General liability insurance isn’t meant for data breaches

The files held on apartment tenants are voluminous and detailed, including all sorts of personal and financial information that is extremely valuable to identity thieves. Are you protecting it?

The data can be used not only to undertake fraudulent financial transactions but also as a commodity to legitimate businesses that use it for marketing—in many cases those are unwitting businesses that may be far down the chain from the illegal acquisition of the information.

Whatever the end use of the data is, dealing with its initial loss is the responsibility of the data holder. Property managers at apartments and condominiums can find themselves confronted with substantial costs if their database is hacked or personally identifiable information on residents, employees or applicants is compromised in some other way. Potential expenses include notification of the breach to all affected, provision of credit monitoring and other protective services for victims, forensic services to determine where the weakness in your data protection system is, system audits by regulators, and legal defense fees and settlements or court awards. Costs can quickly run into the hundreds of thousands of dollars or millions if many individuals are affected.

And keep in mind: a data loss can generate extensive costs for property managers or others in custody of the data even if the information is never actually used or shown to have caused financial damage to the individuals whose data were compromised. If you look to your commercial general liability policy for apartment buildings, property managers or condominium master policies, you will find little or no coverage for data breach incidents. In fact, the Connecticut Supreme Court just weighed in on the matter, increasing the body of support for insurers who deny coverage under business general liability insurance. It found in favor of a lower court ruling that said the simple loss of data doesn’t constitute personal injury or public dissemination or publication of the information, meaning coverage isn’t triggered and notification and other expenses are uninsured.

Even if you have a data breach or cyber risk insurance policy, you need to make sure coverage isn’t contingent upon actual damage to those whose files are compromised, because notification, protective response, legal defense and forensic costs can still pile up.

Breaches can occur while the data is stored and inactive, during transmission and when hard copies, such as computer disks or tapes, are being transported to a storage facility or other location. If you are entrusting your data management to a vendor, caveat emptor—you may still be considered the primary custodian and face legal challenges in a privacy breach.

How many property managers carry their own cyber risk or data breach insurance? Do you rely on third-party property management system vendors and hope they carry that protection? Maybe you think it is the apartment building owner’s responsibility or the condo board has it in the master insurance policy. Let us know how you handle data breach liability insurance for apartment buildings and condos. It’s a complex exposure that can be handled in many different ways. Post your questions here, too. This community is full of excellent ideas that can help you better prepare for your next insurance review!

Posted by Global Administrator on 7/7/2015 11:09:01 AM