



## Guidelines for Condo Insurance

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Today's column is the ninth part of our series about updating the legal documents for your community association. In the first eight editions we learned some basic definitions, discussed the functions of the constituent documents, considered the procedures for presenting proposed amendments, analyzed the required votes for amendments, looked at rental amendments, considered guest usage restrictions and talked about transfer restrictions.

Today's topic: insurance requirements for condominium associations. The Florida condominium law simply provides that an association must maintain "adequate" insurance. The law does not define what "adequate" means, nor generally the required types of insurance which an association may carry. In my opinion, it is important for the declaration of condominium to specifically guide the board on what type of insurance requirements apply to the association. The following is a list of the different types of insurance coverage generally applicable to condominium associations.

- **Casualty insurance:** This is the insurance policy that pays to reconstruct the property after a calamity such as a fire, tornado or hurricane. State law mandates the condominium association's insurance of the structures. The statute should be carefully consulted for an understanding of exactly how the line is divided between the association's insurance obligations and the obligations of the individual unit owner. Contrary to popu-

lar belief, insurance and maintenance obligations may be entirely different for the same item. For example, most documents require the unit owner to maintain interior doors, while state law requires that they are to be insured by the association. Often, older condominium documents will impose stricter insurance requirements than what is generally available in the market. For example, while many documents require full replacement cost insurance, most associations now place insurance which contains a deductible. A well-written set of documents also will discuss how deductible expenses are allocated in the event of an uninsured or under-insured loss.

- **Flood insurance:** Many condominium associations carry a master policy of flood insurance. For communities located in federally designated flood hazard areas, mortgages will not be written unless adequate flood insurance is in place. The condominium statute states that an association "may" carry flood insurance. As stated in my Sept. 9, 2004, column, I believe that flood insurance is legally required under the auspices of "adequate insurance" in many situations, and is a good idea in every case. In any event, the declaration of condominium should contain clear guidance on this point.
- **Liability insurance:** The general liability insurance policy is the insurance the association buys for most types of personal injury claims. For ex-

ample, if someone trips on the property and files a suit, the general liability policy is the insurance that provides protection. I recommend that the declaration specifically require the board to obtain liability insurance. Many older documents require minimal amounts of insurance (such as \$300,000), which is no longer commensurate with modern day risks.

- **Workers' compensation:** Unless the association employs four or more employees, workers' compensation is not legally required. However, many associations which do not employ four or more people still purchase a "minimum premium policy." The purpose of the minimum premium policy is to provide stop-gap protection in the event an uninsured worker is injured on association premises. The benefit of workers' compensation is that it is the exclusive remedy for injured workers, meaning they cannot sue, but are entitled to a legally stipulated schedule of benefits to compensate them for their injuries. This should again be addressed in the declaration of condominium.
- **Fidelity bonding:** Sometimes called "crime coverage," "employee dishonesty coverage," or "fidelity bonding," this type of insurance is basically designed to protect against theft or embezzlement by employees, directors, management personnel, or others who might have access to association funds. It is important to understand that a management company having its own fidelity bond may not be sufficient to protect an individual association. For condominiums, there is a statutory

requirement that the minimum amount of the fidelity bond be equal to the maximum amount of money that could be stolen (i.e., the maximum amount of money on deposit in all association accounts at any given time). Since this is a fluctuating number, the association should make certain that adequate coverage is in place, particularly in situations where large amounts of money may be at hand due to a special assessment. Although the law sets the minimum amount of coverage required, I think it is a good idea for the documents to contain a specific obligation for fidelity bonding, so that the layman board member who may not read the law will know from reading his or her documents that the bond is required.

- **Directors and officers liability insurance:** Usually called D&O insurance or E&O (errors and omissions) insurance, this is one of the most important policies for the association. The purpose of the D&O policy is to provide coverage in a defense (a lawyer) if a suit is brought against the association (other than for personal injury) or its directors. I do not believe anyone in her right mind would serve on an association board that did not have D&O coverage, and I strongly believe it should be mandated through the declaration of condominium, not a permissive decision to be made from time to time by the board of directors or property manager.

Next week, we will take a look at insurance issues applicable to homeowners' associations, and if space permits, discuss the provisions regarding repair of property after casualty. ■

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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.*

*Send questions to Joe Adams by e-mail to [jadams@becker-poliakoff.com](mailto:jadams@becker-poliakoff.com) This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at [www.becker-poliakoff.com](http://www.becker-poliakoff.com).*

## Director May Vote, Even with a Conflict of Interest

**Question:** The secretary on our board also works for our management company and votes on all issues regarding contracts. This appears to be a conflict of interest. I know that a board member may abstain from voting because of a conflict of interest, but where in the statute does it state that the board member cannot vote if there is a conflict of interest. — R.R. (via e-mail)

**Answer:** First, I assume that the association's secretary is also a board member. You are correct that a board member may abstain from voting in the event of a conflict of interest. In the condominium setting directors may only abstain from voting when there is a conflict of interest. In a homeowner's association setting the relevant statute does not limit abstentions to only conflict of interest situations, and thus a director in a homeowner's association can abstain from voting for some other reason as well. However, neither the Condominium Act nor the Homeowners Association Act state that a director cannot vote when there is a conflict of interest.

Notwithstanding, when there is a clear conflict of interest, a director should abstain from voting based upon fiduciary duty. For example, if a vote being taken by the board dealt with granting approval for a unit owner to take some type of action (for example, enclosing a lanai), if the unit owner was on the board he should abstain from voting on that issue. Similarly, if your board was voting on an issue that dealt with the contract with the management company, the board member who works for the management company should abstain from such a vote, and should excuse himself or herself from the room while the issues are being discussed.

As relates to contracts, there is a specific section in the Florida Not-For-Profit Corporation Act, Section 617.0832, which provides that a contract between a corporation and one of its directors will not be void or voidable because of such relationship or interest if certain criteria are met.

First, the fact of such relationship or interest must be disclosed or known to the board which authorizes the contract by a sufficient vote without counting the votes of the interested director. Secondly, the fact of such relationship or interest must be disclosed or known to the members entitled to vote on the contract, and they authorize it anyway. Finally, the contract must be fair and reasonable as to the corporation at the time it is authorized by the board.

**Question:** Our developer wants to complete the transition of control of our condominium association (turnover), but members of the association do not want to assume control until the developer takes care of several outstanding issues. Can we stop the turnover by refusing to sign off? Can we stop the turnover by refusing to appear at the turnover meeting and ensuring that less than a quorum attends? — E.A. (via e-mail)

**Answer:** You may know that developers are required by statute to turn over control of a condominium association by a certain date that is determined by the date that a threshold percentage of units are sold in the development. Most governing documents also permit the developer to turnover over control of the association at any time prior to the statutorily required dates.

The "turnover meeting" does not require a quorum of members nor is the membership required to formally accept or even acknowledge the assumption of control of the association. If the developer gives proper notice of the turnover meeting, then the developer-controlled board of directors may resign their positions and make the statutorily required documents available for pickup by the membership. If the membership does not take steps to elect a new board, there will simply be an association with no board of directors.

Therefore, you cannot stop a properly noticed turnover of a condominium association. However, you may be

comforted to know that any claims the membership or association has against the developer are not affected by the turnover. Any “sign-off” that the new board grants should be limited to an acknowledgement of receipt of documents only, and should not address any substantive issues.

**Question:** I have a question about whether someone who is not a unit owner in a condominium can run for the board. I manage a condominium where a husband and wife live in the unit, but only the wife’s name is on the deed. The husband has submitted a candidacy form to run for the board of directors. Our condominium documents are silent on the issue. Can the husband run for the board? — C.F. (via e-mail)

**Answer:** The only requirement for service on a condominium association board established by law is that

candidates must be natural persons at least 18 years old. Further, convicted felons are not entitled to serve on an association board unless their civil rights have been restored.

The condominium documents, usually the bylaws, can impose additional criteria for board membership, such as term limits and ownership requirements. However, in the absence of the requirement for ownership in the condominium documents, there is no such requirement in the law.

Therefore, assuming that the association’s legal counsel agrees that the documents are indeed silent on the issue (managers are precluded by law firms rendering legal opinions), the resident/husband, even though not a titleholder, should be permitted to stand for election. ■

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