

# Are you an owner in a Condominium or Community Association?

If so, recent legislative changes that went into effect July 1, 2011 will most likely impact you.

The Utah legislature passed a new law titled: "Condominium and Community Association Revisions" which amended the "*Condominium Association Act*" and the "*Community Association Act*" (57-8-1 through 57-8-54 and 57-8a-101 through 57-8a-407 respectively). In light of these recent changes, we will endeavor to provide some information relating to the insurance portion as contained in both of these Acts.

The law affects owners who share a common ownership interest. It is our understanding planned unit developments (PUD's) are included in the definition of an organization affected by the Community Association Act. The law provides for a rebuttable presumption that the required coverage is "reasonably available" in the insurance market.

The law requires the association to seek out an insurer that will insure every single unit in the project, including building coverage. The policy will also include blanket property coverage at 100% of full replacement cost.

The association master policy will be considered primary; *however the unit owner will be responsible for their portion of a loss attributable to the association policy deductible.* An association could have a large deductible which the individual unit owner will be responsible for.

It is possible for the unit owner to insure for the association deductible amount with their own unit owner insurance policy, or they could chose to self insure and retain the risk exposure. Of course the unit owner will likely want to have their own insurance policy to cover their share of the association's master policy's deductible - regardless of the amount of that deductible.

The association master policy only provides liability coverage and building coverage to the association - It does not provide coverage for the unit owner's:

- Personal liability exposure
- Personal contents

**The following are additional highlights of the new law for your review:**

## **SB 167 Condominium and Community Association Revisions**

- *Utah SB 167 Condominium and Community Association Revisions* became effective on July 1, 2011 on a "phased-in" basis" as homeowner's association (master) policies and unit owners (HO6) policies are issued or renewed.
- SB 167 preempts any association's document and any policy language to the contrary.

- SB 167 mandates that homeowner associations maintain liability insurance in an amount determined by the management committee, but not less than an amount established in the declaration or bylaws, including medical payments insurance covering liability claims arising out of or in connection with use of the common areas and facilities.
  - Each unit owner is an insured person under the association's liability policy.
- SB 167 mandates 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 a unit owner 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 element.
  - Each unit owner is an insured person under the association's property insurance policy.
- An association is not required to obtain property insurance for a loss to a unit that is not physically attached to i) another unit; or ii) an above-ground structure that is part of a common area or facility.
- The homeowner association's master policy provides primary insurance coverage and the unit owner's (HO6) policy applies to and covers the deductible under the homeowner association's master policy.
  - A unit owner is personally responsible for the amount of the deductible under the homeowner association's master policy and can either purchase an amount of building property coverage under a unit owner's (HO6) policy equal to the deductible amount on the association's master policy, or they can self-insure for that amount.
  - If a unit owner fails to pay up to the deductible amount under the association's master policy within 30 days of substantial completion of the repairs to the unit, the association may assess<sup>1</sup> the unit owner for that amount and can subsequently lien to enforce payment.
- Associations are required to notify unit owners as to their obligation for the association's policy deductible including any changes thereto so unit owners can make any necessary changes to their unit owners (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 association is required to maintain an amount in reserve equal to the association (master) policy deductible or \$10,000 whichever is less.
  - The deductible amount on the master policy can be whatever the association's board members deems appropriate in tandem with market forces.
- If the homeowner association's management committee in the exercise of the Business Judgment Rule determines that a claim is not likely to exceed the property insurance deductible of the association's master policy, the unit owner's policy is considered the policy for primary coverage to the amount of the policy deductible of the association's

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<sup>1</sup> Note: This is unrelated to loss assessment coverage under a unit owner's policy.

master policy, and the association need not tender the claim to the association's insurance carrier.

- Filing claims under the master policy would only be under the purview of the board based upon the severity of the damage to the unit.
- When multiple units sustain damage in the same loss, the association's master policy's deductible is apportioned according to unit damage percentages as defined in the legislation.
- Each unit owner is an "insured" under the association's master policy, therefore, the insurer on the master policy waives the insurer's right to subrogation under the policy against any unit owner or member of the unit owner's household.
- An insurer that issues a property insurance policy, or their authorized agent, shall issue a certificate or memorandum of insurance to the association of unit owners; a unit owner, upon the unit owner's written request; and a holder of a security interest, upon the holder's written request.
- This legislation 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; and 3) The declaration requires each lot owner to insure the lot owner's dwelling.
  - If they so desire, these exempted community associations can elect to opt in and be governed by this new legislation by simply amending their declaration.

Here is the link to the bill: <http://le.utah.gov/~2011/bills/sbillenr/sb0167.htm>

The following link to an outside source contains additional information you may find beneficial: [www.utahlac.com](http://www.utahlac.com)