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**ASSOCIATION UNIT OWNER INSURANCE NEEDS
AND INSURANCE ISSUES**

Illinois law requires condominium associations to have insurance coverage, in the full insurable replacement cost for the common elements and for the units. State law does not require liability, property damage, or other insurance for the unit owner. Unit owners buying a condominium unit have been wrongly told that they do not need insurance, because the association has insurance. Unit owners should have their own liability coverage and other coverage for their potential losses and liabilities. Sadly, until now, in Illinois, less than fifty percent (50%) of unit owners in a condominium have insurance to cover their personal losses of property or personal liability in the event a fire, flood or injury to persons or property. The lack of knowledge and the lack of understanding has caused serious hardship for associations and unit owners. Now those types of hardships can be addressed and reduced or eliminated as a result of an amendment to the insurance provisions of the Illinois Condominium Property Act.

Senate Bill 1046 (Public Act 95-0518) became effective June 1, 2002. This Act amended Section 12 of the Illinois Condominium Property Act ("CPA" or "Act") dealing with insurance. Substantial changes to the entire section of the Act were made.

Section 12 (h) of the Act is entitled "Mandatory Unit Owner Coverage." This new section allows the board of directors: **"under the declaration and by-laws or by rule, to require condominium unit owners to obtain insurance covering their personal liability and compensatory (but not consequential) damages to another unit caused by the negligence of the owner or his or her guests, residents, or invitees, or regardless of any negligence originating from the unit."** Now every association board can create a rule requiring all unit owners to have insurance, as specified above. Once the rule is imposed, and is in place, all unit owners would be required to have insurance covering their personal liability and compensatory damages as

specified. The unit owners would have no option, they would have to get insurance. The absence of any provision in the declaration requiring this insurance would not prevent the association board from imposing this requirement because the Act specifically authorizes the coverage requirements and unit owner insurance.

The Act coverage authorization includes: **"damages to another unit caused by the negligence of the owner or his or her guests, residents, or invitees, or regardless of any negligence originating from the unit."** For example, if there is a rule in place, if a shower leaks or a toilet leaks and it causes damage to another unit, then the unit owner where the leak occurred will be responsible for all damage caused to another unit, to the extent that the Associations insurance does not provide coverage.

"The personal liability of the owner must include the deductible of the owner whose



unit was damaged and any damage not covered by insurance required by the Association as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment and other furnishings." Consequently, the unit owner from which unit the damage or water has emanated may be responsible for significant expenses. With that potential exposure, the owner will require significant coverage for their liability and for any damage that they could cause.

"If the unit owner does not purchase or produce evidence of insurance requested by the board, the directors may purchase the insurance coverage and charge the premium back to the unit owner;"



provided that the authority to do so has been included in the association rules. This insures the association's ability to require each owner to have their own liability, property damage and personal property insurance. With appropriate rules in place, the association can require members to secure insurance in categories and amounts that the board specifies. The board can insist that all unit owner provide the association with proof of coverage each year; that each unit owner make the association an additional insured, and that each insurance company notify the association if it cancels coverage or if coverage is not

renewed. If the unit owner does not renew, cancels or does not secure the policy, the association board can secure that policy and charge the cost back to the unit owner.

Although the Act allows the board to impose rules requiring coverage and specifying the coverage and amounts, the Act further provides that: "in no event will the board be responsible or liable to anyone with regard to any decision either not to purchase the insurance, or with regard to the timing of its purchase of the insurance or the amounts or types of coverages obtained." Consequently, if the board requires purchase of amounts that are not adequate, the board is not responsible for the shortfall in amounts, but the unit owner that caused the damage or the occurrence is responsible.

Although the above focused on the portion of Section 12 of the Act dealing with unit owner coverage, the remaining portions of Section 12 and the changes in those sections are significant. The Act has changed some of the definitions and requirements which previously existed. Section 12 (a) requires: "**Property insurance (i) for the common elements and the units, including the limited common elements and except as otherwise determined by the board of managers, the bare walls, floors and ceilings of the unit, (ii) providing coverage for special form causes of loss, and (iii) in a total amount of not less than full insurable replacement cost of the insured property less**

deductibles." Coverage now include "increased costs of construction due to building code requirements at the time the insurance is purchased and at each renewal date." The association is now required to secure "commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the property in a minimum amount of \$1,000,000." The association is required to secure fidelity coverage.

Section 12 (c) provides that: "The board of directors of the association may, in the case of a claim for damage to a unit or the common elements, (i) pay the deductible amount as a common expense, (ii) after notice and an opportunity for a hearing, assess the deductible amount against the owners who caused the damage or from whose units the damage or cause of loss originated, or (iii) require the unit owners of units affected to pay the deductible amount."

Section 12 now identifies other coverages that can be secure by the association including workmen's compensation, employment practices, environmental hazards and equipment breakdown and authorizes the board of directors to secure those coverages if they so choose. It also provides, at Section 12 (i), that contractors and vendors doing business with a condominium association under contracts exceeding \$10,000 per year must provide certificates of insurance naming the association, its board of

directors, and its managing agent as an additional insured party.

There are potential issues and problems with the wording in this Section and its application in existing condominiums with existing declarations. "Bare walls" coverage is not a clearly defined term. It would appear that the association board must specify what items of the unit are to be included in the association's coverage, in addition to bare walls, if additional items such as cabinets, appliances, floor tile



and flooring are to be included. It is possible that there could be a significant gap in coverage if the association board and the insurance agent do not carefully review coverage and the

association declaration to make sure that they correlate and to make sure that there is full coverage. All policies in these events should include an integration cause for coverage integration between the association's policy and the unit owner's policy to the extent that each does not specifically identify overlap coverages or the lack of overlap coverage. As the cases develop, there will be more problems and issues that will have to be addressed.

If an association wishes to secure rules to implement unit owner coverage, we would be pleased to be of service in drafting rules, or to be of assistance in any other way.



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