All Roads Lead to Increased Premiums

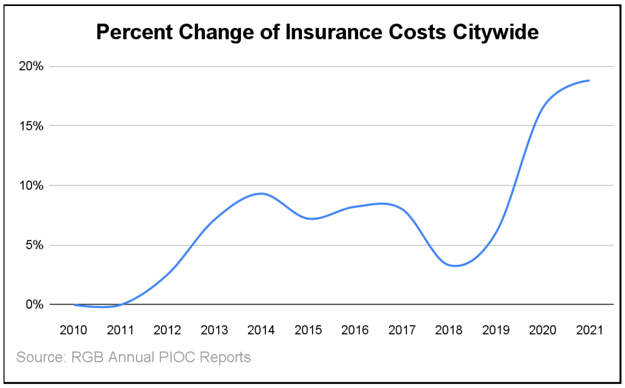
Summary of Insurance Cost Increase for Affordable Housing Providers
University Neighborhood Housing Program
May 2022

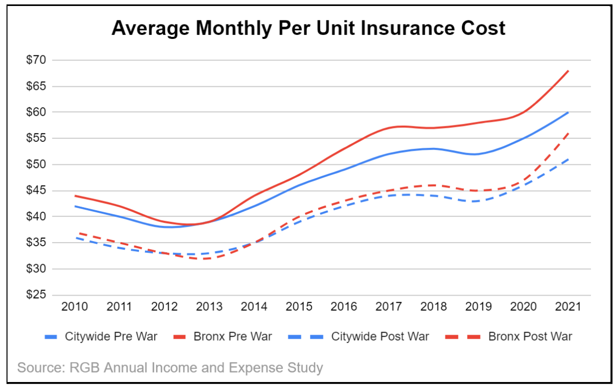
History

Insurance is not a new issue in the Bronx. Advocacy work around it dates back to the 1970s and was directly connected to the redlining which took place in low income neighborhoods in NYC. Advocates for affordable housing were able to target specific carriers and pressure them to write policies in neighborhoods which they had previously excluded altogether. As time went on, more carriers were willing to insure in the Bronx and, therefore, collect healthy premiums from the transitioning and thriving neighborhoods in the borough.

As insurance became accessible, owners were able to fall into a rhythm with renewals that allowed them to minimize cost increases. Typically, a building owner would receive a policy renewal with a 3%-5% increase from one year to the next. Then, every 4-5 years, an owner could decide to shop the policy on the market, receive a number of quotes, and ultimately land on a policy 10%-15% lower than the original renewal. In other words, thanks to the competition in the insurance market, owners were able to manage insurance costs by semi-regularly changing insurance carriers. We have done this in our own buildings; take, for example, the Wilton on the corner of Tremont and Anthony Avenues. In 2017, the insurance for the property accounted for 10% of the operating cost and increased to 10.9% in 2018. Come 2019, we decided to look for a more affordable plan, and we were able to switch carriers and significantly decrease the cost of coverage to 7.9% of the building's operating cost.

However, roughly 5-7 years ago, these year-over-year renewal increases started to grow to 5%-10%. Then, from 2019 on, some increases were closer to 30% for plans that offered less coverage, had more exclusions, and higher deductibles. On top of these larger yearly renewal increases, it also became more challenging to find an alternative quote — we could no longer simply switch to a new carrier to keep costs down. Data from the Rent Guidelines Board, shown in the charts below, corroborates the cost increases that we have seen in our own portfolio. The chart on the left tracks the percent change of insurance costs across the city since 2010. There has been a dramatic increase in the cost of insurance since 2018 with yearly costs increasing nearly 48% by 2021. The chart on the right shows this increase in terms of the average monthly per unit cost for buildings citywide as well as those in the Bronx — it breaks out pre- and postwar buildings for both geographies. Notably, the average Bronx cost is consistently higher than the citywide average.





Recently, NYC Housing Development Corporation (HDC) released their 2022 Maintenance and Operating standards for new construction. These standards delineate maximum costs for projects seeking public funds from HDC. As insurance costs have increased, we have run into difficulty when discussing funding with HDC as we struggled to find a quote that would allow us to come in under or at their desired per unit cost. The new standards do include a 20% increase in the property and liability insurance line from 2021, bringing the per unit cap to $1,100. While this does acknowledge the increasing cost of insurance, we think the cap is still on the low end and may cause issues for affordable developers looking to work with HDC moving forward.

Upon seeing the drastic jump in annual increases and experiencing difficulty shopping our plans, we began working with a group of ten mission driven housing groups, largely located in the Bronx, to study the issue more closely. These include Fordham Bedford Housing Corporation, Dougert Management Corporation, Lemle and Wolff, Sycamore Birch Management, Catholic Homes New York, Rose Hill Management, Bronx Pro Group LLC, WMW Realty Management LLC and others. All in, the owners and managers working group represents nearly fifteen thousand units both in the Bronx and across the city. After two years, one thing has become clear: that there is not one single issue responsible for the sharp increase in insurance costs, but a multitude of factors. In this report we have compiled information from the operators in our working group as well as insights from insurance brokers to share our experiences and shed some light on these factors we see contributing to these increases in cost. Six of the ten housing groups, representing over 13,700 units, took a survey about their experiences with insurance, the results of which we will reference throughout this report.

Importantly, we believe that the factors we identify here — such as increased coverage requirements, perceived increased risk, and outdated legislation — need to be addressed in a way that does not result in tenants carrying the financial burden. The Bronx households who the groups involved in this study serve have long faced an unaffordable housing market and were hard hit by the COVID-19 pandemic. The median income of renters in the borough is just under $34,500, and 34% of renters in the Bronx are severely rent burdened, meaning that they pay 50% or more of their income in rent[1]. At its peak during the pandemic, the unemployment rate in the borough nearly reached 25%. Since then, the rate has decreased, but the Bronx continues to have the highest rate among the boroughs. The effects of the unaffordable housing market and the economic turmoil caused by the pandemic have had a destabilizing effect on residents. This can be seen by the high rate of eviction filings in the borough. Before the pandemic the Bronx accounted for a disproportionate amount of eviction filings in the city, this trend has continued with Bronx neighborhoods having the highest rates of eviction filings in the city[2]. Transferring the increasing cost of insurance to tenants will only serve to further destabilize communities and goes against our mission as an affordable housing provider.

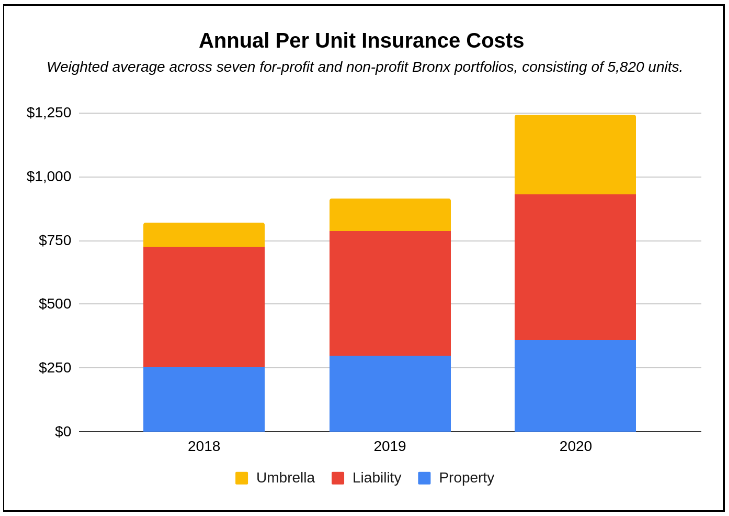
Umbrella Coverage

There are two main types of coverage — property and liability. A building's property coverage typically protects the building and its equipment in the case of weather events, fire damage, vandalism or theft with some exclusions of course. Liability coverage protects the building from claims involving bodily injury or property damage due to actions, or in some cases, inaction on the part of the building. Umbrella coverage, a third coverage type, is intended to provide liability protection for injury to others, property damage, and specific lawsuits beyond what general liability policies will cover.

For many in our working group, umbrella coverage is a requirement of public financing, be it city, state, or federal. These coverage requirements mean that reducing the amount of coverage or letting an umbrella policy lapse because a quote is unreasonably high is not an option.

In order to put some numbers to the insurance cost changes being experienced by working group members, we completed a survey of nearly 6,000 units focusing on the costs of different policy types from 2018 to 2020. The chart below shows the findings:

[1] Furman Center Bronx Neighborhood Profile
[2] Data from the New York State Office of Court Administration via the Housing Data Coalition in collaboration with the Right to Counsel Coalition.



As we began to analyze the data, it became clear that while costs were increasing across all policy types, the cost of umbrella coverage was growing at a startling rate. General liability coverage continues to be the most expensive type of coverage, but the marked increase in umbrella costs are troubling. Additionally, for many in our group — especially those with larger portfolios — it has become challenging to find umbrella coverage as few carriers are willing to provide it.

In discussing umbrella coverage costs with brokers, we learned that the bulk of the policy cost can be attributed to the first $5 million in coverage. In other words, an operator shopping for $10 million in umbrella coverage could receive a quote for $50,000. If, instead, the operator decided to only purchase $5 million in umbrella coverage for the same building, it would not be unusual for them to receive a quote for $40,000. Despite receiving only half of the coverage, the operator would only save $10,000. This frontloading of cost is troubling as it means that anyone looking for umbrella coverage, even those looking for smaller policies, will be affected by its high cost.

Notably, according to our survey among the operators in our working group, no one had exceeded their general liability coverage and therefore utilized their umbrella coverage. This is not to say that the umbrella coverage should be done away with or should not be required by lenders, but it is definitely a rare occurrence that it is actually utilized. The low rate of utilization makes us further question why the cost of this particular type of coverage is increasing so quickly.

The Courts — Losses, Jury Awards, and Backlog

In our conversations with insurance brokers, we have heard that both the Bronx generally and affordable housing specifically are associated with higher risk levels, especially when it comes to "slip and fall" type claims. We have also heard that jury awards are significantly higher in the Bronx than in the other boroughs. However, we have seen no data supporting either of these assertions. Alternatively, throughout the portfolios included in our working group there are numerous buildings that have not had losses in a decade or more. This reality does not fit with the increased risk assessment we are hearing from brokers.

When the court system closed in March of 2020, it created a backlog of not only housing court and criminal court cases but also civil court cases, including claims made against property owners. This led to insurance carriers increasing their reserve holdings so that they would be able to settle claims when the courts began to wade through the backlog of cases. However, according to brokers working with members of the working group, plaintiffs in these cases have a number of financing options available to them, should they refuse a settlement and hold out for a potentially higher jury award as courts begin hearing cases again. This is troubling as an increase in jury awards is likely to strengthen the existing notion that affordable housing in the Bronx is highly risky to insure.

It is difficult to understand why affordable housing providers in the Bronx are being saddled with such large insurance increases, due to external factors without a clear empirical basis. We would like to have access to the data carriers are using to determine both risk levels and differences in jury awards.

Scaffold Law/Labor Laws

Conversations with brokers also directed our attention to specific legislation that is driving up insurance costs in New York City — the *Scaffold Law*, Labor Law sections 240 and 241, which dates back to the 1880s. The law places absolute liability on property owners and general contractors for 'slip and fall' and gravity related incidents. In other words, property owners and general contractors are essentially rendered defenseless from these liability claims. This law predates occupational safety standards set by OSHA, and, importantly, New York is the only state that still has laws of this type.

Affordable housing generally is not high on carriers' list of insurable properties. This law makes it less so. As we have said, it is often impossible to get more than one or two quotes for new policies, and sometimes the quotes that are given include significant exclusions in order to limit the carrier's liability. At the end of the day, this leaves projects with less coverage and higher premiums. Importantly, this does not only impact existing affordable housing but also affordable housing that is not yet built, as it is almost impossible to project insurance costs during pre-development. This outdated law should be reevaluated, as it is directly contributing to the rising cost of insurance as well as the decline of the quality of coverage provided for affordable housing.

Senior Housing

Affordable senior housing projects are becoming the most difficult projects to insure by far. It is important to note that independent senior housing is not the same as assisted living. Tenants work with private healthcare agencies if and when they need in-home care, the care is not provided by the project. Many of these projects, which are financed with tax credits, New York State, or New York City funds have minimum insurance requirements that, given both the lack of carriers providing coverage and the sharp increase in the cost of the coverage available, are out of reach.

A number of operators in our group have shared that certain carriers will refuse to insure senior housing, while others have been told certain aspects of senior housing drive costs up. We suspect that carriers have assigned a higher risk of incurring medical costs to senior housing properties, as a property's liability coverage covers the cost of medical in the event of an injury claim. This does not bode well for the liability plan pricing for senior housing, as medical costs are rising 6% to 8% annually.

For instance, a senior housing project on Decatur Avenue in the Bronx managed by Rose Hill Management faced large increases at their 2021 renewal to their property, liability, and umbrella coverage. The building in question is part of the Section 202 Preservation Program with HUD, and therefore operates on a fixed budget. Their property and liability premiums were set to increase by 10%, and their umbrella policy by neary 42%. Notably, the significantly more expensive umbrella premium would have only provided half of the coverage that they had had the previous year. After learning of the renewal increases they were facing, Rose Hill Management decided to shop for a new policy. However, they were unable to get a single additional quote after reaching out to alternative carriers and in the end they were left with no choice but to renew the policy with the increases above.

In another example, a senior housing project on Amethyst street in the Bronx with a HUD contract had its premium increased by 62% from 2020 to 2021, bringing the per unit cost to over $1,340 annually. There were no major claims or events in the one year period, aside from the Covid-19 pandemic, to explain such a significant increase.

In recent years, our attention has been drawn to the liability associated with resident alert systems specifically. Increasingly, brokers are inquiring as to whether or not this system is in place in a building, indicating that costs will increase if so. These systems consist of a pull chain in the bathroom that can be used to alert building staff in the event of a fall — a way of reducing the risk of a senior unnecessarily suffering for an extended period of time. Four out of six respondents to our survey said that they had received negative feedback from brokers in regards to pull cords. Notably, HUD will often require that this helpful system is in place. It is frustrating that buildings are being penalized for providing this helpful and at times mandatory system.

Exclusion of Small and Medium Sized Businesses, Including MWBE's

A project's property and liability policies dictate requirements for contractor liability coverage. In recent years, liability coverage for contractors has become more expensive. Additionally, the amount of contractor liability coverage required by projects' insurers had doubled or tripled. In other words, contractors now must purchase liability policies that are much larger and more expensive. This has led to many small to medium sized companies — many of whom we know to be Minority and Women Owned Enterprises (MWBEs) — being excluded from obtaining maintenance, contracting, and other service contracts for projects in their communities.

UNHP, for instance, makes a point of having local Bronx contractors service and maintain the projects which we oversee. This has become increasingly difficult to do in the face of these increases. For smaller jobs worth $500 to $5,000 contractors are required to carry $5 to $10 million in coverage. This is out of reach for Bronx small businesses. Additionally, in the event that local contractors are able to meet the coverage requirements, they will pass this cost onto the project owner who has hired them, thereby incentivizing operators to hire larger, non-local corporations, which can more easily cover high coverage costs, instead further ostracizing local small businesses.

Inspections

Upon policy start or renewal, it is standard practice for carriers to inspect the property in question for potential liabilities. Issues that are found are laid out in a scope of work and the commencement or renewal of a policy is contingent upon its completion. Historically, these inspections might include grinding down a sidewalk flag that may have shifted over the winter, installing an air conditioner bracket on an A.C. installed by a tenant, or installing a tension bar on a heavy door. However, today we are seeing much more expansive work scopes being required by carriers — four out of six respondents to our survey indicated that they received increased work scopes as a condition of policy renewal.

Work scopes are a somewhat hidden component of the true cost of insurance. For example, in the case of a policy renewal a project could be quoted a premium increase of 10%. However, upon inspection by the carrier they may be quoted a work scope in the $10,000 to $20,000 range. This would effectively bring the yearly increase to the cost of the project's insurance to 20%.

Carrier scopes of work are also often inefficient from the property owner perspective. They force owners to complete repair work under tight time constraints as they are required for the policy to commence. They can also prevent owners from lumping smaller jobs together in order to save money. For smaller jobs, mobilization costs — installing a sidewalk shed, hanging a scaffold, expediting fees, etc. — often account for a significant portion of the total.

Cost Mitigating Strategies

As part of our working group of affordable housing operators, we have tried to come up with creative ways to reduce premiums and mitigate increases while maintaining the necessary coverage limits. Oftentimes, this means reducing what may have been considered excess coverage or coverage above the amount required by lenders to the minimum amount required. Another strategy is for groups to increase deductibles anywhere from 100% to 500%. This has presented an additional obstacle however, as lenders often require high deductible amounts be set aside in an insurance escrow account, meaning that the project does not have access to that cash for other immediate or emergency needs.

In some cases, groups have switched to lesser rated, non-admitted carriers, meaning the carrier is not protected by the New York State Guaranty Fund. The New York State Guaranty Fund was put in place to protect policyholders from liability in the event of insurer insolvency; it pays claims if an insurer goes under or becomes financially impaired. Four out of six respondents to our survey reported that they had voluntarily reduced their coverage and switched to a non-admitted carrier.

In other cases, nonprofits are self-insuring. However, this practice is only available to larger groups with the financial means to guarantee liability coverage at the required levels. While this is effective in the short term, it leaves non-profits that are providing vital housing, health, and financial resources to the communities they serve significantly exposed to financial liability.

Looking Ahead

Senate Bill S2531 directs the New York State Division of Housing and Community Renewal (DHCR) to investigate the increasing cost of insurance premiums as well as the lack of availability of insurance for affordable housing. It also directs DHCR to identify the potential impact of these trends over the next 10 years.

UNHP and our partners applaud legislators for passing S5231, and we are eager to provide data and evidence collected through our work to DFS and HCR as they move forward with the directive. Our collective fear, of course, is that in the time it may take to identify the reasons behind these trends, projects will become unable to manage the rapidly growing insurance costs. We believe there are actions which can be taken in the short term to provide immediate relief to projects that provide crucial housing to low and middle income New Yorkers. It is imperative to reign in insurance costs if New York State and City are going to attract development of new quality affordable housing by both for-profit and not-for-profit developers.

Unfortunately, there is no one solution that will provide relief to all who are being affected. So how do we provide relief to affordable housing without increasing rents to cover the increased cost of insurance? Below are a few suggestions for consideration:

- We need our lenders to consider changes to umbrella coverage limits.
- We need our legislators to look at the unintended consequences of legislation like the scaffold laws.
- We need our judicial system to look at the possibility of caps on payouts, the current legal standard for claims, and what we feel is the predatory practice of paying plaintiffs not to settle.
- We need the NYS, DFS, and HCR to determine whether affordable housing is being excluded from obtaining coverage or discriminated against because of the population it serves, be it low income families or senior citizens.
- To provide immediate relief, we think that an insurance subsidy for single purpose entities providing regulated affordable housing is necessary in order to maintain the existing affordable housing stock.