

Contractors, Co-ops and Condos, Landlords, Managing Agents & Service Firms: You Are Facing Cyber Risk!

INSURANCE INSIGHTS

By Ken Furst and Jason Schiciano, Levitt-Furst Associates



YONKERS—Do you know if your Liability Insurance Coverage includes protection for Cyber Liability Risk?

By now, most of us have heard of Data Breach Cyber-Crimes, crimes wherein personally identifiable information (PII)—such as credit card numbers, social security numbers, bank account numbers, name, address, etc.—stored electronically, or available online, are stolen.

Recent high-profile Data Breach Cyber-Crime Victims have included customers of Ebay, Target, Home Depot, JP Morgan Chase, and Anthem. Put another way, the list is an online retailer, two brick-and-

mortar retailers, a bank, and a healthcare company. That is a diverse list of victims, but in fact, over the last decade, virtually every commercial business sector has suffered Cyber Data Breaches, resulting in billions of records stolen, and billions of dollars in cost to individual victims and the companies bearing the liability for the breaches.

Data Theft Methods include unauthorized access to database files via the internet (due to weak or stolen user names and passwords); a stolen laptop or portable hard drive; or email phishing (the acquisition of user name/password via a email sender masquerading as

a trustworthy source).

Key Examples

While it's easy to understand how a hospital, retailer, or bank could be at-risk for a Cyber-Data Breach, it may be more difficult to contemplate cyber risk for members of The Builders Institute (BI)/Building and Realty Institute (BRI). Consider these examples:

- **Contractor:** A Contractor stores personally identifiable information for employees (name, address, social security numbers) in payroll software on an office desktop computer. The computer is user-name/password protected, but the computer is

hacked and the data is stolen.

- **Managing Agent:** A Managing Agent stores personally identifiable information for condo/co-op residents (name, address, social security number, bank account number) in Property Management Software on an office computer server. The server is hacked and the data is stolen.
- **A Co-op:** A Co-op's Board President e-mails an electronic file of a shareholder applicant to other board members. The file contains personally identifiable information for the applicant (name, address, social security number, investment statements, and pay-stubs). One member of the board has his or her computer hacked, or a laptop is stolen, and the shareholder's personal information is accessed.
- **A Landlord:** A Landlord stores personally identifiable information for tenants (name, address, social se-

curity number, bank account number) in Property Management Software on an office computer server. The server is breached and the data is stolen.

- **A Supplier/Service Firm:** A Supplier/Service Firm stores credit card information for its customers in Sales Management Software. The software is breached and credit card information is stolen.

The above examples are just a few of the dozens of cyber theft scenarios that can occur involving the personal information of employee records, resident records, applicant records, tenant records, or customer records.

Cyber Liability Insurance can help mitigate the costs of Cyber Data Breaches. Cyber Liability Coverages vary widely by carrier and client type, but, in general, include coverages for costs associated with liability (e.g. third-party claim or suit) related to a breach, including:

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THE HANLEY REPORT

By JEFF HANLEY
Associate Director, Building and Realty Institute (BRI)/IMPACT Editor



Addressing a Serious Threat to Most Businesses

ARMONK – What do Contractors, Managing Agents, Co-ops and Condos, Landlords, Managing Agents and Service Firms have in common?

The answer is clear – each face the negative prospects of Cyber Risk! That scary threat is addressed thoroughly in this issue's Insurance Insights column. The important article was written by Jason Schiciano and Ken Furst of Levitt-Furst Associates, insurance manager for The Builders Institute (BI)/Building and Realty Institute (BRI).

The analysis stresses that, by now, most of us have heard of Data Breach Cyber-Crimes, crimes wherein personally identifiable information (PII) - such as credit card numbers, social security numbers, bank account numbers, name, address, etc., - stored electronically, or available online, are stolen. It emphasizes that recent high-profile Data Breach Cyber-Crime Victims have included customers of Ebay, Target, Home Depot, JP Morgan Chase and Anthem.

Put another way, the article says, the list is an online retailer, two brick-and-mortar retailers, a bank, and a healthcare company. The summary em-

phasizes that is a diverse list of victims, but in fact, over the last decade, virtually every commercial business sector has suffered Cyber Data Breaches, resulting in billions of records stolen, and billions of dollars in cost to individual victims and the companies bearing the liability for the breaches.

Again, a scary scenario, indeed. The analysis is one of many important reports in this issue. Others include:

- A Page One Article from The National Association of Home Builders (NAHB). The report says that the Housing Recovery will "pick up steam" in 2016, but that challenges will remain. It emphasizes that steady employment and economic growth, pent-up demand, affordable home prices and attractive mortgage rates will keep the housing market on a gradual upward trend in 2016. But, it adds, persistent headwinds related to shortages and availability of lots and labor, along with rising materials prices, are impeding a more robust recovery.
- An article from The Hudson Gateway Multiple Listing Service (HGMLS) sum-

marizing that positives are continuing for the region's real estate market. The review shows how the market continued to post high sales volumes and moderate price changes through the third quarter, according to a recent report from the organization. The study said that Realtors working in Westchester, Putnam, Rockland and Orange Counties reported a total of 5,231 closed transactions of single family houses, condominiums, cooperatives and 2-4 family houses during July, August and September. That represents an increase of 687 units, or 15.2 percent, over the third-quarter results of 2014, the report said.

- An analysis of Saber Dobbs Ferry, LLC hosting a groundbreaking ceremony on Oct. 6 for the retail, dining and entertainment portion of Rivertowns Square, the \$130 million, 450,000-square-foot mixed-use development under construction in Dobbs Ferry. Officials said the project will create more than 650 full and part-time jobs, as well as 475 construction jobs,

upon its completion. Scheduled to open in 2016, Rivertowns Square, spokesmen added, will feature a 138-room hotel, restaurants, boutiques and entertainment, along with 202 luxury apartments.

- A summary on how representatives of Ginsburg Development Companies (GDC) gathered with elected officials from the Village of Ossining and Westchester County on Oct. 15 for a "topping-off" event at Harbor Square, the \$65 million luxury rental complex. Harbor Square, across from the Ossining Metro-North station, will feature 188 luxury

rental units, with a mix of studio and 1-, 2- and 3-bedroom apartments. Harbor Square will also feature a 6,000-square-foot restaurant, offering dining along the Ossining waterfront. GDC is a longtime member of the BI/BRI. Martin Ginsburg, principal of the company, is a former president of the association.

- A review in Tech Talk on key components for businesses involving the upcoming Holiday Shopping Season. Andrea Wagner, the principal of Wagner Web Designs, authored the piece.

Enjoy the issue – and your autumn!



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Reviewing the Key Points of Cooperative Interviews

COUNSELS' CORNER

By **Kenneth J. Finger, Esq., Carl L. Finger, Esq., and Daniel S. Finger, Esq.**
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WHITE PLAINS—The topic of interviewing prospective shareholders for Cooperatives has been presented several times at membership meetings and seminars of The Building and Realty Institute (BRI), including those of The Cooperative and Condominium Advisory Council (CCAC) of the BRI.

Nonetheless, it is an important topic that we are constantly asked questions about. How to conduct an interview, what questions should be asked and what topics to avoid are items that we are asked about.

While this is generally a topic for Cooperatives, Landlords can look to these suggestions for some guidance, as well. It is, however, important to keep in mind that Landlords have additional restrictions, such as Source of Income Restrictions, as well as possibly Emergency Tenant Protection Act (ETPA) restrictions that they must adhere to.

Specifics

What are the key items for boards when interviewing prospective shareholders? How to know if these folks are for your building? There are no hard and fast rules, except not to discriminate based on protected classes.

Beyond the basic financial criteria as determined by each board, i.e., minimum down payment and percentage of

income that goes to mortgage and maintenance, the Board of Directors can look at any number of issues.

The interview can be used to explore any financial issues that need to be clarified from the application package, such as “cash business income,” which is not reported on tax returns, or where the down payment is coming from if not reflected in assets.

The other issues are not so easy. The discussion of some scenarios may help to clarify the subjects and the manner of questioning that may apply.

Steps

Before the Board of Directors can interview a potential candidate—or even decide on whether to interview the candidate—the prospective shareholder must submit a complete application that answers all appropriate questions, including all required documentation, references and background checks.

The Board of Directors should consult with its attorney and have its attorney review the application to make sure that none of the questions in the application are, in any way, unlawfully discriminatory.

Once the Board of Directors has received and reviewed the application, the Board of Directors must determine whether the prospective shareholder is qualified under the criteria

set by the Board of Directors to purchase the shares. It is important that the criteria used by the Board of Directors are not discriminatory and that the Board of Directors applies the same criteria to all prospective shareholders that apply to purchase shares and units.

If the Board of Directors decides to make a change to the criteria, the Board of Directors should make the change a global one and apply the new criteria to all future prospective shareholders. This avoids confusion and claims of discrimination.

Again, the Board of Directors should review the criteria and policy with its attorney to insure that it is not discriminating or using discriminatory policies. At this time, the Board of Directors can decide whether or not the candidate's application is suitable for an interview.

If, however, in reviewing the application the Board of Directors does not feel that it would approve the purchase, then it should not conduct an interview. This limits potential discrimination claims.

The Important Process

Assuming that the candidate is approved for an interview, the interview is scheduled and conducted. The interview may be attended by some, or all, of the Board of Directors at the discretion of the board. Frequently, the Board of Directors delegates the interview process to a committee made up of members of the board.

It is always a good idea to make sure that there is more than one board member present to insure against any subsequent allegations of discrimination or improper questioning at the interview by the member of the Board of Directors.

There are several goals for an interview - reviewing the application to confirm that there are no discrepancies and clarifying any minor discrepancies that do exist. It is also important to try and get to know the prospective shareholder on a more personal level (again, without asking questions that could be construed as discriminatory).

There are no hard and fast rules on exact questions to ask a prospective shareholder in an interview, other than do not discriminate against a protected class. If there are specific rules about the building (“A No Pet Rule,” for example) you can ask them if they understand the rules and have any problems with those guidelines.

If the prospective shareholder has specific hobbies or an occupation that will carry over into their home (i.e. a professional musician, like a violinist), you can ask questions related to those issues. Some other topics for inquiry may include:

- The proposed occupants of the unit;
- The reasons for choosing the area/neighborhood.
- Whether or not the prospective shareholder has any questions.

An Important List

Listed below are questions that may be appropriate to ask a prospective shareholder/resident:

- Have you had your own apartment before?
- Why did you leave your previous residence?
- Do you get along well with the residents in your previous residence?
- How were you referred here?
- Have you ever been evicted? If yes, please explain.
- What is your primary Source of Earned Income?
- What is your Total Household Income?
- Have you ever been convicted of a crime? If so,

- please explain.
- What would you do if a neighbor were causing a disturbance in the building?
- Have you ever been involved in a community group or done volunteer work? If so, please explain.
- Do you have any skills that would benefit the cooperative?

Suggestions

We recommend that when you schedule the interview, you ask that all prospective occupants (other than minor children) attend.

As an additional reminder (in case there is any ambiguity), the protected classes include: race, color, religion, creed, national origin, alienage, citizenship, gender, sexual orientation, marital status, age, military status, and disability (and in New York City, occupation).

Do not ask any questions that involve any of those topics, or could be construed to involve any of those topics. If you have any doubt, consult your attorney.

Editor's Note: The authors are attorneys with Finger and Finger, A Professional Corporation. Finger and Finger is Chief Counsel to The Builders Institute (BI)/Building and Realty Institute of Westchester and The Mid-Hudson Region (BRI). The firm is based in White Plains. This article originally appeared in the September, 2013 issue of IMPACT. It is being republished due to its popularity.

Houlihan-Parnes Reports Regional Transactions

Continued from page 4

co-op apartment building constructed in 1950. There are 54 apartments, on-site outdoor parking spots, 27 garages, gardens and a courtyard. The loan was placed with a savings bank at a 7-year fixed interest rate of 3.5 percent on a 30-year amortization schedule. The lender charged a no-commitment fee and the loan has a sliding scale penalty in the case of pre-payment.

- Arranged a loan secured by a first mortgage in the amount of \$2,000,000 encumbering of a 1.15-acre property, improved, with a 7-story concrete block and masonry brick double-wing, residential multi-family rental apartment building with two self-service elevators constructed in 1932 at 33 Williams Street in the Fleetwood section of Mount Vernon. There are 116 apart-

ments, 26 on-site outdoor parking spots, 60 garage spots, gardens and a courtyard. The self-liquidating loan was placed with a savings bank at a 15-year fixed interest rate of 3.63 percent. The lender charged a no-commitment fee and the loan has a yield maintenance penalty in the case of pre-payment.

Houlihan-Parnes Realtors is a multi-faceted real estate investment company headquartered in White Plains. Founded in 1891, its companies and affiliates are engaged in the acquisition and ownership of all types of commercial real estate investment property in the continental U.S., company officials said.

Houlihan-Parnes and its affiliates specialize in commercial mortgage finance, investment sales, property management, leasing, mortgage servicing and consulting, officials added.

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- Network and Information Security Liability
- Communications and Media Liability
- Regulatory Defense Expenses, including fines and penalties.
- Coverage for Direct (First-Party) Costs to the insured for such things as the material costs of a breach, forensic analysis, fees to determine the nature and extent of the breach, as well as notification costs that are legally mandated in most states. First-Party costs to the insured can include:
 - Crisis Management Event Expenses
 - Security Breach Remediation and Notification Expenses
 - Computer Program and Electronic Data Restoration Expenses
 - E-Commerce Extortion
 - Business Interruption and Additional Expenses

While the types of Cyber Liability Threats vary by business or organization type, in a world ever-more dependent

on technology and the internet, two things are certain:

All of our businesses/organizations face some kind of Cyber Liability Threat;

The threat of Cyber Data Breaches will continue to grow for the foreseeable future.

If you don't have Cyber Liability Insurance yet, ask your insurance broker to help assess the Cyber Threats facing your business/organization, and whether Cyber Liability Insurance is worth the cost, versus the cost of addressing a Cyber-Data Breach uninsured, and out-of-pocket.

For more information on Cyber Liability Insurance, contact your insurance broker, or Levitt Furst Associates, at (914) 376-2500.

Editor's Note: Levitt-Furst Associates is the Insurance Manager for The Builders Institute (BI)/Building and Realty Institute (BRI) of Westchester and The Mid-Hudson Region (BRI). The firm can be reached at (914) 376-2500.