

## Legislature Overhauls Insurance Portion of Statutes

*Lawmakers Removed all Grandfather Dates*

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Today is the eighth part of a series regarding 2003 community association legislation.

Past installments have looked at activities of the 2003 Florida Legislature involving community association manager licensing, the new condominium “flag law,” new disclosure obligations in homeowner associations (HOA’s), amendments to the HOA statute, amendments to the Florida Marketable Records Title Act, and amendments to the condominium statute regarding mortgagee questionnaires and electronic notice of association meetings. Today, we will continue our review of the year’s major condo bill, Senate Bill 592, which became effective on May 21, 2003.

Today’s focus involves amendments to the insurance clause of the condominium statute, Chapter 718 of the Florida Statutes.

Suffice it to say that the line between the association’s master insurance policy coverage and individual unit owner insurance coverage is an item that is universally misunderstood, even among attorneys, insurance agents and adjusters, and association managers. The confusion stems from several sources. First, many people assume that the allocation of maintenance responsibility in the condominium documents is equal with the allocation of insurance responsibility. That is not correct. Maintenance allocation is set primarily by the declaration of condominium, while allocation of insurance responsibility is set strictly by state statute.

Additionally, the insurance section of the condominium law has been amended a half-dozen times since the current version of the statute was written in 1977. Further compounding the morass is the fact that the legislature has previously applied “grandfathering” dates in the law, so that insurance obligations might

be different for different condominium associations, depending upon when the condominium was created. For example, the law permits an association to be responsible for insuring carpeting if the declaration was recorded prior to October 1 of 1986, but such a clause is unlawful in a declaration of condominium recorded after that date.

The amendment to the law was the product of efforts of the Florida Association of Insurance Agents (FAIA), whose members felt that clarity in the law was needed to assist insurance professionals in quoting coverage and adjusting losses.

In addition to FAIA, other parties influenced the final draft of the proposed legislation, which was ultimately adopted by the Legislature. Among the highlights of the new insurance law, which apply to policies written after January 1, 2004, are the following:

- **Land Condominiums:** The statute has been clarified to provide that in “land condominiums” (typically single family lots with a house built on them) the declaration of condominium can require either the association or the unit owner to insure the home. Previous interpretations of the statute have suggested that only the association could provide casualty insurance for free-standing condominium homes, although many developers have drafted their governing documents to the contrary.
- **Deductibles:** The new statute provides that regardless of any requirement in a declaration of condominium for “replacement cost” insurance, the association’s insurance policies may include reasonable deductibles, as determined by the board.

- **Scope of Coverage:** The law has been clarified to some degree to reflect the current intent of the statute, that being that the association insures the structure of the building (whether part of the unit or common elements) as originally constructed. For example, an item like a closet door is typically to be maintained by the unit owner, but is to be insured by the association. Exempted from the association's master policy items are unit owner upgrades and "excluded items," which are specifically listed in this statute.
- **Expansion of Excluded Item List:** Based upon 1986 and 1992 amendments to the law, various "structural" items have been excluded from association insurance coverage, to be covered under the unit owner's policy (usually called an HO6 policy). Floor coverings, wall coverings, ceiling coverings, built-in cabinetry, appliances, air conditioners, water heaters, and other items are the listed "excluded items." The new law adds to the list of "excluded items": water filters, countertops, window treatments, and air conditioning compressors that serve only an individual unit (whether or not located within the unit boundaries).
- **Elimination of Grandfathering Dates:** In a move that will bring much clarity to adjusting claims, while possibly raising constitutional issues, the Legislature has abolished all distinctions regarding insurance coverage based upon the date of recording the declaration of condominium. The new law will apply equally to all associations.
- **Amendment of Documents:** The new law permits an association to amend the declaration of condominium without obtaining approval from mortgage lenders. Many declarations of condominium require mortgagee approval for amending the insurance clause, which has prevented associations from updating the insurance clause in their documents. This change should make that process much easier, although the board will still need to obtain a vote of the unit owners to amend the insurance clause.

With insurance costs constantly rising, and constituting the largest expenditure in many association's budgets, hopefully these changes will be seen by the insurance industry as a positive development, and will maybe even play some role in easing the current insurance crisis. ☺☺

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*Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.*

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