

By Senator Jones

13-00853-09

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1 A bill to be entitled
2 An act relating to condominium insurance; amending s.
3 718.111, F.S.; requiring that adequate property
4 insurance be based upon the replacement cost of the
5 property to be insured as determined by an independent
6 appraisal or update of a prior appraisal; requiring
7 that such replacement cost be determined at least once
8 within a specified period; providing means by which an
9 association may provide adequate property insurance;
10 authorizing an association to consider deductibles
11 when determining an adequate amount of property
12 insurance; providing that failure to maintain adequate
13 property insurance constitutes a breach of fiduciary
14 duty by the members of the board of directors of an
15 association; revising the procedures for the board to
16 establish the amount of deductibles; requiring that an
17 association controlled by unit owners operating as a
18 residential condominium use its best efforts to obtain
19 and maintain adequate property insurance to protect
20 the association and certain property; requiring that
21 every property insurance policy issued or renewed on
22 or after a specified date provide certain coverage;
23 excluding certain items from such requirement;
24 providing that excluded items and any insurance
25 thereupon are the responsibility of the unit owner;
26 requiring that condominium unit owner's policies
27 issued after a specified date conform to certain
28 provisions of state law; deleting provisions relating
29 to certain hazard and casualty insurance policies;

13-00853-09

2009714__

30 conforming provisions to changes made by the act;
31 creating s. 627.714, F.S.; requiring that unit owner
32 policies issued or renewed on or after a specified
33 date include at least a minimum amount of loss
34 assessment coverage; requiring that every property
35 insurance policy issued or renewed on or after a
36 specified date to an individual unit owner contain a
37 certain provision; providing an effective date.

38
39 Be It Enacted by the Legislature of the State of Florida:

40
41 Section 1. Paragraphs (a), (b), (c), (d), (f), (g), and (j)
42 of subsection (11) of section 718.111, Florida Statutes, are
43 amended to read:

44 718.111 The association.—

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

53 (a) Adequate property ~~hazard~~ insurance, regardless of any
54 requirement in the declaration of condominium for coverage by
55 the association for full insurable value, replacement cost, or
56 similar coverage, shall be based upon the replacement cost of
57 the property to be insured as determined by an independent
58 insurance appraisal or update of a prior appraisal. The

13-00853-09

2009714__

59 replacement cost ~~full insurable value~~ shall be determined at
60 least once every 36 months.

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

64 2. The association may also provide adequate property
65 ~~hazard~~ insurance coverage for a group of no fewer than three
66 communities created and operating under this chapter, chapter
67 719, chapter 720, or chapter 721 by obtaining and maintaining
68 for such communities insurance coverage sufficient to cover an
69 amount equal to the probable maximum loss for the communities
70 for a 250-year windstorm event. Such probable maximum loss must
71 be determined through the use of a competent model that has been
72 accepted by the Florida Commission on Hurricane Loss Projection
73 Methodology. No policy or program providing such coverage shall
74 be issued or renewed after July 1, 2008, unless it has been
75 reviewed and approved by the Office of Insurance Regulation. The
76 review and approval shall include approval of the policy and
77 related forms pursuant to ss. 627.410 and 627.411, approval of
78 the rates pursuant to s. 627.062, a determination that the loss
79 model approved by the commission was accurately and
80 appropriately applied to the insured structures to determine the
81 250-year probable maximum loss, and a determination that
82 complete and accurate disclosure of all material provisions is
83 provided to condominium unit owners prior to execution of the
84 agreement by a condominium association.

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

13-00853-09

2009714__

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

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

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

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

106 3. The board shall establish the amount of deductibles
107 based upon the level of available funds and predetermined
108 assessment authority at a meeting of the board. ~~Such meeting~~
109 ~~shall be open to all unit owners~~ in the manner set forth in s.
110 718.112(2)(e). ~~The notice of such meeting must state the~~
111 ~~proposed deductible and the available funds and the assessment~~
112 ~~authority relied upon by the board and estimate any potential~~
113 ~~assessment amount against each unit, if any. The meeting~~
114 ~~described in this paragraph may be held in conjunction with a~~
115 ~~meeting to consider the proposed budget or an amendment thereto.~~

116 (d) An association controlled by unit owners operating as a

13-00853-09

2009714__

117 residential condominium shall use its best efforts to obtain and
118 maintain adequate property insurance to protect the association,
119 the association property, the common elements, and the
120 condominium property that is required to be insured by the
121 association pursuant to this subsection.

122 (f) Every property ~~hazard~~ insurance policy issued or
123 renewed on or after January 1, 2009, for the purpose of
124 protecting the condominium shall provide primary coverage for:

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

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

130 3. The coverage shall exclude all personal property within
131 the unit or limited common elements, and floor, wall, and
132 ceiling coverings, electrical fixtures, appliances, water
133 heaters, water filters, built-in cabinets and countertops, and
134 window treatments, including curtains, drapes, blinds, hardware,
135 and similar window treatment components, or replacements of any
136 of the foregoing. Such property and any insurance thereupon
137 shall be the responsibility of the unit owner.

138 (g) A condominium unit owner's policy issued after October
139 1, 2009, shall conform to the requirements of s. 627.714. ~~Every~~
140 ~~hazard insurance policy issued or renewed on or after January 1,~~
141 ~~2009, to an individual unit owner must contain a provision~~
142 ~~stating that the coverage afforded by such policy is excess~~
143 ~~coverage over the amount recoverable under any other policy~~
144 ~~covering the same property. Such policies must include special~~
145 ~~assessment coverage of no less than \$2,000 per occurrence. An~~

13-00853-09

2009714__

146 ~~insurance policy issued to an individual unit owner providing~~
147 ~~such coverage does not provide rights of subrogation against the~~
148 ~~condominium association operating the condominium in which such~~
149 ~~individual's unit is located.~~

150 ~~1. All improvements or additions to the condominium~~
151 ~~property that benefit fewer than all unit owners shall be~~
152 ~~insured by the unit owner or owners having the use thereof, or~~
153 ~~may be insured by the association at the cost and expense of the~~
154 ~~unit owners having the use thereof.~~

155 ~~2. The association shall require each owner to provide~~
156 ~~evidence of a currently effective policy of hazard and liability~~
157 ~~insurance upon request, but not more than once per year. Upon~~
158 ~~the failure of an owner to provide a certificate of insurance~~
159 ~~issued by an insurer approved to write such insurance in this~~
160 ~~state within 30 days after the date on which a written request~~
161 ~~is delivered, the association may purchase a policy of insurance~~
162 ~~on behalf of an owner. The cost of such a policy, together with~~
163 ~~reconstruction costs undertaken by the association but which are~~
164 ~~the responsibility of the unit owner, may be collected in the~~
165 ~~manner provided for the collection of assessments in s. 718.116.~~

166 1.3. All reconstruction work after a casualty loss shall be
167 undertaken by the association except as otherwise authorized in
168 this section. A unit owner may undertake reconstruction work on
169 portions of the unit with the prior written consent of the board
170 of administration. However, such work may be conditioned upon
171 the approval of the repair methods, the qualifications of the
172 proposed contractor, or the contract that is used for that
173 purpose. A unit owner shall obtain all required governmental
174 permits and approvals prior to commencing reconstruction.

13-00853-09

2009714__

175 ~~2.4.~~ Unit owners are responsible for the cost of
176 reconstruction of any portions of the condominium property for
177 which the unit owner is required to carry casualty insurance,
178 and any such reconstruction work undertaken by the association
179 shall be chargeable to the unit owner and enforceable as an
180 assessment pursuant to s. 718.116. ~~The association must be an~~
181 ~~additional named insured and loss payee on all casualty~~
182 ~~insurance policies issued to unit owners in the condominium~~
183 ~~operated by the association.~~

184 ~~3.5.~~ A multicondominium association may elect, by a
185 majority vote of the collective members of the condominiums
186 operated by the association, to operate such condominiums as a
187 single condominium for purposes of insurance matters, including,
188 but not limited to, the purchase of the property hazard ~~hazard~~
189 insurance required by this section and the apportionment of
190 deductibles and damages in excess of coverage. The election to
191 aggregate the treatment of insurance premiums, deductibles, and
192 excess damages constitutes an amendment to the declaration of
193 all condominiums operated by the association, and the costs of
194 insurance shall be stated in the association budget. The
195 amendments shall be recorded as required by s. 718.110.

196 (j) Any portion of the condominium property required to be
197 insured by the association against property casualty ~~casualty~~ loss
198 pursuant to paragraph (f) which is damaged ~~by casualty~~ shall be
199 reconstructed, repaired, or replaced as necessary by the
200 association as a common expense. All property hazard ~~hazard~~ insurance
201 deductibles, uninsured losses, and other damages in excess of
202 property hazard ~~hazard~~ insurance coverage under the property hazard ~~hazard~~
203 insurance policies maintained by the association are a common

13-00853-09

2009714__

204 expense of the condominium, except that:

205 1. A unit owner is responsible for the costs of repair or
206 replacement of any portion of the condominium property not paid
207 by insurance proceeds, if such damage is caused by intentional
208 conduct, negligence, or failure to comply with the terms of the
209 declaration or the rules of the association by a unit owner, the
210 members of his or her family, unit occupants, tenants, guests,
211 or invitees, without compromise of the subrogation rights of any
212 insurer ~~as set forth in paragraph (g)~~.

213 2. The provisions of subparagraph 1. regarding the
214 financial responsibility of a unit owner for the costs of
215 repairing or replacing other portions of the condominium
216 property also apply to the costs of repair or replacement of
217 personal property of other unit owners or the association, as
218 well as other property, whether real or personal, which the unit
219 owners are required to insure ~~under paragraph (g)~~.

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

227 4. The association is not obligated to pay for repair or
228 reconstruction or repairs of property ~~casualty~~ losses as a
229 common expense if the property ~~casualty~~ losses were known or
230 should have been known to a unit owner and were not reported to
231 the association until after the insurance claim of the
232 association for that property ~~casualty~~ was settled or resolved

13-00853-09

2009714__

233 with finality, or denied on the basis that it was untimely
234 filed.

235 Section 2. Section 627.714, Florida Statutes, is created to
236 read:

237 627.714 Condominium unit owner coverage; loss assessment
238 coverage required.—For policies issued or renewed on or after
239 October 1, 2009, coverage under a residential condominium unit
240 owner's policy shall include loss assessment coverage of at
241 least \$2,000 after any applicable deductible due under the
242 condominium unit owner's policy. Every property insurance policy
243 issued or renewed on or after January 1, 2010, to an individual
244 unit owner must contain a provision stating that the coverage
245 afforded by such policy is excess coverage over the amount
246 recoverable under any other policy covering the same property.

247 Section 3. This act shall take effect July 1, 2009.