

# COMMUNITY LAW NEWSLETTER

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**LETTER**

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## Summer 2008

### **2008 LEGISLATIVE UPDATE - PART 3**

During the 2008 Florida Legislative Session, the Legislature passed House Bill 601 ("HB601"). HB601 contains significant revisions to the insurance provisions found in Florida Statutes § 718.111(11). What follows is a summary of many (but not all) of the changes to the requirements pertaining to hazard insurance policies insuring condominium property. The changes discussed in this summary apply to hazard insurance policies issued or renewed on or after January 1, 2009. Florida Statutes § 718.111(11) applies to every residential condominium in the State of Florida and the provisions supersede any provisions in a declaration which are contrary to amended Florida Statutes § 718.111(11).

#### Replacement Cost

Florida Statutes § 718.111(11)(a) establishes that the amount of insurance coverage under the policy cover the full replacement cost and provides, in part, as follows<sup>1</sup>:

Adequate hazard insurance, regardless of any requirement in the declaration of condominium for coverage by the association for full insurable value, replacement cost, or similar coverage, shall be based upon the replacement cost of the property to be insured as determined by an

independent insurance appraisal or update of a prior appraisal. The full insurable value shall be determined at least once every 36 months.

#### Deductibles

Florida Statutes § 718.111(11)(c) establishes new requirements regarding deductibles and provides as follows:

Policies may include deductibles as determined by the board.

1. The deductibles shall be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the condominium property is situated.

2. The deductibles may be based upon available funds, including reserve accounts, or predetermined assessment authority at the time the insurance is obtained.

3. The board shall establish the amount of deductibles based upon the level of available funds and

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<sup>1</sup> Florida Statutes § 718.111(11)(a) 1, 2 and 3 have been omitted.

predetermined assessment authority at a meeting of the board. Such meeting shall be open to all unit owners in the manner set forth in s. 718.112(2)(e). The notice of such meeting must state the proposed deductible and the available funds and the assessment authority relied upon by the board and estimate any potential assessment amount against each unit, if any. The meeting described in this paragraph may be held in conjunction with a meeting to consider the proposed budget or an amendment thereto.

In light of the above changes regulating deductibles, an association's board of directors ("board") should review the powers granted to the board under the declaration in order to determine its authority to levy a special assessment and any limitations thereof. Based on this language, an association is required to either have the funds on hand to cover the insurance deductible at the time the policy is issued or have the authority to specially assess for the entire amount of the deductible.

### **Coverage Requirements**

Florida Statutes § 718.111(11)(f) requires an association's insurance policy to provide coverage as follows:

1. All portions of the condominium property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications.
2. All alterations or additions made to the condominium property or association property pursuant to s. 718.113(2).
3. The [Association's] coverage shall exclude all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing.

The Association's insurance will also now include coverage for unit owner air conditioner and heating equipment.

### **Special Assessment Coverage – Unit Owner Policy**

Florida Statutes § 718.11(11)(g) requires mandatory changes to unit owner insurance policies and provides, in part, as follows:

Every hazard insurance policy issued or renewed on or after January 1, 2009, to an individual unit owner must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property. Such policies must include special assessment coverage of no less than \$2,000 per occurrence. An insurance policy issued to an individual unit owner providing such coverage does not provide rights of subrogation against the condominium association operating the condominium in which such individual's unit is located.

### **Unit Owner Obligations**

Florida Statutes § 718.111(11)(g) imposes further insurance coverage obligations on individual unit owners as follows:

1. All improvements or additions to the condominium property that benefit fewer than all unit owners shall be insured by the unit owner or owners having the use thereof, or may be insured by the association at the cost and expense of the unit owners having the use thereof.
2. The association shall require each owner to provide evidence of a currently effective policy of hazard and liability insurance upon request, but not more than once per year. Upon the failure of an owner to provide a certificate of insurance issued by an insurer approved to write such

insurance in this state within 30 days after the date on which a written request is delivered, the association may purchase a policy of insurance on behalf of an owner. The cost of such a policy, together with reconstruction costs undertaken by the association but which are the responsibility of the unit owner, may be collected in the manner provided for the collection of assessments in s. 718.116.

3. All reconstruction work after a casualty loss shall be undertaken by the association except as otherwise authorized in this section. A unit owner may undertake reconstruction work on portions of the unit with the prior written consent of the board of administration. However, such work may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, or the contract that is used for that purpose. A unit owner shall obtain all required governmental permits and approvals prior to commencing reconstruction.

4. Unit owners are responsible for the cost of reconstruction of any portions of the condominium property for which the unit owner is required to carry casualty insurance, and any such reconstruction work undertaken by the association shall be chargeable to the unit owner and enforceable as an assessment pursuant to s. 718.116. The association must be an additional named insured and loss payee on all casualty insurance policies issued to unit owners in the condominium operated by the association.

#### **No Mortgagee Consent Required**

Florida Statutes § 718.111(11)(i) clearly states that mortgagee consent to an amendment is to a declaration in order to comply with this section is not required and provides as follows:

The association may amend the declaration of condominium without regard to any

requirement for approval by mortgagees of amendments affecting insurance requirements for the purpose of conforming the declaration of condominium to the coverage requirements of this subsection.

#### **Reconstruction and Repair**

Florida Statutes § 718.111(11)(j) delineates between an association's obligations and responsibilities and those of the unit owners and provides as follows:

Any portion of the condominium property required to be insured by the association against casualty loss pursuant to paragraph (f) which is damaged by casualty shall be reconstructed, repaired, or replaced as necessary by the association as a common expense. All hazard insurance deductibles, uninsured losses, and other damages in excess of hazard insurance coverage under the hazard insurance policies maintained by the association are a common expense of the condominium, except that:

1. A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds, if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of any insurer as set forth in paragraph (g).

2. The provisions of subparagraph 1. regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also apply to the costs of repair or replacement of

personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure under paragraph (g).

3. To the extent the cost of repair or reconstruction for which the unit owner is responsible under this paragraph is reimbursed to the association by insurance proceeds, and, to the extent the association has collected the cost of such repair or reconstruction from the unit owner, the association shall reimburse the unit owner without the waiver of any rights of subrogation.

4. The association is not obligated to pay for repair or reconstruction or repairs of casualty losses as a common expense if the casualty losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim of the association for that casualty was settled or resolved with finality, or denied on the basis that it was untimely filed.

### Opting Out

Florida Statutes § 718.111(11)(k) allows association's to opt-out and provides as follows:

An association may, upon the approval of a majority of the total voting interests in the association, opt out of the provisions of paragraph (j) for the allocation of repair or reconstruction expenses and allocate repair or reconstruction expenses in the manner provided in the declaration as originally recorded or as amended. Such vote may be approved by the voting interests of the association without regard to any mortgagee consent requirements.

Note that any association whose members vote to opt-out pursuant to this provision must record a notice in the public records of the county where the property is located. The effective date is the date of recording.

### Limitations on an Association's Obligation to Pay

Florida Statutes § 718.111(11)(n) provides as follows:

The association is not obligated to pay for any reconstruction or repair expenses due to casualty loss to any improvements installed by a current or former owner of the unit or by the developer if the improvement benefits only the unit for which it was installed and is not part of the standard improvements installed by the developer on all units as part of original construction, whether or not such improvement is located within the unit. This paragraph does not relieve any party of its obligations regarding recovery due under any insurance implemented specifically for any such improvements.

*This newsletter is provided as a courtesy and is intended for the general information of the matters discussed herein above and should not be relied upon as legal advice. Christopher J. Shields ([christophershields@paveselaw.com](mailto:christophershields@paveselaw.com)) is a Florida Bar Certified Real Estate Lawyer and Partner in the Pavese Law Firm. Christina Harris Schwinn ([christinaschwinn@paveselaw.com](mailto:christinaschwinn@paveselaw.com)) and Stacy L. Bennings ([stacybennings@paveselaw.com](mailto:stacybennings@paveselaw.com)) are Associates with the Pavese Law Firm. Each attorney practices in the area of Real Estate Development and Community Association Law. Ms. Schwinn also specializes in Labor/Employment Law. Should you wish to contact any one of them, please feel free to contact them via the e-mail addresses listed above.*