



## HB 601 Impacts Condo Association Insurance

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**By Joe Adams**

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

Today's column is the ninth installment of our annual review of new laws affecting community associations. Today, we continue with a review of House Bill 601, which became effective July 1, 2008, and which impacts condominium association insurance requirements.

The condominium law has always required associations to maintain "adequate" insurance. The law has never defined what that term means. The new law states that "adequate insurance ... shall be based upon the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal." The law goes on to require that the full insurable value shall be determined at least once every 36 months.

While arguably an improvement over the previous version of the law, the new statute still leaves something to be desired in terms of certainty. The statute does not say that the association must insure for "replacement cost", but rather that adequate insurance shall be "based upon" replacement cost. Does this mean, for example, that a condominium association could insure for a certain percentage of replacement cost and still comply with the law? Does the new law require insurance coverage for upgrades required by new building codes? These are unanswered questions.

The law goes on to provide that when the association is determining the amount of adequate

insurance, the association "may consider deductibles." The law specifically permits the board to set the deductible, and provides that deductibles must be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the condominium property is located.

The new law goes further and provides that deductibles may be based upon available funds, including reserve accounts, or "predetermined assessment authority" at the time the insurance is obtained. The reference to reserve accounts being a factor in setting the deductible seems to make sense. For example, if it would cost \$100,000.00 to replace a roof, and there is \$70,000.00 in roof reserves, the association could theoretically insure the roof for \$30,000.00 and have "adequate insurance." But is this wise? It would seem to me that if a roof is damaged by casualty, the association would rather get the money to fix it from its insurers, than have to take the funds out of association reserve accounts. The reference to "predetermined assessment authority" is somewhat mysterious, as nearly every association has some "predetermined" authority to assess, as established by the condominium documents.

Perhaps the most significant aspect of the new law is the requirement that the board establish the amount of deductibles at a meeting of the board for which notice is given to each unit owner in the

same manner as the budget meeting. Specifically, and perhaps subject to more stringent requirements in an association's bylaws for budget meeting notices, notice of the board meeting where the "deductible" is set must be mailed to each unit owner at least fourteen days in advance, and also posted on the condominium property at least fourteen days in advance. The law does not, on its face, limit this requirement to setting deductibles for hazard insurance policies (general casualty and windstorm), but arguably applies to any insurance policy where there is a deductible, including general liability policies and directors and officers liability policies. Lots of paperwork, to say the least.

The notice of the board meeting where the proposed deductible will be set "must state the proposed deductible and the available funds and

the assessment authority relied upon by the board and estimate any potential assessment amount against each unit, if any." Good luck with that. Experience has shown that associations often do not know for months, and in some cases years, how much the unit owners will ultimately have to be assessed to pay for the repair of uninsured damage. Requiring boards to get out their crystal ball and estimate such things in advance is certainly, at least in my opinion, asking a lot from volunteers.

Next week, we will continue with our review of HB 601 and the significant new changes to the law that deal with the allocation of costs in post-damage situations, ranging from catastrophic hurricanes to run-of-the-mill pipe leaks.

*Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.*

*Send questions to Joe Adams by e-mail to [jadams@becker-poliakoff.com](mailto:jadams@becker-poliakoff.com) This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at [www.becker-poliakoff.com](http://www.becker-poliakoff.com).*