



Association Not Obligated to Pay For Some Repairs

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Today's column is the eighth installment of our review of 2008 legislation affecting community associations. We continue last week's review of House Bill 601, which became effective July 1, 2008, and which addresses condominium association insurance requirements.

HB 601 is yet another attempt by the Florida Legislature to fine-tune the allocation of insurance responsibilities between the association's master policy and what is required to be insured by individual unit owners, the latter subject being the focus of last week's column. Section 718.111(11)(f) of the Florida Condominium Act now states that every association master hazard insurance policy issued or renewed on or after January 1, 2009 shall provide primary coverage for: (1) all portions of the condominium property as originally installed or replacements of like kind and quality, in accordance with the original plans and specifications; and (2) all alterations or additions made to the condominium property pursuant to Section 718.113(2) of the Florida Condominium Act (the provision of the statute dealing with material alterations and substantial additions).

As noted last week, various parts of the condominium property are specifically exempted from the association's insurance obligation, and are the insurance responsibility of the unit owner.

The new law also states that the unit owner's policy must cover all improvements or additions to the condominium property that benefit fewer than all owners, but then goes on to provide that such items may be insured by the association at the cost and expense of the unit owners having use thereof.

At least to me, it appears that the new law simply intends to codify what has been the general law since 1979, that being that the association insures all fixtures and improvements on the condominium property, as originally conveyed by the developer (or replacements of like kind and quality), unless those fixtures or improvements are on the list of excluded items spelled out in the statute.

One ambiguity in the new law is the requirement that the association insure alterations or additions to the condominium property made pursuant to the material alteration section of the law. When applied to alterations or additions made by the association, the new law makes complete sense, since the association should insure upgrades it has made to the property for the benefit of all owners. However, the relevant clause of the new law could be interpreted to apply to all alterations or additions, even those made by unit owners, since unit owner additions and alterations are also governed by Section 718.113(2) of the Condominium Act.

On the opposite end of the spectrum, additional ambiguity exists in the provision of the new law

that states that improvements or additions to the condominium property that benefit fewer than all owners shall be insured by the owner having exclusive use thereof. Taken to its extreme, this part of the statute could be interpreted to essentially negate all of the association's insurance obligations, by requiring the unit owner to insure improvements that benefit only his or her unit, such as drywall, windows, and balcony screening. I am certain that this was not the intent of the law. Hopefully these "glitches" will be promptly addressed by the Legislature and the law "fine-tuned" some more. It remains to be seen how the insurance industry will sort this out.

One thing that seems clear to me is that the Legislature intended by this new law to overrule an interpretation from the Division of Florida Condominiums dealing with unit owner upgrades, such as balcony enclosures or hurricane shutters. The new law, consistent with a recent ruling from a Florida appeals court, states that the association is not obligated to pay for any reconstruction or repair expenses due to casualty losses 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 was 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.

Recognizing that reasonable minds can differ over legislative intent, the following is a summary of what I think the new law is intended to accomplish.

The association remains responsible for insuring everything that was part of the original construction, except those items specifically excluded (floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments). The association's master policy obligation now includes air conditioner compressors. The unit owner is responsible for insuring those improvements listed above, and upgrades. Insurance responsibilities for upgrades includes upgrades that might have been a developer option, as well as after-purchase upgrades, such as balcony enclosures and hurricane shutters.

If there is an improvement that benefits less than all owners, such as a carport structure, the association can insure that item, but pass the cost on to the benefiting owner(s) only. The authority for this pass through should probably be set forth in the declaration of condominium.

Next week, we will continue with our review of HB 601 with a focus on substantial changes to the law regarding how the board of directors must calculate adequate insurance and set deductibles.

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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