



PART OF INSURANCE LAW GENERATES CONFUSION

Fort Myers The News-Press, November 2, 2008

By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

Q: Our condominium association is trying to gather proof of insurance from our unit owners, in response to the recent changes to the Florida condominium insurance laws about which you have written. At least one insurer has told their insured (the unit owner) that they will not name the association as a “loss payee” and that the new law is not effective until January 1, 2009. Also, we have an owner who refuses to purchase insurance. Should we buy the insurance and bill her, or should we have our lawyer send a letter first? **D.R. (via e-mail)**

A: Although enacted only a couple of months ago, this part of the new law has already generated a tremendous amount of debate and confusion. While the effective date of this law (House Bill 601) is July 1, 2008, some parts are specifically stated to be only applicable to insurance policies issued on or after January 1, 2009. Further, it would seem to make sense (although the law does not specifically say so) that the changes would not apply to existing policies, and would only come into force when the policy is renewed.

The provision of the new law which states that the association must be an “additional named insured and loss payee on all casualty insurance policies issued to the unit owners” does not say whether it is effective July 1, 2008 or January 1, 2009. I have

heard both points of view argued, I suppose it will become a moot point in the relatively near future.

I am also told by my acquaintances in the insurance industry that the requirement that associations be named as “an additional named insured” is considered a rather radical requirement by insurers. There appears to be a substantial question as to whether insurance companies that have traditionally written HO-6 policies will be willing to write this coverage. However, it is (or soon will be) clearly required by the law, so the industry is going to have to figure out how to deal with compliance if companies are going to write HO-6 policies.

I am also told that the new law’s requirement that every HO-6 policy contain “special assessment coverage” of no less than \$2,000.00 is also causing great concern within the insurance community. By the way, this requirement (for special assessment coverage) clearly applies only to policies issued on or after January 1, 2009. It appears that the term the Legislature should have used in the law was “loss assessment” coverage, which is an insurance product that has historically been available to reimburse unit owners when they are assessed by their associations for uninsured casualty damage, such as in the aftermath of a hurricane. However, the term used in the law is “special assessment” coverage, which is a much broader concept.

Associations levy “special assessments” for many items, including operational expenses. Are these assessments to be insured by the new law?

With respect to “force-placing” individual insurance policies, this is the only enforcement mechanism stated in the law. While perhaps a valid idea theoretically, “force-placing” HO-6 insurance will not be an effective remedy where the unit owner who is the subject of the action is already delinquent in their other obligations to the association, and on the verge of losing their unit to a foreclosure. It seems quite unlikely that the other unit owners would find it acceptable to shoulder more burden in carrying the costs for that unit than they already are.

In response to your inquiry, associations are generally obligated to provide “notice and opportunity to cure” before taking formal legal action, and I would recommend doing so before force-placing insurance. A letter from the association’s attorney would seem to be the most effective way to provide notice and opportunity for compliance.

There are so many questions about the new law, that there is already talk of “glitch” legislation in 2009 to address these open questions. On a related note, there is also a grass-roots movement afoot to make foreclosing lenders responsible for a greater share of past-due assessments, as many feel that the “free ride” that they get under the current law is simply unfair. Stay tuned.

Q: Our condo community master board is made up of ten members who are the respective presidents of our various building associations. Each of the buildings has their own association. Those buildings elect their own boards. Those boards elect a president, and the president is automatically on the master board. The master board then elects its own officers (president, vice

president, etc.). How does the new law on staggered terms apply to this master board? **T.D. (via e-mail)**

A: It sounds to me like your “master” association is what is commonly referred to as a “condominium master association.” This is the case if membership in the master association is limited to condominium unit owners or condominium associations. In such a case, your association is governed by Chapter 718 of the Florida Statutes, known as the Florida Condominium Act. If so, the new laws on director terms, which became effective October 1, 2008, would apply to your master association.

Under the new condominium law, all directors will serve one year terms unless the bylaws permit two year staggered terms, and a majority of the voting interests of the association affirmatively approve continuing with two year staggered terms.

Conversely, if your master association has any non-condominium members (such as single family home owners or homeowners’ associations), Chapter 718 does not apply. Rather, it is likely that the association would be governed by Chapter 720 of the Florida Statutes, which is commonly (although not officially) cited as the Florida Homeowners’ Association Act. The Homeowners’ Association Act does not contain the board term laws that are now found in the condominium statute.

Your master association may also wish to check as to whether its election process complies with current legal requirements. The State of Florida has ruled through a declaratory statement called In Re: Heron Master Association, Inc., that condominium master associations must follow an election process which involves popular voting.

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 This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.

