



2040 E Murray-Holladay Rd.
Suite 106
Salt Lake City, UT 84117
(801) 274-6800
www.rkw-law.com

HOA University

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Presented by
John D. Richards
Curtis G. Kimble

Changes to Utah's Condominium Act
INSURANCE
Title 57-8-43 et seq.
By John D. Richards, Esq.

Summary:

1. The following changes apply to all policies issued or renewed on or after July 1, 2011.

2. A condominium association shall maintain:

a. Property insurance on the physical structures in the condominium project, including common areas and facilities, limited common areas and facilities, and UNITS, insuring against all risks of direct physical loss commonly insured against including fire and extended coverage.

i. The property covered by property insurance shall include any property that, under the Declaration, is required to become common areas and facilities.

ii. The total amount of coverage provided by blanket property insurance may not be less than 100% of the full replacement cost of the insured property at the time the insurance is purchased or renewed.

iii. Property insurance SHALL INCLUDE coverage for any fixture, improvements, or betterment installed by a unit owner or to a limited common area, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, windows, and any other item permanently part of or affixed to a unit or to a limited common element.

b. Liability insurance, including medical payments insurance 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 areas and facilities.

i. A liability insurance policy shall be in an amount determined by the management committee but not less than an amount specified in the Declaration or Bylaws.

ii. Each unit owner is an insured person under a liability insurance policy that an association obtains, that insures against liability arising from the unit owner's interest in the common areas and facilities or from membership in the association.

c. "a" and "b" above are required to the extent "reasonably available."

3. The Declaration or Bylaws may require the association to carry other types of insurance in addition to those described above.

4. An insurance policy issued to an association may not be inconsistent with any provision of this Title.

5. A property insurance or liability policy issued to an association may not prevent a unit owner from obtaining insurance for the unit owner's own benefit.

6. Unless otherwise provided in the Declaration, an association is NOT required to obtain property insurance for a loss to a unit that is not physically attached to (1) another unit; or (2) an above-ground structure that is part of a common area or facility.

7. A unit owner who owns a unit that has suffered unit damage as part of a covered loss is responsible for an amount calculated by applying the unit damage percentage for that unit to the amount of the deductible under the property insurance policy of the association.

8. An association shall set aside an amount equal to the amount of the association's property insurance policy deductible or \$10,000, whichever is less.

9. If, in the exercise of the business judgment rule, the management committee determines that a claim is likely NOT to exceed the property insurance policy deductible of the association, then:

a. the unit owner's policy is considered the policy for primary coverage to the amount of the policy deductible of the association of unit owners.

b. a unit owner who does not have a policy to cover the property insurance policy deductible of the association is responsible for the loss to the amount of the policy deductible of the association AND the association need not tender the claim to the association's insurer.

END OF SUMMARY

**2011 UCIOA Insurance Provisions – NON CONDOMINIUMS
INSURANCE
Title 57-8a-401 et seq**

57-8a-401. Definition.

As used in this part, "reasonably available" means available using typical insurance carriers and markets, irrespective of the ability of the association to pay.

57-8a-402. Applicability of part.

(1) This part applies to an insurance policy or combination of insurance policies:

(a) issued or renewed on or after July 1, 2011; and

(b) issued to or renewed by:

(i) a lot owner; or

(ii) an association, regardless of when the association is formed.

(2) This part **does not apply** to a project if all of the project's lots are restricted to entirely nonresidential use.

(3) Subject to Subsection (4), **this part does not apply to a project if:**

(a) the initial declaration for the project is recorded before January 1, 2012;

(b) the project includes attached dwellings; and

(c) the declaration requires each lot owner to insure the lot owner's dwelling.¹

(4) (a) An association that is subject to a declaration recorded before January 1, 2012 may amend the declaration, as provided in the declaration, to subject the association to this part.

(b) During the period of administrative control, an amendment under Subsection (4)(a) requires the consent of the declarant.

57-8a-403. Property and liability insurance required -- Notice if insurance not reasonably available.

(1) Beginning not later than the day on which the first lot is conveyed to a person other than a declarant, an association shall maintain, to the extent reasonably available:

(a) subject to Section 57-8a-405, property insurance on the physical structure of all attached dwellings, limited common areas appurtenant to a dwelling on a lot, and common areas in the project, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils; and

¹ IN OTHER WORDS – these provisions apply to: all non-condominium association policies ISSUED OR RENEWED on or after July 1, 2011, regardless of when the HOA was formed EXCEPT the following are not subject to the requirements of this Act unless your documents are amended: Does not apply when (1) your Declaration was recorded before January 1, 2012 AND (2) the project includes attached dwellings and (3) the Declaration already requires that each LOT OWNER insure their own dwelling unit.

(b) subject to Section 57-8a-406, liability insurance, including medical payments insurance 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 areas.

(2) If an association becomes aware that property insurance under Subsection (1)(a) or liability insurance under Subsection (1)(b) is not reasonably available, the association shall, within seven calendar days after becoming aware, give all lot owners notice, as provided in Section 57-8a-215, that the insurance is not reasonably available.

57-8a-404. Other and additional insurance -- Limit on effect of lot owner act or omission -- Insurer's subrogation waiver -- Inconsistent provisions.

(1) (a) The declaration or bylaws may require the association to carry other types of insurance in addition to those described in Section 57-8a-403.

(b) In addition to any type of insurance coverage or limit of coverage provided in the declaration or bylaws and subject to the requirements of this part, an association may, as the board considers appropriate, obtain:

- (i) an additional type of insurance than otherwise required; or
- (ii) a policy with greater coverage than otherwise required.

(2) Unless a lot owner is acting within the scope of the lot owner's authority on behalf of an association, a lot owner's act or omission may not:

(a) void a property insurance policy under Subsection 57-8a-403(1)(a) or a liability insurance policy under Subsection 57-8a-403(1)(b); or

(b) be a condition to recovery under a policy.

(3) An insurer under a property insurance policy or liability insurance policy obtained under this part waives its right to subrogation under the policy against any lot owner or member of the lot owner's household.

(4) (a) An insurance policy issued to an association may not be inconsistent with any provision of this part.

(b) A provision of a governing document that is contrary to a provision of this part has no effect.

(c) A property insurance or liability insurance policy issued to an association may not prevent a lot owner from obtaining insurance for the lot owner's own benefit.

57-8a-405. Property insurance.

(1) This section applies to property insurance required under Subsection 57-8a-403(1)(a).

(2) The property covered by property insurance shall include any property that, under the declaration, is required to become common areas.

(3) The total amount of coverage provided by blanket property insurance may not be less than 100% of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding items normally excluded from property insurance policies.

(4) Property insurance shall include coverage for any fixture, improvement, or betterment installed by a lot owner to an attached dwelling or to a limited common area appurtenant to a dwelling on a lot, 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 an attached dwelling or to a limited common area.

(5) Notwithstanding anything in this part and unless otherwise provided in the declaration, an association is not required to obtain property insurance for a loss to a dwelling that is not physically attached to another dwelling or to a common area structure.

(6) Each lot owner is an insured person under a property insurance policy.

(7) If a loss occurs that is covered by a property insurance policy in the name of an association and another property insurance policy in the name of a lot owner:

(a) the association's policy provides primary insurance coverage; and

(b) notwithstanding Subsection (7)(a) and subject to Subsection (8):

(i) a lot owner is responsible for the association's policy deductible; and

(ii) the lot owner's policy applies to that portion of the loss attributable to the association's policy deductible.

(8) (a) As used in this Subsection (8):

(i) "Covered loss" means a loss, resulting from a single event or occurrence, that is covered by an association's property insurance policy.

(ii) "Lot damage" means damage to any combination of a lot, a dwelling on a lot, or a limited common area appurtenant to a lot or appurtenant to a dwelling on a lot.

(iii) "Lot damage percentage" means the percentage of total damage resulting in a covered loss that is attributable to lot damage.

(b) A lot owner who owns a lot that has suffered lot damage as part of a covered loss is responsible for an amount calculated by applying the lot damage percentage for that lot to the amount of the deductible under the association's property insurance policy.

(c) If a lot owner does not pay the amount required under Subsection (8)(b) within 30 days after substantial completion of the repairs to, as applicable, the lot, a dwelling on the lot, or the limited common area appurtenant to the lot, an association may levy an assessment against a lot owner for that amount.

(9) An association shall set aside an amount equal to the amount of the association's property insurance policy deductible or \$10,000, whichever is less.

(10) (a) An association shall provide notice in accordance with Section 57-8a-215 to each lot owner of the lot owner's obligation under Subsection (8) for the association's policy deductible and of any change in the amount of the deductible.

(b) An association that fails to provide notice as provided in Subsection (10)(a) is responsible for the amount of the deductible increase that the association could have assessed to a lot owner under Subsection (8).

(c) An association's failure to provide notice as provided in Subsection (10)(a) may not be construed to invalidate any other provision of this part.

(11) If, in the exercise of the business judgment rule, the board determines that a claim is likely not to exceed the association's property insurance policy deductible:

(a) the lot owner's policy is considered the policy for primary coverage to the amount of the association's policy deductible;

(b) a lot owner who does not have a policy to cover the association's property insurance policy deductible is responsible for the loss to the amount of the association's policy deductible, as provided in Subsection (8); and

(c) the association need not tender the claim to the association's insurer.

(12) (a) An insurer under a property insurance policy issued to an association shall adjust with the association a loss covered under the association's policy.

(b) Notwithstanding Subsection (12)(a), the insurance proceeds for a loss under an association's property insurance policy:

(i) are payable to an insurance trustee that the association designates or, if no trustee is designated, to the association; and

(ii) may not be payable to a holder of a security interest.

(c) An insurance trustee or an association shall hold any insurance proceeds in trust for the association, lot owners, and lien holders.

(d) (i) Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property.

(ii) After the disbursements described in Subsection (12)(d)(i) are made and the damaged property has been completely repaired or restored or the project terminated, any surplus proceeds are payable to the association, lot owners, and lien holders.

(13) An insurer that issues a property insurance policy under this part, or the insurer's authorized agent, shall issue a certificate or memorandum of insurance to:

(a) the association;

(b) a lot owner, upon the lot owner's written request; and

(c) a holder of a security interest, upon the holder's written request.

(14) A cancellation or nonrenewal of a property insurance policy under this section is subject to the procedures stated in Section 31A-21-303.

(15) A board that acquires from an insurer the property insurance required in this section is not liable to lot owners if the insurance proceeds are not sufficient to cover 100% of the full replacement cost of the insured property at the time of the loss.

57-8a-406. Liability insurance.

(1) This section applies to a liability insurance policy required under Subsection 57-8a-403(1)(b).

(2) A liability insurance policy shall be in an amount determined by the board but not less than an amount specified in the declaration or bylaws.

(3) Each lot owner is an insured person under a liability insurance policy that an association obtains that insures against liability arising from the lot owner's interest in the common areas or from membership in the association.

57-8a-407. Damage to a portion of project -- Insurance proceeds.

(1) (a) If a portion of the project for which insurance is required under this part is damaged or destroyed, the association shall repair or replace the portion within a reasonable amount of time unless:

(i) the project is terminated;

(ii) repair or replacement would be illegal under a state statute or local ordinance governing health or safety; or
(iii) (A) at least 75% of the allocated voting interests of the lot owners in the association vote not to rebuild; and
(B) each owner of a dwelling on a lot and the limited common area appurtenant to that lot that will not be rebuilt votes not to rebuild.

(b) If a portion of a project is not repaired or replaced because the project is terminated, the termination provisions of applicable law and the governing documents apply.

(2) The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.

(3) If the entire project is damaged or destroyed and not repaired or replaced:
(a) the association shall use the insurance proceeds attributable to the damaged common areas to restore the damaged area to a condition compatible with the remainder of the project;

(b) the association shall distribute the insurance proceeds attributable to lots and common areas that are not rebuilt to:

(i) the lot owners of the lots that are not rebuilt;
(ii) the lot owners of the lots to which those common areas that are not rebuilt were allocated; or
(iii) lien holders; and

(c) the association shall distribute the remainder of the proceeds to all the lot owners or lien holders in proportion to the common expense liabilities of all the lots.

(4) If the lot owners vote not to rebuild a lot:

(a) the lot's allocated interests are automatically reallocated upon the lot owner's vote as if the lot had been condemned; and

(b) the association shall prepare, execute, and submit for recording an amendment to the declaration reflecting the reallocations described in Subsection (4)(a).

END OF STATUTE