

SB167: Raising the Excitement Bar on Insurance



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Insurance and exciting are usually not mentioned in the same conversation or document. In the past, owners of homeowner's association projects seeking answers about insurance coverage were only met with a lot of confusion and misinformation.

The main issue was that insurance coverage was not determined by a broad insurance policy, but in most cases, was in fact dictated by the governing documents. A standard did not exist for governing documents when it came to common insurance requirements. This created ambiguity, coverage gaps or duplication of coverage at the expense of owners and the associations. It was at the time of a claim that unit owners faced the real consequences of this flawed process.

Many lenders required unit owners to insure the entire amount of the loan to guarantee sufficient insurance coverage was in place. In most cases the insurance was already provided by the homeowner association's master policy. Unfortunately, the governing documents did not clearly support this. This resulted in a lot of wasted time and more importantly, money.

SB167 brings excitement and certainty for HOA unit owners, managers and boards. The bill clarifies what the insurance policy has to provide under both unit owner's individual policy and the HOA's master policy. The bill also determines how claims are handled and who is responsible for the deductible.

SB167 took effect on July 1, 2011.

Any association subject to the new bill must comply with the insurance section at the time of their insurance policy renewal date. Associations also have the right to opt in sooner if they choose.

The bill mandates that the homeowner's association maintain property insurance on the physical structures of the project, including the units, for an amount not less than 100% of the full replacement cost of the insured property at the time of purchase and at renewal.

This includes improvements and betterments installed by unit owners to an individual unit or to a limited common area including floor covering, cabinets, light fixtures, electrical fixtures, heating or plumbing fixtures, paint, wall coverings, windows and any other item permanently part of or affixed to a

unit or to a common unit. Each unit owner is an insured person under the association property insurance policy.

The association's master policy provides primary insurance coverage. The unit owner's individual policy commonly known as an HO6 policy applies to and covers the policy deductible for the HOA's master policy. In the event of a loss, when multiple units sustain damage, the association's master policy deductible is shared by the affected unit owners in a proportionate amount based on the extent of damage sustained to each unit. This will eliminate arguments as to who is at fault and ensures that the claims process will be fair, consistent and equitable.

It is highly recommended that unit owner purchase an HO6 type policy with building property coverage commonly known as "Coverage A" and "Loss Assessment" equal to the amount of the master policy deductible. They should also discuss a higher limit of "Loss Assessment" with their personal insurance agent to determine the right limit for you. Loss assessment provides valuable protection for the unit owner for certain insurance claims but could also pay for other assessments that the HOA has to pass due to unforeseen events.

The HO6 policy also protects the unit owner from loss of use of the unit, loss of rents, personal liability, the personal belongings and other specialty items such jewelry, art, money etc. In the event the damage does not amount to the association's

deductible, the unit owners HO6 policy would be primary coverage.

If the unit the owner fails to pay the share of the deductible amount of the association master policy within 30 days of substantial completion of the repairs to the unit, the association may levy an assessment against the unit owner for that amount and can subsequently lien to enforce payment.

The HOA must give reasonable notice to unit owners in the event of any changes to the master association deductible. Failure to do so could leave an association responsible for the amount of increase in a deductible amount.

Do not assume your homeowner's association is subject to SB167 without consulting your attorney or property manager.

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