



Condominium Law Q&A

June 8, 2009

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Correction:

A few weeks ago, a reader asked whether a condominium association could compel the unit owners to name the condominium association as an additional insured under the unit owner's hazard and flood policy, and force place coverage, if the owner did not furnish evidence of same. I advised of several drafting errors in the 2008 amendments impacting condominium insurance, which were cured in a bill introduced during the 2009 legislative session by Rep. Ellyn Bogdanoff and Sen. Dennis Jones. That bill, SB 714, also contained a provision which extended the deadline for condominiums over 75 feet in height to retrofit the common elements or units of a residential condominium with a fire sprinkler system or other engineered life safety system prior to 2014; extending the deadline to 2025. On June 1, 2009, Governor Crist vetoed SB 714 for what he expressed was an "unacceptable safety risk associated with installing the fire sprinkler systems." While I personally do not agree with the Governor's actions, given that many associations are already under enormous financial pressure caused by mortgage foreclosures and unit owner delinquencies, the bottom line is that the curative insurance language contained in SB 714 is not law. Thus, the answer to the reader's question is that an association can compel unit owners to furnish evidence that they carry hazard insurance to cover the portion of the unit and common elements which the law mandates unit owners insure and failing to do so, the association can force place insurance against the unit owner and assess the cost to the unit owner.

Question – Since 1988, I have lived in a 30 unit condominium in Boynton Beach. An unknown number of years ago (probably early 1990s), a decision was made (apparently, without full board knowledge and without knowledge of the residents) to discontinue flood insurance because it had become "too expensive." This year, we had to replace the roof on our condos and I do not have the money to pay my share. I applied for a reverse mortgage and was approved, subject to the bank's receipt of proof of flood insurance by my condo association. This is consistent with HUD Manual 2-5 D 4 which reads as follows:

4. Condominium. The Homeowners' Association (HOA), not the individual owner, is responsible for maintaining flood insurance on buildings located within the special flood hazard area. If the FHA appraiser reports that buildings in a condominium project are located within a FEMA-designated SFHA, the lender is responsible for ensuring that the HOA obtains and maintains national flood insurance on buildings located within the Special Flood Hazard Area (SFHA).

Adding to the confusion is the fact that FEMA allows dwelling form flood insurance coverage to be purchased by an individual unit owner when the condo association does not, or refuses to, carry flood insurance. Although the HUD regulation appears to

have been law for some time, the prevalent procedure here has been to require the unit owner to get his own coverage. Further complicating the situation is that Florida condo law says that the board MAY purchase flood insurance. Other casualty and hazard insurances are required, but it appears that flood insurance is not required even in a FEMA-designated SFHA. At present, there is considerable opposition from several board members to take any action whatsoever. Fortunately, our board president and secretary were able to get the board to agree to at least "look into" the possibility of getting our buildings reclassified out of a flood zone. Help! P.C.B., Boynton Beach

Answer - If the condominium is within a flood plain, the association is the entity which must obtain

flood insurance. Also, just as you indicated, the failure of the Board to obtain flood insurance can jeopardize the ability of the unit owners to obtain a mortgage on their units and cause considerable personal loss in the event of a hurricane. The State of Florida Bureau of Condominiums lacks jurisdiction to enforce the board's fiduciary duty, which, unfortunately, is the basis of individual unit owner action in this case. As you note, the Condominium Act speaks of the board's obligation to maintain "adequate insurance," but does not specifically require flood insurance. Your only option, assuming the Board fails to acquire flood insurance, may be a private legal action to compel the Board to do so.

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