

**§1603-113. Insurance**

(a) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) Property insurance on the common elements, insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion condominium, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than 80% of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and [PL 1981, c. 699 (NEW).]

(2) Liability insurance, including medical payments' insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the common elements. [PL 1981, c. 699 (NEW).]

(b) The insurance maintained under subsection (a), paragraph (1), to the extent reasonably available, may, and in the case of buildings containing units having horizontal boundaries between them, shall include the units, but need not include improvements and betterments installed by unit owners. [PL 1981, c. 699 (NEW).]

(c) If the insurance described in subsection (a) is not reasonably available, the association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States' mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners. [PL 1981, c. 699 (NEW).]

(d) Insurance policies carried pursuant to subsection (a) must provide that:

(1) Each unit owner is an insured person under the policy with respect to liability arising out of his ownership of an undivided interest in the common elements or membership in the association; [PL 1981, c. 699 (NEW).]

(2) The insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of his household; [PL 1981, c. 699 (NEW).]

(3) No act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and [PL 1981, c. 699 (NEW).]

(4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance. [PL 1981, c. 699 (NEW).]

(e) Any loss covered by the property policy under subsection (a), paragraph (1), and subsection (b) shall be adjusted with the association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lien holders as their interest may appear. Subject to the provisions of subsection (h), the proceeds shall be disbursed first for the repair or restoration of the damaged property, and unit owners and lien holders are not entitled to receive payment of 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 condominium is terminated. [PL 1981, c. 699 (NEW).]

(f) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for his own benefit. [PL 1981, c. 699 (NEW).]

(g) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon request, to any unit owner or mortgagee. The insurer issuing the policy may not cancel or refuse to renew it until 20 days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner and each mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. [PL 1981, c. 699 (NEW).]

(h) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless: (1) The condominium is terminated; (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (3) 80% of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced: (1) The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium; (2) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated or to their respective lien holders as their interests may appear; and (3) the remainder of the proceeds shall be distributed to all the unit owners or lien holders as their interests may appear in proportion to the common element interests of all the unit owners. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under section 1601-107, subsection (a), and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, section 1602-118 governs the distribution of insurance proceeds if the condominium is terminated. [PL 1981, c. 699 (NEW).]

(i) The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to nonresidential use. [PL 1981, c. 699 (NEW).]

## SECTION HISTORY

PL 1981, c. 699 (NEW).

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