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SUMMARY OF CHANGES TO
UTAH'S CONDOMINIUM ACT
Title 57-8-43, INSURANCE
(Richards, Kimble & Winn, PC)
www.rkw-law.com

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

1. 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 (in the future).

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

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

2. The declaration and bylaws may require the association to carry other types of insurance in addition to those described above.

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

4. 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.
5. 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.
6. A unit owner who owns a unit that has suffered unit damage as part of a covered loss is responsible for the deductible based on an amount calculated by a statutory formula (see special notes below). Thus, the owner should obtain insurance to cover its potential exposure to liability for the deductible. Fault is not an issue.
7. An association may set the deductible, not to exceed \$10,000, and shall set aside an amount equal to the amount of the association's property insurance policy deductible or \$10,000, whichever is less.
8. 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.
 - 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.

SPECIAL NOTES:

Those who are affected by the "loss," whether at fault or not, are required (based on a formula if more than 1 unit owner is involved) to pay the deductible. "FAULT" is not the key issue.

Due to these "changes," namely the deductible obligation, every association MUST provide notice to each unit owner of the potential obligation for the deductible. If the association fails to provide such notice, then the association cannot claim the deductible from the owner and must pay it itself.

[END OF SUMMARY]

SUMMARY OF CHANGES TO
UTAH'S NON-CONDOMINIUM COMMUNITIES
Title 57-8a-401, INSURANCE
(Richards, Kimble & Winn, PC)
www.rkw-law.com

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

1. This Title does not apply to a project if all of the project's lots are restricted entirely to non-residential use.

2. This Title does not apply to a project if:

- a. the initial declaration was recorded before January 1, 2012; AND
- b. the project includes attached dwellings; AND
- c. the declaration requires each lot owner to insure the lot owner's dwelling.

* However, an association may amend the declaration to subject the association to this Title.

* In short, if you have an attached townhome style PUD community and the declaration requires that the association insure the living units, then the Act applies. It's only when the declaration requires the owners to insure their dwelling units, not the association, that #2 above is triggered.

3. Assuming this Title is applicable, then:

a. The association shall maintain 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

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.

4. The declaration or bylaws may require that the association carry other types of insurance in addition to those described above.

5. In addition to any type of insurance coverage or limit of coverage provided in the declaration or bylaws, an association may, as the board deems appropriate, obtain:

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

6. A provision in the declaration or bylaws that is inconsistent with this Title has no effect.

7. Nothing in the Section prevents a lot owner from obtaining insurance for the lot owner's own benefit.

8. The property covered by property insurance shall include any property that, under the declaration, is required to BECOME common areas.

9. 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.

10. 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 or of affixed to an attached dwelling or to a limited common area.

11. Nevertheless, notwithstanding anything in this Section 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.

12. Each lot owner is an insured person under a property insurance policy.

13. 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, then:

- i. the association's policy provides PRIMARY coverage; and
- ii. a lot owner is responsible for the association's policy deductible; and
- iii. the lot owner's policy applies to that portion of the loss attributable to the association's policy deductible.

14. WITH RESPECT TO THE DEDUCTIBLE OBLIGATION: A lot owner who owns a lot that has suffered lot damage as part of a covered loss (as defined by the statute) is responsible for an amount calculated by applying the "lot damage percentage" (as defined by the statute) for that lot to the amount of the deductible under the association's property insurance policy.

15. If a lot owner does not pay their deductible obligation 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, the association may levy an assessment against a lot owner for that amount.

16. The association may set the deductible but for more than \$10,000. Further, the association shall set aside an amount equal to the amount of the association's property insurance policy deductible or \$10,000, whichever is less.

17. The association SHALL PROVIDE NOTICE to each lot owner of the lot owner's obligation regarding the deductible in this Section and any change in the amount of the deductible. If the

association fails to provide notice (as further detailed in the statute), then the association is responsible for the deductible.

18. If the board determines that a claim is likely not to exceed the association's deductible, then:

i. the lot owner's policy is consider the policy for PRIMARY coverage to the amount of the association's policy deductible; and

ii. the association need not tender the claim to the association's insurer.

19. Liability insurance shall be in an amount determined by the board but not less than an amount specified in the declaration or bylaws.

20. 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.

[END OF SUMMARY]