

## SECTION IV: INSURANCE

### Introduction to Insurance:

The first appearance in the Condominium Act of any reference to insurance occurred in a 1974 amendment. That addition merely included, within the definitions of official records of the association, a copy of each insurance policy that had been obtained by the association.

In 1976, the Act was further amended to require the association to use its best efforts to maintain adequate insurance to protect the association and the common elements. After the adoption of this amendment, condominium policies in Florida were generally written using the “**bare walls**” concept; meaning that the association was not responsible for anything on the interior of the unit beyond the bare drywall. The association insures the common elements, and the condominium property which was not included within the units, but provided no coverage for anything beyond the unfinished interior surfaces. Thus, unless the owner obtained supplemental insurance, no coverage was provided for such items as cabinets, sinks, tubs, kitchen appliances, floor coverings, wall coverings, and fixtures.

Many unit owners, not understanding the necessity to purchase additional insurance, failed to do so and experienced significant losses when disaster struck. The association’s master policy restored the exterior of the building but many unit owners, having no insurance on the unit, were financially unable to repair the interior, leaving the association and the remaining unit owners with a difficult problem. Obviously, unless the unit was restored, property values would suffer. In some instances, the unit owner even abandoned the unit, and the association was forced to make the repairs and dispose of the unit. Along with the many disadvantages inherent in the unique characteristics of condominium home ownership, there are unique insurance hazards and problems. Fortunately, there are also unique insurance products designed to deal with these hazards and reduce risks of financial loss. The association and the unit owners insurance go together hand and hand, because it is the unit owner that pays the bill for all coverage’s.

**The condominium declarations and bylaws, along with certain Florida Statutes, set forth the responsibilities and risks assumed by the association, and those assumed by the individual unit owners.** Because there is no standardization of declarations and bylaws, there is no standard insurance product to fit all needs. Rather, there are basic products with many flexible options to permit thoughtful condominium unit owners, in consultation with their independent insurance agent, to adequately protect against risks of loss.

## IV. Obtain and Fulfill Insurance Requirements

### SECTION: IV. 1, a. Knowledge of Association Property and Liability

#### FLORIDA STATUTE 718 IN REGARDS TO INSURANCE

**Keeping the Property Insured. The condominium association is required to obtain and maintain full replacement cost insurance.** This insurance must cover the association, the association property, and the condominium property in the following respects: all hazard policies must be issued to protect fixtures, installations, or additions which are part of the building within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the individual units. Such fixtures and parts of the buildings must be those which were initially installed by the developer or their replacements when they are of similar kind and quality (***Ch.718.111 (11)(a) and (b), F.S.***). **Condominium associations are required to insure unit owner air conditioning units from a casualty loss ONLY. Maintenance of said units is still the responsibility of the unit owner.**

**Insurance Quote Example  
Vero Beach, FL 329XX  
(2019-2020 Insurance Period)**

**\*\*To be used for budgeting purposes. Rates subject to change\*\***

<b>Property</b>	(Chubb Custom)		
	Property Total Insurable Value	\$8,773,671	
	Replacement cost Excluding Wind/Hail		
	Ordinance & Law Coverage is included		
	-Coverage A -Undamaged Portion of the Building		
	-Coverage B - \$500.000 Increased Demolition Cost		
	-Coverage C - \$500.000 Increased Cost of Construction		
<b>Deductibles</b>	\$2,500 All Other Perils		
			<b>Yearly Premium: \$8,510.00</b>
<b>Windstorm</b>	(Citizens)		
	Property Total Insurable Value	\$9,335,683	
	Replacement Cost Included		
	Excludes Area Lighting; Patio Wall; Patio Deck		
	\$1,000 AOW/ 3% Wind Deductible per Calendar Year		
	<i>(AOW= All Other Wind Events)</i>		
			<b>Yearly Premium: \$19,420.00</b>
<b>General Liability</b>	(Western Heritage)		
	General Aggregate	\$2,000,000	
	Products Aggregate	\$1,000,000	
	Pers. & Advertising	\$1,000,000	
	Each Occurrence	\$1,000,000	
	Hired/Non Owned	\$1,000,000	
			<b>Yearly Premium: \$1,400.00</b>
<b>Crime (Fidelity Bond)</b>	(Hartford)		
	\$300,000 Subject to a \$3,000 deductible		
			<b>Yearly Premium: \$ 652.46</b>
<b>Directors and Officers</b>	(Travelers)		
	Each Loss	\$1,000,000	
	Each Policy Year	\$1,000,000	
	Deductible	\$ 1,000	
			<b>Yearly Premium: \$ 905.00</b>
<b>Flood (Hartford)</b>			
			<b>Yearly Premium: \$5,590.00</b>

## **SECTION: IV. 1, b. Knowledge of Unit Owner Property and Liability Insurance**

### **The Florida Condominium Unit Owners Policy**

This form of protection is a variation upon the popular homeowners “package” protection utilized by most residence owners and renters. It provides protection against a wide range of hazards for personal property both at and away from the condominium unit, for additions and alterations to the unit, and for liability protection against injuries or damage to others arising from the unit itself or personal activities away from the unit. In addition, there is a wide range of options to expand the basic coverage.

#### **1. Coverage on Personal Property**

The condominium unit owners policy covers personal property (clothing, furniture, other property which is not “additions and alterations”) against many perils, including fire, windstorm, vandalism, and theft anywhere in the world. It is the unit owner’s responsibility to establish the desired amount of coverage. This amount may be based upon replacement value or actual cash value (the latter being replacement cost less allowance for depreciation). For this purpose, it is recommended that a household inventory be prepared. This will not only establish an appropriate amount of insurance, but also will assist materially in making any claim in the event of a serious loss.

The most common deductible applicable to each property loss is \$250 except for a minimum \$500 deductible on windstorm losses. Usually, arrangements may be made for other deductibles.

#### **2. Unit Owners Additions and Alterations**

As distinguished from personal property, “additions or alterations” are those types of property which compromise a permanent attachment to the realty, for example: floor coverings, wall coverings, built-in cabinets and appliances, tile, light fixtures, and plumbing fixtures. This area of loss exposure demands the close attention of the condominium unit owner.

*Two important questions must be resolved: (1) What property is the responsibility of the unit owner? and (2) What is a proper valuation of such property?*

The answer to the first question may be found in §718.111 (11)(f)(3) of the Florida Statutes.

It states that the insurance the association provides on the condominium buildings must include “fixtures, installations or additions comprising that part of the building within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the individual units initially installed, or replacements thereof of like kind or quality, in accordance with the original plans and specifications, or as existed at the time the unit was initially conveyed if the original plans and specifications are not available”.

It is important to note that the policy carried by the condominium association will apply only to those interior items “initially installed”, or replacements thereof of like kind or quality, in accordance with the original plans and specifications or as existed at the time the unit was initially conveyed. Any such interior items additionally installed by the unit owner after acquisition of the unit, or any increase in value created in upgrading the existing interior items, would have to be protected by the unit owner unless responsibility is assumed by the condominium association under its declaration and/or bylaws, and covered by the association insurance. To avoid under or over insurance, the unit owner should clearly identify the property for which there is personal responsibility. If in doubt, or in the event the condominium documents are unclear as to title, particular areas of responsibility between unit owners and the association, the best recommendation would be to increase the amount of coverage the unit owner maintains for additions and alterations. It is also important to determine whether or not the condominium association carries a high deductible which may preclude the payment of relatively minor damages on interior unit items under the association’s policy. If so, coverage’s should be provided by the unit owner.

The reference to floor, wall and ceiling coverings means that the law does not require that those items in a unit owner’s apartment be covered by a condominium association policy. Consequently, unit owners should protect these properties by increasing the amount of the additions and alterations insurance in their homeowner’s policies.

The charge for this added protection is usually quite expensive.

Further, the law does not require that the association policy cover electrical fixtures, appliances, water heaters, or built-in cabinets which are in the unit and which the unit owner is required by the association documents to repair or replace. Again, these properties should be protected by increasing the amount of additions or alterations insurance.

**The association's insurance policy must exclude all personal property within the unit or limited common elements, and floor, wall, and ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of the unit and serve only such unit. Such property and any insurance thereupon is the responsibility of the unit owner.**

The unit owner should know the cost of additions and alterations made at personal expense. However, property installed by the builder or a previous owner may have to be evaluated with the help of the association, suppliers, contractors, and others. Establishing an amount of insurance deemed adequate for a serious or total loss to the additions or alterations is most important because quality and quantity varies greatly among unit owners.

The basic unit owner's policy automatically provides between \$1,000 and \$5,000 of coverage (this may vary by company) on alterations and additions and covers for the same perils which apply to personal property. However, while personal property may be covered for its actual cash value or replacement value, additions and alterations are covered for their replacement value, with no deduction for depreciation, if actually replaced (subject to the basic policy deductible). This fact should be taken into consideration when determining the valuation of additions and alterations for insurance purposes.

The limit on additions and alterations may be increased to any *desired* amount, and the perils may be broadened to "all-risk" (subject to certain exclusions). With so many items specifically eliminated from coverage under the condominium association policy, special consideration should be given to these coverage improvements and an increase in the amount.

### **3. Other Property**

If the condominium unit owners personally owns a separate, detached structure on the association premises (such as a storage building or cabana), it may be covered under a unit owners policy for the same perils that apply to additions and alterations (as long as the structure is not rented to others or used for business purposes).

### **6. Loss Assessment Coverage**

If the condominium association suffers a loss or claim which is not insured by the association, then, of course, the unit owners may be assessed for the necessary funds which must be raised to pay for the exposure. This again makes it incumbent on all unit owners to be aware of and satisfied with the insurance program of their association. **It is mandatory for all condominium unit owners to carry at least \$2,000 in loss assessment coverage.** (627.714 F.S.)

Section 627.714, Florida Statutes, is created to read:

**627.714 Residential condominium unit owner coverage; loss assessment coverage required. —**

**(1) For policies issued or renewed on or after July 1, 2010, coverage under a unit owner's residential property policy must include at least \$2,000 in property loss assessment coverage for all assessments made as a result of the same direct loss to the property, regardless of the number of assessments, owned by all members of the association collectively if such loss is of the type of loss covered by the unit owner's residential property insurance policy, to which a deductible of no more than \$250 per direct property loss applies. If a deductible was or will be applied to other property loss sustained by the unit owner resulting from the same direct loss to the property, no deductible applies to the loss assessment coverage.**

Unit owners must take steps to avoid assessment losses by purchasing “**Loss Assessment Coverage**” as a requirement their own condominium unit owner’s policies. This coverage reimburses unit owners for assessments arising from:

- 1) Property losses, if covered by a peril insured against under their own unit owners policies;
- 2) Liability losses covered under their own unit owners policies; and
- 3) **Director and Officers** claims arising from acts of elected directors, officers, or trustees serving without income.

Examples of the need for this coverage include:

- 1) A large liability claim exceeding the limit of the association’s coverage;
- 2) Loss to the association’s property by a peril not insured against in the association’s policy but covered by the unit owners policy;
- 3) A property loss wherein the association’s amount of insurance was adequate;
- 4) A property loss wherein the association’s insurance did not respond because of a high deductible.

In the case of a Loss Assessment payment as a result of the association’s deductible, no more than \$1,000 will be paid under each unit owner policy unless additional coverage is purchased. **Note: We suggest owners obtain the maximum amount of Loss Assessment Coverage available to them.**

It is emphasized that this option does not cover assessments from every cause. For example, if the association were to assess unit owners as a result of flood damage, any assessments for such a loss is not covered by Loss Assessment Coverage, because the condominium owner’s policy also does not cover flood or rising waters.

#### **Other Forms of Insurance**

The foregoing information briefly describes the association, the condominium unit owner’s policy, and principal opinions, which is the sole purpose of this section.

#### **IV: 1., c. Knowledge of Limited Liability and Exclusions**

Each unit owner’s **liability is limited** to the unit owner’s proportionate ownership interest in the common elements. The condominium association is liable for its acts or its failure to act, and may pass this liability on to unit owners if the liability is connected with the common elements (§718.119 (2)(3), F.S.). In no case may an individual owner’s liability exceed the value of the unit itself. Whenever the association is exposed to liability through legal action in excess of the association’s insurance coverage, the association must give notice of the deficiency in insurance coverage to each unit owner and the association can special assess for the appropriate dollar amount. After receiving notice, each owner has the right to intervene and defend in the legal action. The intervener is responsible for their attorney fees.

#### **IV: 1., d. Knowledge of Flood Insurance**

##### **INTRODUCTION TO THE NATIONAL FLOOD INSURANCE PROGRAM**

**The National Flood Insurance Program (NFIP) was established by the National Flood Insurance Act of 1968.**

The act was in response to Congress finding that:

- Flooding disasters required unforeseen disaster relief and placed an increase burden on the nation’s resources.
- The installation of flood preventive and protective measures and other public programs designed to reduce losses caused by flood damage had not been sufficient to adequately protect against the growing exposure to flood losses as a matter of national policy. A reasonable method of slowing the risk of flood losses would be through a program flood insurance which could complement and encourage preventive and protective measures.
- Many factors made it uneconomical for the private insurance industry carriers to make flood insurance available to those in need of such protection on reasonable terms and conditions.
- A program of flood insurance with large scale participation of the federal government and the maximum extent practicable by the private industry was feasible and could be initiated.

Congress stated that the purpose in passing the Act was to:

- Authorize a flood insurance program which, over a period of time, could be made available on a nationwide basis through the cooperative effort of the federal government and the private insurance industry.
- Provide flexibility in the program so that such flood insurance would be based on workable methods of pooling risks, minimizing costs, and distributing burdens equitably among the general public and those who would be protected by flood insurance.
- Encourage state and local governments to use wisely the lands under their jurisdictions by considering the hazard of flood when rendering decisions on the future use of such land, thus minimizing damage caused by flooding.

In 1979, the Federal Emergency Management Agency (FEMA) was established as a single point of contact within the federal government for emergency management activities. The Federal Insurance Administration (FIA), which directly administers the NFIP, became a part of FEMA, having been originally a part of the Department of Housing and Urban Development from 1968 to 1979.

The NFIP is a program in which communities formally agree, as evidenced by their adoption codes and ordinances, to regulate the use of their flood-prone lands. In return, the FIA makes flood insurance coverage available on buildings and their contents throughout the community. The FIA has traditionally identified these flood hazard areas on maps, which are provided to communities for carrying out their responsibilities. The maps are also used by insurance producers to determine rates and by lenders to determine purchases requirements.

#### **NATIONAL FLOOD INSURANCE BACKGROUND**

Flood insurance coverage's have been developed and prescribed by the NATIONAL FLOOD INSURANCE ACT and the FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), an agency of the federal government. **The maximum amount of flood insurance available to associations is \$250,000 per unit.**

It may have been always dry where you live, or at least as long as anyone can remember. But, a big storm...a tropical storm...a summer downpour, a spring thaw....and streets can become rivers; neighborhoods can become lakes.

Flood insurance provides protection against property damage that results from a flood. A waiting period may apply after the insurance is purchased before the insurance becomes effective. The information within these pages on flood insurance are general in content. The learner should consult with insurance agents for exact details.

**An important factor to remember when your association purchases flood and other insurance, the insurance only covers the ASSOCIATION PROPERTY AND NOT THE UNIT OWNERS PROPERTY within the unit, garage, or storage unit.** Unit owners are responsible for obtaining their own insurance coverage of the various types.

It would be prudent for the Association Board, to send out a special notice reminding all unit owners that the association does not insure anything inside their unit, garage, or storage space as assigned to their unit. The special notice is especially necessary if there have been changes of ownership.

The following is a summary of what property is covered and what property not covered, losses covered and losses not covered by flood insurance.

The policy insures against direct physical loss from flood. The term flood is defined in the policy.

You should refer to the policy from complete definition. The policy also provides coverage for the costs of:

- Removal of debris following a covered loss.
- Moving insured property that is endangered by flood.
- Sand and bags to protect endangered property from flood.

Note: These coverage's may be subject to special limits and do not increase the total amount of insurance coverage.

## **LOSSES NOT COVERED**

Some losses are not covered – For example, there is no coverage for:

- Any loss not caused by flood.
- A flood confined to your premises unless the flooding covers two (2) acres or more of your premises.
- Loss resulting from your failure to take reasonable care to protect your property from flood.
- Additional living expense resulting from flood.

## **DEDUCTIBLES**

The theory behind a deductible is a simple one. You assume the cost of losses up to the deductible amount while the policy protects you against the larger, hard-to-afford losses above the deductible amount. Generally, the higher the deductible, the lower your premium. Separate deductible amount applies to building coverage and personal property coverage. **Florida Statute 718 requires the deductible amount be disclosed to the unit owners once per year both as a percentage and a dollar amount and that the association discloses how it intends to raise those funds.**

**718.111(c) 3. The board shall establish the amount of deductibles based upon the level of available funds and predetermined assessment authority at a meeting of the board in the manner set forth in s. 718.112(2)(e).**

**The above requires a 14 day notice to the owners that would state that the deductible amount is going to be discussed as part of the agenda.**

There are straight deductible, percentage, and franchise deductibles found in insurance policies. Straight deductibles specify the deductible as flat amount of the loss payment, regardless of amount of loss. Percentage deductible requires a deduction from the loss of percentage of the value of the property or a percentage of the policy limits. Franchise deductibles specify that no payment shall be made until the loss equals or exceeds a prescribed amount, then the loss is paid in full.

### **IV: 1., e. Knowledge of Loss Control Procedures**

Knowledge or Control – The insurance company will not pay for loss or damage while the chance of loss or damage is increased by any means within your or the associations knowledge or control. Any act or neglect of any person or the association other than you or the association beyond your or the associations direction or control will not affect this insurance. The breach of any condition of a policy at any one or more locations will not affect coverage at any location, where, at the time of loss, the breach of condition does not exist.

**Conclusion for this section: Don't allow additional damage or loss by any means that either you or the association could prevent from happening.**

### **IV: 1., f. Knowledge of Insurance Policy Deductibles**

Each loss to your insured property is subject to a deductible provision under which you or the association bears a portion of the loss before payment is made under the policy. The loss deductible shall apply separately for each loss occurrence and to each building and personal property loss including, as to each, any appurtenant structure loss and debris removal expense.

Each separate type of policy has a deductible. As an example your automobile collision coverage could have \$100.00, \$500.00, or for a new car a \$1,000.00 deductible. The higher the deductible amount the cheaper the annual premium.

For a building insured for \$2,000,000, the deductible could be \$125,000 or more. **Remember the Florida Statutes require the association to be insured to various levels (replacement value or adequate) and the deductible amount be disclosed to all owners once per year.**

The association could have a dozen insurance policies; one flood, one windstorm, and one building policy for each building. As an example, three garages, three of each type = nine separate policies. Just filing these is a task in itself.

#### **IV: 1, g. Knowledge of Governing Documents**

Each association is required by statute §718.111 (11) (a) F.S., to obtain and maintain **full replacement cost** (condo) or **adequate** (HOA) insurance coverage to maintain and protect the condominium /association property, the common elements, and protection for the directors and officers. Insurance should provide general blanket coverage for the members of the association who may ultimately have to indemnify the actions of the board.

**The condominium declarations and bylaws, along with certain Florida Statutes, set forth the responsibilities and risks assumed by the association, and those assumed by the individual unit owners.** Because there is no standardization of declarations and bylaws, there is no standard insurance product to fit all needs. Rather, there are basic products with many flexible options to permit thoughtful condominium unit owners, in consultation with their independent insurance agent, to adequately protect against risks of loss.

#### **IV: 1, h. Knowledge of Certificates of Insurance – Contract Law**

**The Certificate of Insurance is one of the essentials to protect the association from a loss or liability claim.** When the contractor obtains a permit, the building department requires, among other items, the certificate of insurance and in some instances the city will require that the city be listed on the certificate of insurance as a certificate holder / additionally insured.

The form will list the companies affording coverage, the name, address of the contractor, coverage's, types of insurance, policy number, effective date, policy expiration date, limits of the general liability, automobile liability, garage liability, excess liability, workers' compensation, and employers' liability. The association name and address will appear in the certificate holder box. The Certificate of Insurance must be signed by the authorized agent of the insurance company.

**Note: If the association name and address does not appear, the association is not additionally insured!**

**DO NOT ACCEPT A FAX OR A COPY FROM THE CONTRACTOR. HAVE THE CONTRACTOR CONTACT THEIR INSURANCE COMPANY AND HAVE THEIR INSURANCE COMPANY MAIL THE ASSOCIATION AN ORIGINAL SIGNED COPY IN THE MAIL. SHUT THE JOB DOWN IF THE ASSOCIATION DOES NOT HAVE A CURRENT CERTIFICATE ON HAND.**

#### **IV: 1, i. Knowledge of Fidelity Bonding**

Bonding and Insurance – Florida's Condominium Act provides for two types of security for the members of the board of directors. The first is the requirement that the association obtains and maintains insurance or fidelity bonding of all officers, board members, and other individuals who control and disburse funds for the association.

Those "persons who control and disburse funds of the association" include, but are not limited to, the individuals authorized to sign checks on behalf of the association and the president, secretary, and treasurer of the association. The fidelity bond or insurance must be in an amount that covers the maximum funds that will be in the custody of the association or its management agency at any one time. The association assumes the responsibility for the costs of the required insurance or fidelity bonding as a common expense of the condominium (§718.111 (11)(h), F.S.).

Each association is additionally required to use its best effort to obtain and maintain adequate insurance coverage to protect the condominium property, the association, the association property, and the common elements (**§718.111 (11)(a), F.S.**). Adequate insurance coverage should appropriately include officer's and directors' liability insurance for all members of the board of directors and all officers of the association. The liability coverage for the officers and board members provides basic protections for those who have volunteered to serve in these positions of responsibility.

Each board member must recognize the fiduciary relationship and the responsibilities which the board has to the condominium association and each of its members. **The duties must be performed with the care and responsibility that an ordinary prudent person would exercise under similar circumstances and the ultimate responsibilities cannot be delegated to a manager, a management company, or other third party.** Further, to be consistent with its fiduciary duty to unit owners, the board of directors **must employ a licensed community manager where licensure is required by §468.431, Florida Statutes, 61b-23.001 (6), F.A.C.**

#### **IV: 1, j. Knowledge of Florida Windstorm Underwriting Association**

**NOTE: This association name was changed and the function was combined to form: CITIZENS PROPERTY INSURANCE CORPORATION (CPIC).**

The Citizens Property Insurance Corporation (**CPIC**), is a quasi-public association created by the Florida legislature. The CPIC is not a state agency, however under state law, it is to provide windstorm and hail insurance to “applicants who in good faith entitled, but unable, to obtain, to procure insurance through voluntary market.” – The Insurer of Last Resort

#### **IV: 1, k. Knowledge of CITIZENS PROPERTY INSURANCE CORPORATION.**

**The Florida Residential Property and Casualty Joint Underwriting Association** was created by the Florida Legislature in December 1992, some three months after hurricane Andrew devastated parts of South Florida, causing \$16 billion in insured losses and severely disrupting the state’s property insurance market. This group was renamed on 5-11-2002 to: **CITIZENS PROPERTY INSURANCE CORPORATION (CPIC). The FWUA & the JUA are no longer in existence**

The **CPIC’s** mission, under state law, is to provide residential property insurance to “applicants who are in good faith entitled, but are unable, to procure insurance through the voluntary market. The JUA actually began writing policies in March 1993 before the name change.

The **CPIC** offers policies through two separate lines of business. Personal Residential Lines includes Homeowners, Mobile Homeowners, Tenants, Condominium Unit Owners, and Dwelling Fire policies.

Commercial Residential Lines includes Condominium Associations, Apartment Buildings, and Homeowners Association policies. The **CPIC** writes policies in all 67 Florida counties, and it writes policies both with and without windstorm coverage.

The **CPIC** is not a state agency. It is a quasi-public association overseen by a 13-member Board of Governors whose membership is prescribed by state law. The **CPIC** does not directly write policies, but rather, appoints private insurance agencies around the state with the authority to write policies into the associations. The **CPIC** contracts with private companies that provide its main information system, administer policies, and perform claims adjusting for policyholders. The **CPIC** staff in Tallahassee acts as a “home office,” overseeing the work of these private contractors.

It is important to remember that while state law mandates that the CPIC provide residential property insurance coverage to applicants “who are in good faith entitled, but are unable, to procure insurance through the voluntary market,” the association is not required to insure every application it receives. For example, state law says the applicants are not eligible for the **CPIC** if they have received a valid offer of coverage from an authorized insurance company in the private market.

#### **IV: 2., a., b. Obtain Insurance Coverage on Officers and Directors**

##### **IV: 2, a. Knowledge of Liability Insurance Coverage for Officers and Directors**

**Directors and Officers (D & O), liability protects officers or directors who may become subject to suit by unit owners alleging damages resulting from improper or illegal acts. Many people simply will not serve on a board when this type of coverage is not maintained. Also remember, most D&O liability endorsements exclude coverage for failure to purchase or maintain adequate insurance. To protect the officers and the membership which they serve, the board should maintain E & O “errors and omissions” insurance coverage on each officer and director. The board must also maintain the required insurance or fidelity bonding on all persons who control and disburse the funds of the association (S. 718.112 (2), (F.S.)** This insurance, like most other professional liability coverage, is offered only on a claims-made basis. In other words, the policy in force at the time the claim is made is the policy which will provide the coverage as long as the loss occurred subsequent to the retroactive date specified in the policy. Retroactive dates in new policies are generally the same as policy effective date of the policy. Claims-made forms with retroactive dates the same as policy effective dates are attractive to insurance carriers since the carrier has a finite period during which they have liability exposure; i.e. from the effective date of the policy to the end of the policy period. The retroactive date does not become significant, generally, in the case of D&O renewal with the same insurance carrier. That same carrier, since they were already exposed, and receive a premium for, the original retroactive date, will generally issue the renewal policy with the same retroactive date as contained in the former policy. Thus, there is no gap in coverage. However, if the association decides to change insurance carriers, a gap in coverage could result. In this case, there are three possible, but now always available, options.

First, the association can specifically purchase prior acts coverage. Or, sometimes the association can get the new insurance company to eliminate retroactive date entirely; not often, but sometimes. Or, if the former alternatives are not feasible, then the association should insist that the new insurance company go back to the retroactive date of the prior coverage so that the board is not exposed to that gap in benefits. Any bid specifications for new insurance should always specify the D&O retroactive date desired; i.e. the retroactive date of the prior policy.

D&O liability, is rarely available as a stand-alone policy, but is generally offered as an endorsement to the basic property and liability package. Thus, if the association wishes to change insurance companies, and the new company refuses to give a retroactive date back to the retroactive date of the prior policy, not only does that expose the board to an unreasonable gap in protection, but may give some indication of that company’s willingness to service the association or even remain in the condominium market. It would be highly recommended that any such company be disqualified as a competitor in the bid process.

When officers and directors are properly carrying out their duties within the scope of responsibility assigned to them, they may be indemnified by the association and its members when claims or suits are brought against them for their action (ch.617.0831, F.S.).

##### **IV: 2, b. Knowledge of Liability Insurance Exclusions for Officers and Directors**

When officers and directors are properly carrying out their duties within the scope of responsibility assigned to them, they may be indemnified by the association and its members when claims or suits are brought against them for their action (ch.617.0831, F.S.). To protect the officers and the membership which they serve, the board should to maintain “errors and omissions” insurance coverage on each officer and director. The board must also maintain the required insurance or fidelity bonding for all persons who control and disburse the funds of the association (§718.112 (2)(j), F.S.). **The officers and directors cannot be excused from improper actions and must exercise their responsibility as fiduciaries toward the members of the association.**

**NOTE:** The **FIDELITY BOND** is coverage that is for any officer or the CAM, or anyone else that handles funds of the association. The cost of the bond is based upon the total gross amount of funds in the association bank accounts at any given time. The insurance company will audit the bank account statements to establish the cost of the **FIDELITY BOND**.