



Community Association Q&A

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Question – At our recent Condo Association meeting, the matter of wind insurance was of primary importance. We have an 8 unit building and the wind-only insurance last year was \$1,000, and this year it has gone up to \$4,750. We find this increase very steep and are considering self-insuring. Our question to you is, can we self-insure? If not, why not? If we can, please give us, if possible, a step-by-step list of what needs to be done. I.O., West Palm Beach

Answer – This is a very timely question. To answer, we must first review the requirements of the insurance provisions of the Condominium Act. The Act provides that the board use its best efforts to obtain and maintain “adequate” insurance to protect the association, the association property, the common elements and the portion of the units which the Act mandates be included within the scope of the association’s policy. While the term “adequate insurance” was not initially defined, the Act provided that, regardless of any requirement in the declaration of condominium for coverage by the association for “full insurable value,” “replacement cost,” or the like, coverage may include reasonable deductibles as are determined by the board. Shortly after Hurricane Andrew, the Act was amended to provide that, “an association or group of associations may self-insure against claims against

the association.” Please note that the term “self insurance” does not mean going without insurance; rather, it means forming a self-insurance pool with other associations. To the best of my knowledge, no associations ever availed themselves of that right because of the burden of complying with unachievable thresholds in order to qualify a self insurance fund. During the 2007 special legislative session called to address the insurance crisis in Florida, the Legislature revisited the self insurance language in the Condominium Act. The changes made were immediately challenged by legal scholars who questioned whether the rights granted under the Act to self insure would take precedent over provisions of the declaration of condominium which generally require that insurance be acquired from admitted commercial lines carriers. During the 2007 regular session, the Legislature tried to alleviate those concerns by further amending the Condominium Act’s self insurance provision to state that the right to form a self insurance pool exists, regardless of when the declaration of condominium was recorded. Unfortunately, the action taken still skirts the constitutional impairment of contract rights issue and conflicts with the mandates of Section 718.111(b) of the Act. While a number of self insurance programs have been rolled out since enactment of the 2007 amendments, those which I have personally

reviewed pose greater risk than the savings warrant. Of particular concern is the fact that Self Insurance Funds are not afforded the protection of the Florida Insurance Guarantee Association (FIGA). That is, if the fund goes belly-up, FIGA does not cover the loss. Furthermore, some of the proposed funds which I am familiar with impose unlimited potential assessments against the members of the pool, not only for losses within their own communities, but for losses of any of the members. My best advice, don't join any self insurance fund without first reviewing the details and risks with a knowledgeable and experienced insurance professional.

Question – With more and more focus on insurance and hurricane shutters, I wonder if there is a relationship between the following two paragraphs. It would appear that prior to making any decisions on hurricane shutters, the unit owners should become involved, since hurricane shutters would impact on unit use. Your opinion is urgently awaited. The Condominium Act, 718.113(c)(5), states in part: “Each board of administration shall adopt hurricane shutter specifications for each building within each condominium operated by the association which shall include color, style, and other factors deemed relevant by the board.” Paragraph 718.112(2)(c) states in part: “However, written notice of any meeting at which non emergency special assessments, or at which amendment to rules

regarding unit use will be considered, shall be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property not less than 14 days prior to the meeting.” C.N.M., Stuart

Answer – You fail to note two other sections of the Condominium Act which are relevant to the subject. First, Section 718.113(5), Florida Statutes, which provides that, notwithstanding any provision to the contrary in the condominium documents, the board shall not refuse to approve the installation or replacement of hurricane shutters which conform to the board approved specifications. Also, Section 718.115(e), F.S., provides that the expense of installation, replacement, operation, repair, and maintenance of hurricane shutters by the board, if approved by a majority of the voting interests, shall constitute a common expense. The dilemma occurs when the windstorm carrier mandates, as a condition of renewal or writing of a windstorm policy, that the building be retrofitted with impact glass or hurricane shutters. The board is required by law to obtain and maintain adequate insurance to protect the condominium property. What if the unit owners vote “no?” Does the board have the right to do so regardless, in order to satisfy its fiduciary duty and comply with the law? There has been no court or arbitration decision on this point.

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