

By the Committee on Regulated Industries; and Senators Jones and Fasano

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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 conform to certain provisions of state law; deleting
28 provisions relating to certain hazard and casualty
29 insurance policies; conforming provisions to changes

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30 made by the act; creating s. 627.714, F.S.; requiring
31 that coverage under a unit owner's policy for certain
32 assessments include at least a minimum amount of loss
33 assessment coverage; requiring that every property
34 insurance policy to an individual unit owner contain a
35 specified provision; providing an effective date.
36

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

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

42 718.111 The association.—

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

51 (a) Adequate property hazard insurance, regardless of any
52 requirement in the declaration of condominium for coverage by
53 the association for full insurable value, replacement cost, or
54 similar coverage, shall be based upon the replacement cost of
55 the property to be insured as determined by an independent
56 insurance appraisal or update of a prior appraisal. The
57 replacement cost ~~full insurable value~~ shall be determined at
58 least once every 36 months.

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

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

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

86 (b) If an association is a developer-controlled
87 association, the association shall exercise its best efforts to

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

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

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

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

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

114 (d) An association controlled by unit owners operating as a
115 residential condominium shall use its best efforts to obtain and
116 maintain adequate property insurance to protect the association,

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117 the association property, the common elements, and the
118 condominium property that is required to be insured by the
119 association pursuant to this subsection.

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

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

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

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

137 (g) A condominium unit owner's policy shall conform to the
138 requirements of s. 627.714. Every hazard insurance policy issued
139 or renewed on or after January 1, 2009, to an individual unit
140 owner must contain a provision stating that the coverage
141 afforded by such policy is excess coverage over the amount
142 recoverable under any other policy covering the same property.
143 Such policies must include special assessment coverage of no
144 less than \$2,000 per occurrence. An insurance policy issued to
145 an individual unit owner providing such coverage does not

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146 ~~provide rights of subrogation against the condominium~~
147 ~~association operating the condominium in which such individual's~~
148 ~~unit is located.~~

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

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

165 ~~1.3.~~ All reconstruction work after a property casualty loss
166 shall be undertaken by the association except as otherwise
167 authorized in this section. A unit owner may undertake
168 reconstruction work on portions of the unit with the prior
169 written consent of the board of administration. However, such
170 work may be conditioned upon the approval of the repair methods,
171 the qualifications of the proposed contractor, or the contract
172 that is used for that purpose. A unit owner shall obtain all
173 required governmental permits and approvals prior to commencing
174 reconstruction.

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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 property ~~casualty~~
178 insurance, and any such reconstruction work undertaken by the
179 association shall be chargeable to the unit owner and
180 enforceable as an assessment pursuant to s. 718.116. ~~The~~
181 ~~association must be an additional named insured and loss payee~~
182 ~~on all casualty insurance policies issued to unit owners in the~~
183 ~~condominium 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~~
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~~ 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~~ insurance
201 deductibles, uninsured losses, and other damages in excess of
202 property ~~hazard~~ insurance coverage under the property ~~hazard~~
203 insurance policies maintained by the association are a common

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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

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

235 (n) The association is not obligated to pay for any
236 reconstruction or repair expenses due to property ~~casualty~~ loss
237 to any improvements installed by a current or former owner of
238 the unit or by the developer if the improvement benefits only
239 the unit for which it was installed and is not part of the
240 standard improvements installed by the developer on all units as
241 part of original construction, whether or not such improvement
242 is located within the unit. This paragraph does not relieve any
243 party of its obligations regarding recovery due under any
244 insurance implemented specifically for any such improvements.

245 Section 2. Section 627.714, Florida Statutes, is created to
246 read:

247 627.714 Residential condominium unit owner coverage; loss
248 assessment coverage required; excess coverage provision
249 required.—For policies issued or renewed on or after July 1,
250 2009, coverage under a unit owner's residential property policy
251 shall include property loss assessment coverage of at least
252 \$2,000 for all assessments made as a result of the same direct
253 loss to the property, regardless of the number of assessments,
254 owned by all members of the association collectively when such
255 loss is of the type of loss covered by the unit owner's
256 residential property insurance policy, to which a deductible
257 shall apply of no more than \$250 per direct property loss. If a
258 deductible was or will be applied to other property loss
259 sustained by the unit owner resulting from the same direct loss
260 to the property, no deductible shall apply to the loss
261 assessment coverage. Every individual unit owner's residential

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262 property policy must contain a provision stating that the
263 coverage afforded by such policy is excess coverage over the
264 amount recoverable under any other policy covering the same
265 property.

266 Section 3. This act shall take effect upon becoming a law.