

INSURANCE CHANGES - SB 167

Given the great interdependence that exists between owners in common interest ownership arrangements and the complexity and difficulty experienced in the insurance process, it has been obvious for a long time that significant change was needed.

Owners seeking direction and advice in the search for proper coverage found mainly confusion. What exactly could the association policy be relied on to cover in the event of a loss? What coverage should the owners purchase on a unit owners' policy to assure restoration of damages in tandem with the association policy? How could gaps in coverage be avoided?

These challenges have been sizable for insurance marketers, underwriters, claim handlers and especially owners. Attempts to interpret and rely on association documents and policy contracts for guidance have only generated more questions and debate. Some owners who have relied on information obtained from their association, insurance professionals and others to make insurance decisions have unfortunately discovered at claim time that things didn't work out as they expected.

Without definitive information to guide them, to feel adequately covered, many unit owners have found it necessary to purchase building coverage on their unit owners' (HO6) policy in an amount sufficient to cover an entire claim even though they were already purchasing building coverage on the association policy through their monthly dues in an amount sufficient to cover an entire claim as well. The result for owners: double coverage at double cost with uncertainty as to where to turn at claim time and which policy should provide payment. Owners are the association, they are not the enemy. They have been paying premiums on both policies to cover the same thing and they deserve better than the status quo.

The passage of senate bill 167 (1st sub) during the 2011 Utah legislative session finally brings certainty to the process by making clear the insurance requirements and responsibilities of the association and those of the unit owners. The new statute becomes effective July 1, 2011 on a "phased-in basis" as homeowner association (master) policies and unit owner (HO6) policies are issued or renewed.

It is mandated that homeowner associations maintain property insurance on the physical structures in the project *including the units* in an amount that may not be less than 100% of the full replacement cost of the insured property at the time of purchase and at renewal, including improvements and betterments installed by unit owners. Such coverage shall include coverage for any fixture, improvement, or betterment installed by unit owners to a unit or to a limited common area, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window and any other item permanently part of or affixed to a unit or to a common unit.

The association policy (master) provides primary insurance coverage and the unit owner (HO6) policy applies to and covers the policy deductible of the association of unit owners. Therefore, unit owners needs to purchase an amount of building property coverage under the unit owner (HO6) policy equal to the deductible amount on the association policy (master), or they are

personally responsible for the entire amount of their share of the deductible on the association policy (master).

If unit owners fail to pay their share of the deductible amount of the association policy (master) within 30 days of substantial completion of the repairs to the unit, the association may levy an assessment against unit owners for that amount and can subsequently lien to enforce payment.

Further, associations are required to notify unit owners of deductible provisions on the association policies, including any changes thereto so unit owners can make any necessary changes to their unit owner (HO6) policies and remain properly covered. Failure to do so could leave an association responsible for the amount of increase in a deductible amount.

The deductible amount on the homeowner association policy is the association's loss control mechanism and associations can avoid excessive claim frequency through the selection of higher deductibles. The association is required to maintain an amount in reserve equal to the association policy (master) deductible or \$10,000 - whichever is less.

Recognizing the need to minimize activity under a master policy, if the management committee in the exercise of the business judgment rule determines that a claim is likely not to exceed the property insurance policy deductible of the association of unit owners, the unit owners' policy is considered the policy for primary coverage to the amount of the policy deductible of the association of unit owners, and the association need not tender the claim to the association's insurance carrier.

When multiple units sustain damage in the same loss, the association policy deductible is apportioned according to unit damage percentages.

The new statute not only makes the insurance process equitable and functional for everyone involved and creates consistency with sales and underwriting, but also most importantly brings certainty to the claims handling process. There will be no more arguments over fault, no more standoffs as to which policy has the obligation to pay, no more inconsistency, no more unpredictability, no more paying for extra coverage you don't need and no more interference with the process which only delays settlement of the claim and frustrates the unit owners involved.

The new statute does not apply to a townhome project if:

- 1) the initial declaration for the project is recorded before January 1, 2012
- 2) the project includes attached dwellings
- 3) the declaration requires each lot owner to insure the lot owner's dwelling.