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**\*Condominium Coverages\***

During the 2003 legislative session senate bill 592 made changes to the statutes (Specifically 718.111) that address how insurance coverage must be provided under the condominium master policy and the individual unit owner policies.

During the 2007 special legislative session, the word "residential" was added to the statutes in 718.111(11) and 718.111(11)(a) to indicate that the statutes applied only to residential condominiums.

Then during the 2008 legislative session House Bill 601 made further changes. Below is a summary of the condominium insurance law as currently written.

- The statute applies to every residential condominium in the state, regardless of the date of its declarations. Nothing in chapter 718 relating to insurance applies for a non-residential condominium.
- In condominiums where there is only one unit in a free standing building the association is not required to insure that building if the condominium declarations require the unit owner to obtain adequate insurance on the condominium property.
- The condominium board may satisfy the requirement to obtain "adequate insurance" if the policy contains a reasonable deductible as determined by the board. There is no definition of "reasonable."
- The master policy shall provide primary coverage for the following:
- All portions of the condominium property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications. (Editor's note: This includes items such as drywall, sheetrock, unfinished walls, unfinished floors, interior doors, interior non-load bearing walls, closet doors, closet rods, bath tubs, sinks, and toilets as long as items such as these were initially installed by the builder or are replacements of like kind and quality.)
- All alterations or additions made to the condominium property or association property pursuant to s. 718.113(2)
- The law provides that the following property components are excluded from the property and casualty insurance maintained by the condominium association. Coverage for these items would be obtained by the unit owners.
- Floor coverings, wall coverings, and ceiling coverings
- Electrical fixtures
- Appliances
- Water heaters
- Water filters
- Built in cabinets and counter tops
- Window treatments, including curtains, drapes, blinds, and hardware
- Replacements for any of the above listed property
- Air conditioning units, no matter where located, are the primary insurance responsibility of the association. This change took place during the 2008 legislative session.
- Associations may amend their declarations without regard to mortgagee approval of the amendments affecting insurance requirements.

- Unit owners are responsible for any interior additions and upgrades that are not of like kind of quality to the original interior building items.
- Where the unit owner's policy covers the same property that is also covered by the master policy, the unit owner's policy shall be excess over the amount recoverable under the master policy.
- Unit owner policies shall be without rights of subrogation against the condominium association.

In recent months FAIA has been inundated by member agents with questions about how coverage works for certain building items. Commonly mentioned are items such as drywall, windows, interior doors, and baseboards to name a few. Agents advise FAIA that claims adjusters and/or condo associations are telling unit owners that the items just mentioned are the primary insurance responsibility of the unit owner. The statutes, however, clearly dictate otherwise and no one has ever cited any statutory basis to justify a statement along the lines of "Drywall is the primary responsibility of the unit owner." Clearly, building items such as drywall, windows, doors, and baseboards are "...the condominium property as originally installed or replacement of like kind and quality..." as referenced in the statute and are clearly the primary insurance responsibility of the association. While items such as drywall, doors, windows, baseboards, and shutters may be the maintenance responsibility of the unit owner, they are the primary insurance responsibility of the association. Even if the condominium bylaws or documents stated that items such as drywall, windows, doors, baseboards, and exterior shutters were the primary insurance responsibility of the unit owner, Florida statute 718.111 dictates otherwise.

The January 1, 2009 in the statute date is significant because older statutes referred to a 1986 date and a 1992 date. Depending on the dates of the condominium declarations (bylaws) it was possible that the master policy would cover items such as the floor coverings, electrical fixtures, appliances, and water heaters to name a few. With the statutory change, those 1986 and 1992 dates are eliminated and there is one "common playing field" when it comes to what the master policy will not cover. It's now safe to say that all of the 20,000 or so residential condominium associations in the state all fall under the new law and the "property not covered list" is the same for all residential condominium associations.

What this means for the unit owner is that increased coverage may be required under the unit owner policy. When advised of this fact it's likely that the first call will be to the insurance agency with the question of, "How much coverage should I carry?" That answer is the same today as it was when the first condominium policy was written decades ago, "Whatever limit you think is appropriate." The agency should not select a limit of insurance. Only after reading the statute and the condominium declarations can a unit owner know what his insurance responsibility is. The amount of coverage should be based on:

- The property not covered by the master policy shown above
- Any property which the association bylaws require unit owners to insure
- Additions and alterations inside the unit which are not of like kind and quality when compared to the original installed property.

Again, the declaration of condominium no longer dictates the insuring responsibilities for the condominium association or the unit owner. The Florida Statutes now dictate the insuring responsibilities for the residential condominium association and the unit owner.

The statutes pertaining to this issue are below.

**718.111 The association.—**

(11)INSURANCE.—In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

(a) Adequate property insurance, regardless of any requirement in the declaration of condominium for coverage by the association for full insurable value, replacement cost, or similar coverage, must be based on the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal. The replacement cost must be determined at least once every 36 months.

1. An association or group of associations may provide adequate property insurance through a self-insurance fund that complies with the requirements of ss. 624.460-624.488.

2. The association may also provide adequate property insurance coverage for a group of at least three communities created and operating under this chapter, chapter 719, chapter 720, or chapter 721 by obtaining and maintaining for such communities insurance coverage sufficient to cover an amount equal to the probable maximum loss for the communities for a 250-year windstorm event. Such probable maximum loss must be determined through the use of a competent model that has been accepted by the Florida Commission on Hurricane Loss Projection Methodology. A policy or program providing such coverage may not be issued or renewed after July 1, 2008, unless it has been reviewed and approved by the Office of Insurance Regulation. The review and approval must include approval of the policy and related forms pursuant to ss. 627.410 and 627.411, approval of the rates pursuant to s. 627.062, a determination that the loss model approved by the commission was accurately and appropriately applied to the insured structures to determine the 250-year probable maximum loss, and a determination that complete and accurate disclosure of all material provisions is provided to condominium unit owners before execution of the agreement by a condominium association.

3. When determining the adequate amount of property insurance coverage, the association may consider deductibles as determined by this subsection.

(b) If an association is a developer-controlled association, the association shall exercise its best efforts to obtain and maintain insurance as described in paragraph (a). Failure to obtain and maintain adequate property insurance during any period of developer control constitutes a breach of fiduciary responsibility by the developer-appointed members of the board of directors of the association, unless the members can show that despite such failure, they have made their best efforts to maintain the required coverage.

(c) Policies may include deductibles as determined by the board.

1. The deductibles must be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the condominium property is situated.

2. The deductibles may be based upon available funds, including reserve accounts, or predetermined assessment authority at the time the insurance is obtained.

3. The board shall establish the amount of deductibles based upon the level of available funds and predetermined assessment authority at a meeting of the board in the manner set forth in s. 718.112(2)(e).

(d) An association controlled by unit owners operating as a residential condominium shall use its best efforts to obtain and maintain adequate property insurance to protect the association, the association property, the common elements, and the condominium property that must be insured by the association pursuant to this subsection.

(e) The declaration of condominium as originally recorded, or as amended pursuant to procedures provided therein, may provide that condominium property consisting of freestanding buildings comprised of no more than one building in or on such unit need not be insured by the association if the declaration requires the unit owner to obtain adequate insurance for the condominium property. An association may also obtain and maintain liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance for common elements, association property, and units.

(f) Every property insurance policy issued or renewed on or after January 1, 2009, for the purpose of protecting the condominium must provide primary coverage for:

1. All portions of the condominium property as originally installed or replacement of like kind and quality, in accordance with the original plans and specifications.

2. All alterations or additions made to the condominium property or association property pursuant to s. 718.113(2).

3. The coverage must exclude all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit. Such property and any insurance thereupon is the responsibility of the unit owner.

(g) A condominium unit owner's policy must conform to the requirements of s. 627.714.

1. All reconstruction work after a property loss must be undertaken by the association except as otherwise authorized in this section. A unit owner may undertake reconstruction work on portions of the unit with the prior written consent of the board of administration. However, such work may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, or the contract that is used for that purpose. A unit owner must obtain all required governmental permits and approvals before commencing reconstruction.

2. Unit owners are responsible for the cost of reconstruction of any portions of the condominium property for which the unit owner is required to carry property insurance, and any such reconstruction work undertaken by the association is chargeable to the unit owner and enforceable as an assessment pursuant to s. 718.116.

3. A multicondominium association may elect, by a majority vote of the collective members of the condominiums operated by the association, to operate the condominiums as a single condominium for purposes of insurance matters, including, but not limited to, the purchase of the property insurance required by this section and the apportionment of deductibles and damages in excess of coverage. The election to aggregate the treatment of insurance premiums, deductibles, and excess damages constitutes an amendment to the declaration of all condominiums operated by the association, and the costs of insurance must be stated in the association budget. The amendments must be recorded as required by s. 718.110.

(h) The association shall maintain insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. As used in this paragraph, the term "persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign checks on behalf of the association, and the president, secretary, and treasurer of the association. The association shall bear the cost of any such bonding.

(i) The association may amend the declaration of condominium without regard to any requirement for approval by mortgagees of amendments affecting insurance requirements for the purpose of conforming the declaration of condominium to the coverage requirements of this subsection.

(j) Any portion of the condominium property that must be insured by the association against property loss pursuant to paragraph (f) which is damaged shall be reconstructed, repaired, or replaced as necessary by the association as a common expense. All property insurance deductibles, uninsured losses, and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium, except that:

1. A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of the insurer.

2. The provisions of subparagraph 1. regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also apply to the costs of repair or replacement of personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure.

3. To the extent the cost of repair or reconstruction for which the unit owner is responsible under this paragraph is reimbursed to the association by insurance proceeds, and the association has collected the cost of such repair or reconstruction from the unit owner, the association shall reimburse the unit owner without the waiver of any rights of subrogation.

4. The association is not obligated to pay for reconstruction or repairs of property losses as a common expense if the property losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim of the association for that property was settled or resolved with finality, or denied because it was untimely filed.

(k) An association may, upon the approval of a majority of the total voting interests in the association, opt out of the provisions of paragraph (j) for the allocation of repair or reconstruction expenses and allocate repair or reconstruction expenses in the manner provided in the declaration as originally recorded or as amended. Such vote may be approved by the voting interests of the association without regard to any mortgagee consent requirements.

(l) In a multicondominium association that has not consolidated its financial operations under subsection (6), any condominium operated by the association may opt out of the provisions of paragraph (j) with the approval of a majority of the total voting interests in that condominium. Such vote may be approved by the voting interests without regard to any mortgagee consent requirements.

(m) Any association or condominium voting to opt out of the guidelines for repair or reconstruction expenses as described in paragraph (j) must record a notice setting forth the date of the opt-out vote and the page of the official records book on which the declaration is recorded. The decision to opt out is effective upon the date of recording of the notice in the public records by the association. An association that has voted to opt out of paragraph (j) may reverse that decision by the same vote required in paragraphs (k) and (l), and notice thereof shall be recorded in the official records.

(n) The association is not obligated to pay for any reconstruction or repair expenses due to property loss 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 is 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. This paragraph does not relieve any party of its obligations regarding recovery due under any insurance implemented specifically for such improvements.

(o) The provisions of this subsection shall not apply to timeshare condominium associations. Insurance for timeshare condominium associations shall be maintained pursuant to s. 721.165.