

## **Part 4 Insurance**

### **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.

Enacted by Chapter 355, 2011 General Session

### **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) Unless otherwise provided in the declaration, 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.
- (4)
  - (a) An association to which this part does not apply under Subsection (3) may amend the declaration, as provided in the declaration and applicable law, 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.

Amended by Chapter 152, 2013 General Session

### **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, blanket property insurance or guaranteed replacement cost 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
  - (b) subject to Section 57-8a-406, liability 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-214, that the insurance is not reasonably available.

Amended by Chapter 152, 2013 General Session

**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 by an association under this part waives its right to subrogation under the policy against:
  - (a) any person residing with a lot owner, if the lot owner resides on the lot; and
  - (b) the lot owner.
- (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) Neither the governing documents nor a property insurance or liability insurance policy issued to an association may prevent a lot owner from obtaining insurance for the lot owner's own benefit.

Amended by Chapter 152, 2013 General Session

**57-8a-405 Property insurance.**

- (1) This section applies to property insurance required under Subsection 57-8a-403(1)(a).
- (2) The total amount of coverage provided by blanket property insurance or guaranteed replacement cost 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:
  - (a) items normally excluded from property insurance policies; and
  - (b) unless otherwise provided in the declaration, any commercial lot in a mixed-use project, including any fixture, improvement, or betterment in a commercial lot in a mixed-use project.
- (3) Property insurance shall include coverage for any fixture, improvement, or betterment installed at any time to an attached dwelling or to a limited common area appurtenant to a dwelling on a lot, whether installed in the original construction or in any remodel or later alteration, 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.
- (4) 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.

- (5) Each lot owner is an insured person under a property insurance policy.
- (6) 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 (6)(a) and subject to Subsection (7):
    - (i) the lot owner is responsible for the association's policy deductible; and
    - (ii) building property coverage, often referred to as coverage A, of the lot owner's policy applies to that portion of the loss attributable to the association's policy deductible.
- (7)
  - (a) As used in this Subsection (7) and Subsection (10):
    - (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 (7)(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.
- (8) An association shall set aside an amount equal to the amount of the association's property insurance policy deductible or, if the policy deductible exceeds \$10,000, an amount not less than \$10,000.
- (9)
  - (a) An association shall provide notice in accordance with Section 57-8a-214 to each lot owner of the lot owner's obligation under Subsection (7) for the association's policy deductible and of any change in the amount of the deductible.
  - (b)
    - (i) An association that fails to provide notice as provided in Subsection (9)(a) is responsible for the portion of the deductible that the association could have assessed to a lot owner under Subsection (7), but only to the extent that the lot owner does not have insurance coverage that would otherwise apply under this section.
    - (ii) Notwithstanding Subsection (9)(b)(i), an association that provides notice of the association's policy deductible, as required under Subsection (9)(a), but fails to provide notice of a later increase in the amount of the deductible is responsible only for the amount of the increase for which notice was not provided.
  - (c) An association's failure to provide notice as provided in Subsection (9)(a) may not be construed to invalidate any other provision of this part.
- (10) If, in the exercise of the business judgment rule, the board determines that a covered loss is likely not to exceed the association's property insurance policy deductible, and until it becomes apparent the covered loss exceeds the association's property insurance deductible and a claim is submitted to the association's property insurance insurer:
  - (a) for a lot to which a loss occurs, the lot owner's policy is considered the policy for primary coverage for the damage to that lot;
  - (b) the association is responsible for any covered loss to any common area;

- (c) a lot owner who does not have a policy to cover the damage to that lot owner's lot is responsible for that lot damage, and the association may, as provided in Subsection (7)(c), recover any payments the association makes to remediate that lot; and
  - (d) the association need not tender the claim to the association's insurer.
- (11)
- (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 (11)(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) If damaged property is to be repaired or restored, insurance proceeds shall be disbursed first for the repair or restoration of the damaged property.
    - (ii) After the disbursements described in Subsection (11)(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, as provided in the declaration.
- (12) 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.
- (13) A cancellation or nonrenewal of a property insurance policy under this section is subject to the procedures stated in Section 31A-21-303.
- (14) 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.
- (15)
- (a) Unless required in the declaration, property insurance coverage is not required for fixtures, improvements, or betterments in a commercial lot or limited common areas appurtenant to a commercial lot in a mixed-use project.
  - (b) Notwithstanding any other provision of this part, an association may obtain property insurance for fixtures, improvements, and betterments in a commercial lot in a mixed-use project if allowed or required in the declaration.
- (16)
- (a) This section does not prevent a person suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a person at fault for the loss.
  - (b) Subsection (16)(a) does not affect Subsection 57-8a-404(3).

Amended by Chapter 152, 2013 General Session

**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, but only for liability arising from:
  - (a) the lot owner's ownership interest in the common areas;
  - (b) maintenance, repair, or replacement of common areas; and
  - (c) the lot owner's membership in the association.

Amended by Chapter 152, 2013 General Session

**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)
  - (a) The cost of repair or replacement of any lot in excess of insurance proceeds and reserves is a common expense to the extent the association is required under this chapter to provide insurance coverage for the lot.
  - (b) The cost of repair or replacement of any common area 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).

Amended by Chapter 152, 2013 General Session

