

## Insurance Changes are Some Help

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The new insurance law for condominium associations which took effect January 1, like many new laws, seems to raise as many questions as it answers. The changes were adopted in the 2003 session of the Florida Legislature at the behest of the Florida Association of Insurance Agents (FAIA).

FAIA's main beef with the old law was that it was interpreted by most attorneys to allocate insurance responsibilities between the Association and the individual unit owner based upon the law that was in effect when the condominium was created. Obviously, insurance adjusters found themselves in no-man's land when trying to sort out claims by first having to figure out the legal history of the particular condominium and then attempt to interpret the condominium documents.

Conceptually, the new law eliminates any distinction between adjustment of condominium losses based upon the age of the property. Further, the new law provides that regardless of what the documents say, there are a list of items that an association cannot insure, and these must be insured by the individual unit owner. There were also a few add-ons in the new law to the old list of "excluded items."

Under the new law, the list of "excluded items" now includes floor coverings, wall coverings, ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, 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 which are located within the boundary of a unit and serve only one unit. Further, all air conditioning compressors that service only an individual unit, whether or not located within the unit boundaries, are to be insured by the unit owner, and not the association.

Among the other features of the new statute are the following:

**Freestanding Buildings and Land Condominiums:** Condominiums consisting of detached dwellings (such as single family home condominiums, mobile home condominiums, and the like) may require, through the declaration of condominium, that structures be insured by the unit owner rather than the association. This clarifies a gray area in the old law.

**Amendments:** The new statute provides that if the association is updating its documents, it can amend the insurance clause to conform to the new statute. The reason for this amendment is because many documents require approval of mortgagees to amend the insurance section, which is usually impractical, as well as expensive. Mortgagee approval is not required for amendments to the insurance clause to conform to the new law.

**Deductibles:** A much-needed clarification was added to the new law regarding deductibles. The law now provides that the association's duty to obtain "adequate insurance" is satisfied even though there may be a deductible under the policy.

I have been told that insurance agents have already perceived glitches in the new law, including whether the statute mandates individual unit owners to buy insurance (in my opinion, it does not).

I am also told that the agents are going to seek further amendment to this statute in the upcoming Legislative Session.

One interesting feature of the new law is that it requires the Office of Insurance Regulation to study the

effect of the new law on condo insurance rates, and to issue a report in 2005.

Undoubtedly, for the past decade, insurance rates for condominium associations have climbed by astro-

nomical percentages, and now constitute the largest line-item in the budget for many condominium associations. Whether or not the new law has the effect of stabilizing rates remains to be seen, I certainly would not hold my breath. ⚖️

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## Supermajority Would Have to Approve Limits

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**QUESTION:** Our condominium wants to become a 55 and over community. To change our condominium to a 55 and over community, what percentage do we need to make this happen? Several people made sure it was not a 55 and over community before they bought in. L.B. (via e-mail)

**ANSWER:** In order for a community to be designated a 55 and over community, it must provide “housing for older persons.” The law requires that at least eighty percent of the units be occupied by persons who are 55 years of age or older. It is important to note that the law requires this age restriction of occupants, and not owners. With regard to changing your condominium documents, this would be a matter of specific reference to the amendment clauses in your governing documents. Most require a super-majority vote of the members, such as two-thirds or seventy-five percent. In order to answer that question specifically, you should have someone qualified to interpret these documents examine them for you.

**QUESTION:** May an association legally enforce a “no pet” provision for renters only? C.K. (via e-mail)

**ANSWER:** Under the Florida Condominium Act, associations may generally not treat renters and owners differently, with regard to access and use of common elements and association property. That being said, the Florida Condominium Act has been interpreted by the state to permit associations to prohibit pets for renters, while allowing them for unit owners.

**QUESTION:** Our condo board consists of five members. Except during the summer, it meets once per month. Before every meeting, the board president calls each of the directors and lobbies them to vote his way about things that will be coming up at the meeting. Isn't this a violation of the sunshine law? B.H. (via e-mail)

**ANSWER:** The sunshine provisions applicable to both condos and HOA's only apply to any gathering

of a quorum of the board for the purpose of conducting association business. If the president is contacting fellow board members one on one, the Florida Condominium Act is not being violated.

**QUESTION:** Several people in our condo association are interested in removing the glass sliding doors that lead to their balconies. Is this permissible? R.L. (via U.S. Mail)

**ANSWER:** The first issue to consider is that this may be considered a “material alteration to the common elements.” If this modifies the exterior appearance of the building in any way, or constitutes a structural modification, this could be considered to be a material alteration, and may require a unit owner vote. Also, if premises modifications of this magnitude are under consideration, an engineer should be engaged. The engineer should ensure that removal of the “wing-walls” will not compromise the structure of the building. Further, the engineer should review issues such as the need for additional fire sprinklers, air conditioning issues, and the like. It may be also be necessary to have unit owners who wish to perform this modification record an agreement which would run with their title holding the association harmless for maintenance of areas that the documents probably describe as common elements. A qualified community association attorney should be consulted to ensure that all of these bases are covered.

**QUESTION:** Our condominium association needed some additional landscaping. The association had no funds to do so, but the board of directors gave its permission to the owners most affected by the lack of vegetation to (at their own expense) plant trees of their choosing. Two homeowners got estimates, hired a landscaper, and enlisted ten families to participate in the planting. The cost to each family was about four hundred dollars. The board has now chosen to continue the planting that these families began and assess all of the unit owners for the cost. The original ten families believe that they

should not have to pay for the new planting, since they have already paid once. What do you think? C.G. (via e-mail)

**ANSWER:** The planting of this landscape was authorized by your board of directors and was essentially a gift to the association. However, unless the board of directors' agreement with the unit owners was that the unit owners would be reimbursed for their expenditures, this would not relieve unit owners from the responsibility to contribute their share of the assessment for additional planting.

**QUESTION:** Our board president contacted legal counsel twice without carrying a motion of the board to do so. He claims that directors serving as executive officers have a right under law to contact our organization's legal counsel without such a vote. To make matters worse, this director has not volunteered to reimburse the association for the funds spent. Do board members have such lawful blanket authority? M.H. (via e-mail)

**ANSWER:** Your board of directors has a right to contact legal counsel without a formal board resolution authorizing it. Look at it this way, your association is a corporation. If the president of a Fortune 500 company wants to call corporate counsel to inquire about matters of corporate governance, he or she may do so without calling for a meeting of the board of directors. If the member of your board contacted the association's counsel for purposes relating to the governance of your association, such contact was proper, and unless your bylaws or a resolution of the board states otherwise, the board does not need to hold a meeting and take a vote every time they wish to contact the association's attorney for advice.

**QUESTION:** Our condominium documents state that each unit is entitled to one vote at all meetings. However, it also states: "In the event of joint ownership of a unit, the vote is entitled to be apportioned among the owners as their interest may appear, or may be exercised by one of such joint owners by

written agreement of the remainder of such joint owners." We want to change this provision so that our condominium association is governed by a "one unit - one vote" principle. How can we do this? G.K (via e-mail)

**ANSWER:** I agree that this should be changed. An amendment to your bylaws is probably required. I have never seen a condominium which permits fractional votes, not to say that it does not happen. If ten people own the unit as joint tenants, can they each exercise a one-tenth vote? That does not make sense.

The "one vote per unit" standard is by far the most common method of allocating condominium voting interests.

**QUESTION:** Five of five board seats are up for election in our condominium community. We received four letters of intent from owners wishing to be considered as candidates. Our bylaws require five board members. We understand that if there are more vacancies than letters of intent, then no election is necessary and all candidates are automatically appointed to the board.

Our question is, must the board appoint all those who have submitted letters of intent? One of the candidates is a "difficult character." May the association operate with three board members? S.K. (via e-mail)

**ANSWER:** Sometimes the best way to deal with a "difficult character" is to allow him or her to be on the board of directors. After seeing what a difficult job it is to serve on a condo board, the experience will sometimes mellow the sensibilities of such residents. As a practical matter, if your bylaws require five board members, and only four individuals are running, those four are automatically installed as members of your board of directors. They are not technically "appointed" but rather elected without opposition. As an additional matter, once those four are installed, they have the right to appoint a fifth board member to fill the last vacancy. ⚖️

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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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