



Note Law Changes for Insurance Needs of Owners

Fort Myers The News-Press, August 10, 2008

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Today's column is the seventh installment of our annual review of legislation affecting community associations.

Today we will begin review of House Bill 601, which became effective July 1, 2008. HB 601 once again changes, perhaps fundamentally, the laws applicable to condominium association insurance requirements and provisions regarding allocation of costs after casualty repair. Today, we will focus on some significant changes to the law regarding insurance requirements for individual unit owners.

Section 718.111 (11) is the section of the Florida Condominium Act which regulates insurance. This section of the law was amended in 2003 to provide that unit owners "shall insure" various items that comprise part of the condominium property. These items include floor wall and ceiling coverings, water heaters, built-in cabinetry and counter tops, appliances, electrical fixtures, window treatments, water filters, and air conditioning compressors that service only an individual unit.

There has been some debate as to whether the Legislature's use of the term "shall insure" in the 2003 law meant to impose a mandatory duty on unit owners to insure these items, or was simply intended to clarify that the listed items were not covered under the association's master policy. Most attorneys adopted the former interpretation, a mandatory duty to insure.

However, to the extent that the 2003 law imposed a unit owner duty to insure, there was no provision as to how the association could enforce unit owner insurance requirements, or even if the association had the right to do so. HB 601 lays some of these issues to rest, but will undoubtedly cause some stir in the insurance industry and with associations.

The new law provides that the association "shall 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. This language creates some ambiguity since it implies that associations are now mandated to require unit owners to show proof of insurance, but only "upon request." Does the association have a duty to "request" the information? I think that this is the most logical interpretation.

Upon failure of an owner to provide a certificate of insurance within thirty days of the association's request, the association may purchase a policy of insurance on behalf of the owner. The cost of such policy, together with reconstruction costs undertaken by the association but which are the responsibility of the owner, may be collected by the association from the unit owner, secured by a right of lien.

It appears that the association's new statutory option to "force-place" unit owner insurance is permissive, since the statute states that the association "may" purchase the policy.

All unit owner policies issued on or after January 1, 2009, must include “special assessment coverage”, which I believe is more commonly referred to in the industry as “loss assessment coverage” in a minimum amount of \$2,000 per occurrence. The new law further provides that the condominium association must be an additional named insured and loss payee on all casualty policies issued to unit owners.

The new law also removes air conditioner compressors from the unit owner’s insurance responsibility, presumably intending to place that responsibility back on the association (which was the case before the 2003 change to the law). However, there is also some ambiguity on that issue, more on that later.

The new law is also unclear as to when the unit owner insurance provisions come into effect. Although the law itself became effective July 1, 2008, the subsection of the law which obligates associations to require unit owner proof of insurance and the option to “force-place” it, starts by saying that policies issued or renewed on or after January 1, 2009, must comply with the law. However, it is unclear whether the association can require proof of insurance prior to that time, I assume that will be an issue of debate in the coming weeks and months.

Although this law was no doubt a product of good intentions, there are many potential glitches and concerns that will need to be thought through. For example, many unit owners have argued that they have the financial wherewithal to “self insure” and that the association should let them manage their own financial risks. That argument may have merit when dealing with people of substantial financial means, but “self insurance” no longer seems to be an option. Or is it?

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Although the law apparently obligates the association to mandate proof of insurance, there is no duty to “force-place it”, and no statement as to what the association can do as an alternative means of enforcing the requirement. Presumably, the association would have the legal remedies available for ensuring compliance with the Condominium Act in general.

It is also likely, particularly in this economy and housing market, that many unit owners who do not have insurance are people who are in dire financial straits, in many case “upside down” in their units, and perhaps delinquent in their payment of maintenance fees and their mortgage. If the association “force-places” insurance for these units, even if there is a right to a lien, that may be of little solace at the end of the day if the association’s lien is foreclosed by a mortgage lender. In such cases, not only would the other unit owners subsidize that unit’s share of the insurance under the master policy (which the association purchases) but also the individual unit insurance. This will likely be seen as an unattractive option in many circumstances.

There is also some cause for concern about the association’s duty to keep track of currently effective insurance. Every unit owner will likely have different expiration dates on their policies. Do boards and managers now have a new job to contend with, constantly checking to ensure that individual policies are renewed at their anniversary?

No doubt, these issues will be the subject of future debate, analysis and discussion. Next week, we will continue our review of HB 601 regarding association insurance obligations and casualty repair costs allocation.