

Insurance Trends – Contractors and The Community Association Commercial General Liability Policy

By Jim Ruebsam, CIRMS, EBP

Senior Vice President, The Daniel & Henry Company

www.condoinsure.com

Understanding Subcontractor Warranties and Exclusions in Commercial General Liability Policies

In today's challenging commercial insurance environment, community associations and management companies are facing increasingly stringent requirements when working with subcontractors. Commercial General Liability (CGL) policies—especially those issued by non-admitted or surplus lines carriers—are now more frequently including subcontractor warranties, conditions, or exclusions. These provisions can significantly affect coverage, especially when claims arise from the actions of third-party contractors.

This article outlines what these warranties mean, why they're important, and how associations and community association managers can protect themselves.

What Are Subcontractor or Independent Contractor Warranties?

Subcontractor warranties are conditions placed within a CGL policy that dictate how an insured must engage with subcontractors or independent contractors. These warranties are designed to shift risk and responsibility from the insurance carrier to the entities performing the work. A common endorsement used is the "**Subcontractor or Independent Contractor Warranty**", which imposes specific duties on the policyholder (and, therefore, the management company and/or board) before subcontractor work begins.

Please note that some insurance companies are now even adding **Subcontractor or Independent Contractor Exclusions**, which are often more stringent than warranties.

Please note that most CGL insurance applications ask about managing subcontractor risks. Even if the CGL policy does not have a warranty or exclusion, the insurance company may deny coverage if the association did not.

Key Requirements Under Typical Subcontractor Warranty Endorsements

Under many subcontractor warranty endorsements, the following conditions **MUST** be met for there to be coverage for claims that arise due to the actions of the association's subcontractors:

1. Proof of Insurance:

- Subcontractors must carry their own Commercial General Liability insurance with minimum limits:
 - \$1,000,000 per occurrence
 - \$2,000,000 general aggregate
 - \$2,000,000 products/completed operations aggregate
- They must also maintain statutory Workers' Compensation and Employers' Liability coverage.
- All policies must be from carriers rated A- VII or better by A.M. Best.

2. Written Agreements:

- A **hold harmless agreement** must be in place, indemnifying the insured from liabilities stemming from the subcontractor's work.
- The subcontractor must list the insured as an **Additional Insured** on their liability policies, with endorsements provided before work starts.

3. Coverage Verification:

- There must be no restrictive endorsements that would undermine the effectiveness of the coverage or indemnification agreements.
- Some examples of restrictive endorsements may include coverage exclusions for your contractor's subs or exclusions for specific types of work being performed.

If these conditions are not met and a claim arises, the insurer may **deny both defense and indemnity** for any liability caused by the association's subcontractor's work.

Real-World Consequences of Non-Compliance

A recent case highlights the risks: A community association faced a **denial of coverage** for a personal injury claim because the management company failed to verify that a contractor carried proper insurance. There was no harmless agreement in place, and the contractor's coverage did not meet policy requirements. As a result, both the association and management company are now paying defense costs out-of-pocket, and the management firm may face a professional liability claim for failing to properly qualify the contractor.

Be Cautious with Snow Removal Contracts

Insurance carriers are increasingly including these conditions in CGL policies, particularly for community associations and their managers. Snow removal contracts have become a hot spot, with many landscaping and snow removal vendors requesting indemnification *in the contractor's favor*—a practice that can directly violate the association's CGL policy and lead to a denial of claims.

Recently, one major insurance company began cancelling association policies if they enter snow removal contracts that require the association to indemnify the contractor.

Contractor Risk Management Recommendations for Associations and Management Companies

1. **Implement a Vendor Management Program:** Ensure subcontractors comply with insurance standards and contractual requirements.
 2. **Use Standard Contracts:** Every contractor agreement should include indemnification clauses and insurance requirements aligned with the CGL policy.
 3. **Verify and Retain Documentation:** Always collect and file certificates of insurance and additional insured endorsements **before** work begins.
 4. **Consult Legal and Insurance Experts:** Review contract language and policy conditions with professionals to avoid unintentional breaches.
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Conclusion

As subcontractor warranties and exclusions become more prevalent, community associations and their managers must stay proactive. Failing to meet even a single policy

condition can mean a loss of coverage when it's needed most. Understanding your insurance policy—and enforcing rigorous vendor protocols—can be the difference between a stout defense by your CGL insurance company or a denial of your claim.