

### 33-1253. 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, both:

1. Property insurance on the common elements and, if required by the condominium documents, the units, insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall be not less than eighty percent 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.

2. Liability insurance in an amount determined by the board of directors or the association 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.

B. To the extent available, the insurance maintained under subsection A, paragraph 1 of this section includes the units or any portion of those units but need not include improvements and betterments installed by unit owners or the personal property of unit owners.

C. If the insurance described in subsection A of this section 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.

D. Insurance policies carried pursuant to subsection A of this section shall provide the following:

1. Each unit owner is an insured person under the policy with respect to liability or property damage arising out of the unit owner's interest in the common elements, the unit, if required by the condominium documents, or membership in the association.

2. The insurer waives its right to subrogation under the policy against any unit owner or members of the unit owner's household.

3. No act or omission by any unit owner, unless acting within the scope of the unit owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy.

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 property covered by the policy, the association's policy provides primary insurance.

5. As an insured person under the association's policy with respect to the unit owner's interest in the common elements, the unit owner's individual unit or membership in the association, each unit owner has the right to report a loss under the association's property insurance policy. Each unit owner shall additionally report the loss to the association.

E. Prior to reporting a loss under the association's master property insurance policy, a unit owner shall report the loss to the association and give the association ten business days to provide the unit owner with a written decision whether the association will be reporting a claim to the master policy. If the association decides not to report a claim under the master policy, the association shall provide the reason for the decision in the written decision.

F. Notwithstanding subsection D, paragraph 5 of this section, any loss covered by the property policy under subsection A, paragraph 1 and subsection B of this section shall be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to subsection H of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

G. An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the unit owner's own benefit.

H. An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, on written request, to any unit owner, mortgagee or beneficiary under a deed of trust. The insurer issuing the policy shall not cancel or refuse to renew it until thirty days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

I. Any portion of the condominium for which insurance is required under this section and that is damaged or destroyed shall be repaired or replaced promptly by the association unless any of the following apply:

1. The condominium is terminated.
2. Repair or replacement would be illegal under any state or local health or safety statute or ordinance.
3. Eighty percent of the unit owners, including every owner of a unit or allocated limited common

element that will not be rebuilt, vote not to rebuild.

J. 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 in proportion to their common element interests or as otherwise provided in the declaration 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 allocated limited common elements that are not rebuilt shall be distributed in proportion to their common element interests or as otherwise provided in the declaration to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders as their interests may appear.
3. The remainder of the proceeds shall be distributed to all the unit owners or lienholders as their interests may appear in proportion to the common element interests of all the units.

K. The association shall inform each unit owner annually in writing of both:

1. The unit owner's responsibility for the association's insurance deductibles for all property and liability coverage.
2. The amount of each deductible.

L. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated on the vote as if the unit had been condemned under section 33-1206, subsection A, and the association promptly shall prepare, execute and record an amendment to the declaration reflecting the reallocations.

M. Notwithstanding subsections H, I and L of this section, section 33-1228 governs the distribution of insurance proceeds if the condominium is terminated.

N. If all units are restricted to nonresidential use, the provisions of a subsection or paragraph of this section do not apply if the declaration, articles of incorporation or amended bylaws contain provisions inconsistent with such subsection or paragraph.

O. This section does not prohibit the declaration from requiring additional or greater amounts of insurance coverage or does not prohibit the board of directors from acquiring additional or greater amounts of coverage as it reasonably deems appropriate.