INSURANCE LAW CHANGES

2013 INSURANCE REVISIONS

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"Insurance" – the word alone causes even the most experienced of community management professionals to sweat. As if the hundreds of pages of insurance policy fine print weren't enough, in 2011, the Utah Legislature in reaction to promptings from the various community management industry stakeholders, passed significant common-interest insurance reform.

THE LONG-TERM RAMIFICATIONS (AND CORRESPONDING FINANCIAL COSTS) ARE STILL IN DEBATE

While overall administration of insurance incidents has become easier for homeowners, boards and practitioners, the long-term ramifications (and corresponding financial costs) are still in debate. Immediately after the 2011 legislation went into effect a few tweaks were identified in order to help further clarify the law. These were packaged together in the recently passed 2013 legislation.

Associations and practitioners should consult with HOA insurance specialists for complete details. Insurance agents who have demonstrated the highest levels of competency within the association risk management profession can be identified by the CIRMS (Community Insurance and Risk Management Specialist) designation.

The original 2011 legislation was unclear regarding the applicability towards commercial-only association projects. Therefore the following clauses (one for condominiums and one for non-condominium associations) were added:

> Unless otherwise provided in the declaration, this section does not apply to a commercial condominium project insured under a policy or combination of policies issued or renewed on or after July 1, 2013. [U.C.A. 57-8-43(2)(b)]
>
> This section applies to property insurance required . . . excluding . . . 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. [U.C.A. 57-8a-405(1); (2); & (2b)]

An oversimplification of the relationship between the association's policy deductible and the affected homeowners financial responsibility is the homeowner is financially responsible for their percentage of the remediation/repairs up to the amount of the association's deductible. Previously unclear were two issues that have now been addressed. The first being that the homeowner is responsible for the remediation/repairs to appurtenant limited common areas or facilities:

INSURANCE AGENTS WITH THE HIGHEST LEVELS OF COMPETENCY WITHIN THE ASSOCIATION RISK MANAGEMENT PROFESSION CAN BE IDENTIFIED BY THE **CIRMS** DESIGNATION

> A unit owner's policy is considered the policy for primary coverage for a loss occurring to the unit owner's unit **or to a limited common area or facility appurtenant to the unit**; [U.C.A. 57-8-43(9)(j)(i) - emphasis added]

A trend we see occurring is the cost of remediation/repairs has significantly increased since the 2011 legislation passed. Water leaks that seemed to average about $2,000 - $3,000 previously are now costing $7,000 - $8,000 per occurrence. Associations are adjusting to this market increase by raising their policy deductibles (therefore making the affected homeowners pay a larger portion of the claims with the hope the association's master insurance won't have to be involved). The second issue relates to the increasing of the association's master insurance deductible:

> An association of unit owners that provides notice of the association's policy deductible . . . 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.** [U.C.A. 57-8-43(9)(i)(ii)(B)][U.C.A. 57-405(9)(b)(ii) - emphasis added]

However, a key factor in this issue is the unit owner's policy has to not be able to cover the deference. An example – If XYZ Association had a $5,000 deductible and I had $5,000 in damage, then I am responsible for $5,000. I have an individual unit policy providing me coverage so I submit a claim to my individual insurance policy and after my deductible on my individual policy, they pay the $5,000.

XYZ Association increases the deductible to $10,000 and fails to give notice to the homeowners. I have a claim of $10,000. If, and only if my individual policy would not cover the full $10,000, then the Association is responsible for the $5,000 difference in the association deductible that was not properly noticed.