies only to condominium unit owner policies:

627.714 Residential condominium unit owner coverage; loss assessment coverage required.—

- (1) For policies issued or renewed on or after July 1, 2010, coverage under a unit owner's residential property policy must include at least \$2,000 in property loss assessment coverage for all assessments made as a result of the same direct loss to the property, regardless of the number of assessments, owned by all members of the association collectively if such loss is of the type of loss covered by the unit owner's residential property insurance policy, to which a deductible of no more than \$250 per direct property loss applies. If a deductible was or will be applied to other property loss sustained by the unit owner resulting from the same direct loss to the property, no deductible applies to the loss assessment coverage.*
- (2) The maximum amount of any unit owner's loss assessment coverage that can be assessed for any loss shall be an amount equal to that unit owner's loss assessment coverage limit in effect 1 day before the date of the occurrence. Any changes to the limits of a unit owner's coverage for loss assessments made on or after the day before the date of the occurrence are not applicable to such loss.*
- (3) Regardless of the number of assessments, an insurer providing loss assessment coverage to a unit owner is not required to pay more than an amount equal to that unit owner's loss assessment coverage limit as a result of the same direct loss to property.*
- (4) Every individual unit owner's residential property policy must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property.*

Several issues are addressed differently under the HO-6 policy when compared to the HO-3.

- \$2,000 of property loss assessment is required.
- A specific endorsement applies: HO 04 47 - Additional Supplemental Loss Assessment Coverage (Unit Owners) – Florida.
- A special deductible of \$250 applies; no other deductible applies.
- The maximum loss assessment coverage available is the amount of loss assessment coverage the insured had on the day before the event that generated the assessment took place. For example, Sam had an HO-6 policy in effect on 10/9/17 when a hurricane hit Florida. His policy provided \$2,000 of loss assessment coverage at that time. A few months later, Sam increased his loss assessment coverage (or changed insurers) to \$10,000. Sixty days after that, he was assessed \$8,000 by the condo association. Sam only has \$2,000 of loss assessment coverage.
- The full \$2,000 is available for a property assessment due to an association deductible.
- If the unit owner suffered damage in the event generating the assessment and had a covered claim under the policy in effect at that time, no deductible applies to the assessment. For example, Susan had an HO-6 policy in effect on 9/25/17 when a hurricane damaged her unit. Her claim was paid less her hurricane deductible. Four months later, Susan is assessed \$1,500 by her condo association due to damage to an uninsured clubhouse. The loss assessment claim is paid without a deductible.

Flood Policy Loss Assessment

The standard NFIP dwelling flood policy contains this coverage:

3. Condominium Loss Assessments

*a. If this **policy** insures a **unit**, we will pay, up to the Coverage A limit of liability, your share of loss assessments charged against you by the **condominium association** in accordance with the **condominium association's** articles of association, declarations and your deed.*

*The assessment must be made as a result of **direct physical loss by or from flood** during the **policy** term, to the **building's** common elements.*

b. We will not pay any loss assessment charged against you:

*(1) And the **condominium association** by any governmental body;*

*(2) That results from a deductible under the insurance purchased by the **condominium association** insuring common elements;*

*(3) That results from a loss to personal property, including contents of a **condominium building**;*

*(4) That results from a loss sustained by the **condominium association** that was not reimbursed under a flood insurance **policy** written in the name of the association under the **Act** because the **building** was not, at the time of loss, insured for an amount equal to the lesser of:*

(a) 80 percent or more of its full replacement cost; or

*(b) The maximum amount of insurance permitted under the **Act**;*

*(5) To the extent that payment under this **policy** for a **condominium building** loss, in combination with payments under any other **NFIP policies** for the same **building** loss, exceeds the maximum amount of insurance permitted under the **Act** for that kind of **building**; or*

*(6) To the extent that payment under this **policy** for a **condominium building** loss, in combination with any recovery available to you as a tenant in common under any **NFIP condominium association policies** for the same **building** loss, exceeds the amount of insurance permitted under the **Act** for a single-family dwelling.*

Loss assessment coverage does not increase the Coverage A limit of liability.

Note that the loss assessment coverage applies **only** for a condominium unit owner. Unlike the standard ISO homeowners policy, coverage is not provided for owners of homes that are not a condominium ownership concept, typically HO-2, HO-3, HO-5, HO-8, and HO-4 policies. Like the homeowners policy discussed above, the assessment is covered if it occurs during the policy period. There is no internal limit for loss assessment coverage; only the Coverage A (dwelling) limit applies. No deductible applies to flood policy loss assessment coverage. There are numerous situations when loss assessment does not respond, such as to cover an association deductible or in situations where the unit owner had already benefited for \$250,000 under their own policy for damage to their own Coverage A items.

Summary

Individuals who live in or own homes in a home association face increased financial risks from assessments. Personal lines policies can help cover some of the assessments that may be made. Increased limits of loss assessment coverage should be purchased where available, and individuals who live in a HOA should have their policy endorsed to include personal injury liability claims. This is a general summary only; the specific policy in question must be read.

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