

Public Act 92-0518

SB1046 Re-enrolled

LRB9202778DJcs

AN ACT in relation to property.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Condominium Property Act is amended by changing Sections 12 and 12.1 as follows:

(765 ILCS 605/12)

Sec. 12. Insurance.

(a) Required coverage. No policy of insurance shall be issued or delivered to a condominium association, and no policy of insurance issued to a condominium association shall be renewed, unless the insurance coverage under the policy includes the following:

(1) Property insurance. Property insurance (i) on 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 the full insurable replacement cost of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date.

(2) General liability insurance. 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, or a greater amount deemed sufficient in the judgment of the board, insuring the board, the association, the management agent, and their respective employees and agents and all persons acting as agents. The developer must be included as an additional insured in its capacity as a unit owner, manager, board member, or officer. The unit owners must be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements. The insurance must cover claims of one or more insured parties against other insured parties.

(3) Fidelity bond; directors and officers coverage.

(A) An association with 6 or more dwelling units must obtain and maintain a fidelity bond covering persons, including the managing agent and its employees who control or disburse funds of the association, for the maximum amount of coverage available to protect funds in the custody or control of the association, plus the association reserve fund.

(B) All management companies that are responsible for the funds held or administered by the association must be covered by a fidelity bond for the maximum amount of coverage available to protect those funds. The association has standing to

make a loss claim against the bond of the managing agent as a party covered under the bond.

(C) For purposes of paragraphs (A) and (B), the fidelity bond must be in the full amount of association funds and reserves in the custody of the association or the management company.

(D) The board of directors must obtain directors and officers liability coverage at a level deemed reasonable by the board, if not otherwise established by the declaration or bylaws. Directors and officers liability coverage must extend to all contracts and other actions taken by the board in their official capacity as directors and officers, but this coverage shall exclude actions for which the directors are not entitled to indemnification under the General Not For Profit Corporation Act of 1986 or the declaration and bylaws of the association.

(b) Contiguous units; improvements and betterments. The insurance maintained under subdivision (a)(1) must include the units, the limited common elements except as otherwise determined by the board of managers, and the common elements. The insurance need not cover improvements and betterments to the units installed by unit owners, but if improvements and betterments are covered, any increased cost may be assessed by the association against the units affected.

Common elements include fixtures located within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the individual units initially installed by the developer. Common elements exclude floor, wall, and ceiling coverings. "Improvements and betterments" means all decorating, fixtures, and furnishings installed or added to and located within the boundaries of the unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters, or built-in cabinets installed by unit owners.

(c) Deductibles. 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 the units affected to pay the deductible amount.

(d) Other coverages. The declaration may require the association to carry any other insurance, including workers compensation, employment practices, environmental hazards, and equipment breakdown, the board of directors considers appropriate to protect the association, the unit owners, or officers, directors, or agents of the association.

(e) Insured parties; waiver of subrogation. Insurance policies carried pursuant to subsections (a) and (b) must include each of the following provisions:

(1) Each unit owner and secured party is an insured person under the policy with respect to liability arising out of the unit owner's interest in the common elements or membership in the association.

(2) The insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of the unit owner's household and against the association and members of the board of

directors.

(3) The unit owner waives his or her right to subrogation under the association policy against the association and the board of directors.

(f) Primary insurance. If at the time of a loss under the policy there is other insurance in the name of a unit owner covering the same property covered by the policy, the association's policy is primary insurance.

(g) Adjustment of losses; distribution of proceeds. Any loss covered by the property policy under subdivision (a)(1) must be adjusted by and with the association. The insurance proceeds for that loss must be payable to the association, or to an insurance trustee designated by the association for that purpose. The insurance trustee or the association must hold any insurance proceeds in trust for unit owners and secured parties as their interests may appear. The proceeds must be disbursed first for the repair or restoration of the damaged common elements, the bare walls, ceilings, and floors of the units, and then to any improvements and betterments the association may insure. Unit owners are not entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the common elements and units have been completely repaired or restored or the association has been terminated as trustee.

(h) Mandatory unit owner coverage. The board of directors may, under the declaration and bylaws or by rule, 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. The personal liability of a unit owner or association member must include the deductible of the owner whose unit was damaged, any damage not covered by insurance required by this subsection, as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings.

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 cost back to the unit owner. In no event is the board liable to any person either with regard to its decision 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.

(i) Certificates of insurance. Contractors and vendors (except public utilities) 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 additional insured parties.

(j) Non-residential condominiums. The provisions of this Section may be varied or waived in the case of a condominium community in which all units are restricted to nonresidential use.

(k) Settlement of claims. Any insurer defending a liability claim against a condominium association must notify the association of the terms of the settlement no less than 10 days before settling the claim. The association may not veto the settlement unless otherwise provided by contract or statute.

) (a) (1) The board of managers shall have the

~~authority to and shall obtain, except as otherwise provided in Section 12.1, insurance for the property against loss or damage by fire and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the common elements and the units. Every insurer issuing a policy against loss or damage by fire and such other hazards as are covered under standard extended coverage to a condominium association shall print on or attach to the premium notice the following statement: "The Condominium Property Act requires every condominium association to obtain insurance for the property against loss or damage by fire and such other hazards as are covered under the standard extended coverage provisions for the full insurable replacement costs. This policy may or may not satisfy this requirement. Please examine your policy carefully to determine if it complies with these requirements." The full insurable replacement cost of the units may include the replacement cost value of betterments and improvements made in and to a unit by a unit owner if it is so provided by the condominium declaration, and if it is so provided in the condominium instruments, any increase premium charge therefor shall be assessed to that unit owner under the provisions of Section 9 hereof.~~

~~(2) Such insurance coverage shall be written in the name of, and the proceeds thereof shall be deemed payable to, the board of managers, as trustee for each of the unit owners in the percentages established in the declaration. Any insurance policy obtained for the property pursuant to paragraph (1) of subsection (a) of this Section, which fails to contain the trustee provisions required by this paragraph (2), shall be deemed to incorporate such provisions into the policy by operation of law.~~

~~(3) The board of managers, or the persons acting in such capacity pursuant to Section 18.2 of this Act, shall have authority to designate any corporation qualified to accept and execute trusts in this state to act as agent or trustee for, or as successor trustee to, said board of managers for the purpose of collecting and disbursing the proceeds of such insurance in the manner provided by the declaration, the bylaws, and this Act. Premiums for such insurance and other expenses in connection therewith shall be common expenses.~~

~~(b) The board of managers shall have the authority and duty to obtain comprehensive public liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the property in amounts, if any, specified by the condominium instruments or otherwise deemed sufficient in the judgment of the board of managers, insuring the board of managers, the unit owners' association, the management agent, and their respective employees, agents and all persons acting as agents. The developer shall be included as an additional insured in his capacity as unit owner and board member. The unit owners shall be included as additional insureds but only with respect to that portion of the premises not reserved for their exclusive use. The insurance shall cover claims of one or more insured parties against other insured parties. The insurance shall contain a waiver of any rights to subrogation by the insuring company against any of the above named insured persons. Premiums for such insurance shall be common expenses.~~

~~(c) The board of managers shall notify insured persons~~

~~concerning the cancellation of insurance obtained pursuant to the terms of this Section.~~

~~(d) Any insurer defending a claim against a condominium association shall notify the association of the terms of the settlement before settling the claim. The association shall not have power to veto such settlement, unless otherwise provided by contract or statute.~~

(Source: P.A. 84-1431; 84-1464.)

(765 ILCS 605/12.1) (from Ch. 30, par. 312.1)

Sec. 12.1. Insurance risk pooling trusts.

(a) This Section shall be known and may be cited as the Condominium and Common Interest Community Risk Pooling Trust Act.

(b) The boards of managers or boards of directors, as the case may be, of two or more condominium associations or common interest community associations, are authorized to establish, with the unit owners and the condominium or common interest community associations as the beneficiaries thereof, a trust fund for the purpose of providing protection of the participating condominium and common interest community associations against the risk of financial loss due to damage to, destruction of or loss of property, or the imposition of legal liability as required or authorized under this Act or the declaration of the condominium or common interest community association. ~~Such trust fund shall initially assess unit owners an amount actuarially adequate to establish such fund and shall assess such amounts as are required to maintain such fund. Such amounts may be treated as assessments of the condominium or common interest community association.~~

(c) The trust fund shall be established and amended only by a written instrument which shall be filed with and approved by the Director of Insurance prior to its becoming effective. ~~The Director of Insurance shall withhold approval of any instrument if it does not comply with the provisions of this Section or any rule or regulation of the Director of Insurance.~~

(d) No ~~common interest community~~ association shall be a beneficiary of the trust fund unless it ~~either~~ shall be incorporated under the laws of this State ~~or shall have first procured a Certificate of Authority from the Secretary of State.~~

(e) The trust fund is authorized to indemnify the condominium and common interest community association beneficiaries thereof against the risk of loss due to damage, destruction or loss to property or imposition of legal liability as required or authorized under this Act or the declaration of the condominium or common interest community association. ~~The trustee of the trust fund may determine and establish contributions to the trust fund actuarially required to fund the operations and carry out the purposes of the trust fund and may enter into contracts in order to carry out the purposes for which the trust fund was established, provided however, that any such contracts shall not provide for compensation or payments in excess of that which is reasonable in relation to the services actually performed thereunder.~~

(f) ~~The trust fund may enter into written agreements with other trust funds established under this Section whereby the Risks assumed by the any such~~ trust fund may be pooled

and shared with ~~such~~ other trust funds established under this Section.

~~(g) (Blank). The trustees of all trust funds established under this Act shall be natural persons over the age of 18 who are residents of this State.~~

~~(h) (Blank). Every such trust fund shall have no fewer than 3 nor more than 30 trustees. No less than 2/3 of the trustees shall be officers, directors, trustees or full time employees of a condominium or common interest community association beneficiary of the trust fund.~~

~~(i) No trustee of the trust fund shall be paid a salary or receive other compensation, except that the written trust instrument may provide for reimbursement for actual expenses incurred on behalf of the trust fund. No trustee or any employer or affiliate of any trustee of the trust fund shall enter into any contract with the trust fund for, or receive any monies or other compensation or thing of value whatsoever from, the trust fund for services performed for or on behalf of such trust fund, except as otherwise provided in this Section.~~

~~(j) (Blank). The trustees shall serve pursuant to the terms of the written trust instrument except that the written trust instrument shall set forth the manner in which a trustee of a trust fund may be removed and the manner in which vacancies among the trustees of the trust fund may be filled.~~

~~(k) (Blank). No trustee of the trust fund shall serve for more than 3 consecutive years unless he is reappointed in the manner provided for in the written trust instrument.~~

~~(l) (Blank). The trustees of the trust fund shall have the powers specified in the written trust instrument which established the trust fund.~~

~~(m) Each trust fund shall by June 1 of each year file annually with the Director of Insurance a full independently audited financial statement, as of December 31 of the preceding year, and by April 1 of each year a report of the trustees of the trust fund detailing the operations of the trust fund and including a list of all beneficiaries during the year and a statement that each beneficiary was not ineligible except as provided for in this Section. The truth and accuracy of the financial statement and report shall be attested to by each trustee. The financial statement shall include the opinion of an independent certified public accountant on the financial condition of the trust fund for the most recent calendar year and the results of its operations, changes in financial position and changes in capital and surplus for the year then ended in conformity with accounting practices permitted or prescribed by the Illinois Department of Insurance.~~

~~(n) (Blank). A beneficiary is ineligible if he or she ceases to be a unit owner of a condominium or common interest community association, except where liability of such beneficiary was incurred at the time he or she was a unit owner.~~

~~(o) (Blank). No beneficiary shall have any cause of action against any other beneficiary arising solely out of the insolvency or inability of the trust fund to meet its obligations, unless such other beneficiary is a trustee of such trust fund and has breached a fiduciary duty in connection with such trust fund. This subsection shall not preclude the assessment and collection of any payments to the~~

~~trust fund to correct such insolvency or inability of the trust fund to meet its obligations.~~

~~(p) (Blank). No trust fund established under this subsection (d) shall grant any power to the trustees of the trust fund which is inconsistent with this Section or any other law of this State.~~

~~(q) (Blank). Every trust fund established hereunder shall include in the written trust instrument the basis upon which payments are made to and from the trust fund.~~

~~(r) (Blank). Trust funds established under this Section and all persons interested therein or dealing therewith shall be subject to the provisions of Sections 133, 144, 144.1, 149, 401, 401.1, 402, 403, 403A, 412, and all of the provisions of Articles VII, VIII, VIII 1/2, XII 1/2, and XIII of the Illinois Insurance Code. Except as otherwise provided in this Section, trust funds established under and which fully comply with this Section shall not be subject to any other provision of the Illinois Insurance Code.~~

~~(s) The Director of Insurance shall have with respect to trust funds established under this Section the powers of examination conferred upon him relative to insurance companies by Section Sections 132 through 132.7 of the Illinois Insurance Code. The cost of any such examination shall be paid by the trust fund examined.~~

~~(t) (Blank). The Director of Insurance shall charge, collect and give proper acquittances for the payment of the following fees and charges:~~

~~(i) For filing trust instruments, amendments thereto and financial statement and report of the trustees, \$25.~~

~~(ii) For copies of papers or records per page, \$1.~~

~~(iii) For certificate to copy of paper, \$5.~~

~~(iv) For filing an application for the licensing of a condominium risk pooling trust, \$500.~~

~~(u) (Blank). This Section shall apply regardless of any contrary provisions of any instrument.~~

~~(v) Trust funds established under and which fully comply with this Section shall not be considered member insurance companies or to be in the business of insurance nor shall the provision of Article XXXIV of the Illinois Insurance Code apply to any such trust fund established under this Section.~~

~~(w) (Blank). The provisions of the Administrative Review Law shall apply to and govern all proceedings for the judicial review of final administrative decisions under this Section.~~

~~(x) The Director of Insurance shall adopt reasonable rules pertaining to the standards of coverage and administration of trust funds authorized under this Section.~~

~~(Source: P.A. 89-97, eff. 7-7-95.)~~

Passed in the General Assembly May 08, 2001.

Governor Amendatory Veto August 03, 2001.

General Assembly Accepts Amendatory Veto November 27, 2001.

Returned to Governor for Certification December 07, 2001.

Governor Certifies Changes January 01, 2002.