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## NEW INSURANCE AND RECONSTRUCTION REQUIREMENTS FOR RESIDENTIAL CONDOMINIUMS

By: Gary A. Kahle  
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Section 718.111(11), Florida Statutes, establishes the requirements for condominium associations and unit owners to insure the condominium property in a residential condominium. This section has been amended effective October 1, 2008. The amendment alters the coverage requirements for hazard insurance policies issued on or after January 1, 2009, further defines insuring requirements, and adds provisions setting forth the respective responsibilities of the unit owners and the association for reconstruction and repairs after casualty.

### INSURANCE REQUIREMENTS

#### A. The Association.

Prior to the amendment, the association was required to maintain "adequate insurance" to protect the association, the association property, and the common elements including all portions of the condominium property located outside the unit and all property initially installed within the unit with the exception of floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioning and heating equipment, water heaters, water filters, built-in cabinets and countertops, window treatment, and replacements of any of the foregoing located within the boundaries of the unit and all air conditioning compressors servicing only one unit, whether or not located within the unit boundaries.

There was no definition of the term "adequate" and the coverage was subject to "reasonable deductibles" determined by the association's board of directors with no guidance as to what was reasonable.

Under the amendment, "adequate insurance" is defined to mean *replacement cost* of the property to be insured *as determined by an independent insurance appraisal at least once every thirty-six months*.

Deductibles must be determined at a meeting of the board of directors of the association open to all unit owners. The notice of the meeting must state the proposed deductible, the available funds, the assessment authority relied upon by the board, and an estimate of any potential assessment amount against each unit. The deductibles must be consistent with industry standards and prevailing practices in the community.

After January 1, 2009 every hazard policy issued to an association must provide primary coverage for all portions of the condominium property as originally installed, or replacement of like, kind and quality in accordance with the original plans and specifications, and all alterations and additions made to the condominium property.

The association's coverage now specifically excludes all personal property within the unit or limited common elements, floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatment. Air conditioning and heating equipment and air conditioning compressors are no longer excluded from the association's coverage.



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In addition to hazard insurance, the association must also maintain fidelity bonding of all persons who control or disburse association funds. The association also has the authority to maintain flood insurance, liability insurance for officers and directors, and insurance for the benefit of the association employees.

B. The Unit Owner.

Prior to the amendment, the statute simply provided that a unit owner must insure all real and personal property within the unit and not otherwise covered under the association's policy.

Under the amendment, the association must require each unit owner to provide evidence of a currently effective policy of hazard *and* liability insurance upon request but not more than once a year. If the unit owner fails to produce evidence of coverage, the association may purchase the insurance on behalf of the unit owner and assess the unit owner for its cost.

Every hazard policy issued after January 1, 2009 to a unit owner must contain special assessment coverage of no less than \$2,000.00 per occurrence. The amendment does not specify what property the unit owner's hazard policy is to cover, but presumably it would cover the items specifically excluded from the association's coverage as under the prior statute. The amendment adds a requirement that the owner's policy provides liability coverage, but does not specify the type or limits of such coverage.

Improvements or additions to the common property that benefit fewer than all of the unit owners are to be insured by the benefited unit owners, or may be insured by the association at the cost of the unit owners having the use thereof.

RECONSTRUCTION AND REPAIRS

All reconstruction work after a casualty loss must be undertaken by the association; provided that a unit owner may undertake reconstruction work on portions of the owner's unit with the prior written consent of the association. The unit owner is responsible for the cost of the reconstructions of any portion of the condominium property for which the unit owner is required to carry insurance, and any reconstruction work undertaken by the association shall be charged to the unit owner and enforced by assessment.

Any portion of the condominium property required to be insured by the association is to be reconstructed, repaired, or replaced by the association as a common expense. Hazard insurance deductibles, uninsured losses, and other damages in excess of the insurance coverage are treated as common expenses except that the unit owner is responsible for the cost of any repairs or reconstruction of condominium property not covered by insurance proceeds if the damage is caused by the intentional conduct, negligence, or failure of the unit owner to comply with the condominium documents.

Notwithstanding the requirement of the association to reconstruct or repair the portions of the condominium property required to be insured, any association may "opt out" of such requirement and allocate the repair and reconstruction expenses in the manner provided in the declaration as originally recorded or as amended upon the approval of a majority of the total voting interest of the association.

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