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The Community Association Law Blog

Sorry, Your Insurance Policy Doesn't Cover That.

Posted on June 7, 2013 by Paul T. Hinckley

River Manor Condominium Association operates a residential condominium complex consisting of three buildings. As a result of Hurricane Wilma, River Manor suffered damage to all three buildings as well as to common elements and association property set apart from the buildings. The amount of damage was significant- $1.75M, $1.34M & $1.6M respectively for each building and an additional $1.2M of damage to common elements and association property set apart from the buildings.

River Manor filed a claim with its insurer, Citizens Property Insurance Corporation. Citizens denied the claim for $1.2M in damage sustained to the common elements and association property that was set apart from the buildings, claiming that the damage fell within an exclusion contained in River Manor's policy with Citizens. The policies issued by Citizens each excluded from coverage "other structures on the demised locations, set apart from the building by clear space," including such things as carports, cabanas, swimming pools, Jacuzzis, piers, seawalls, bridges, ramps, walks, decks, patios and similar structures.

River Manor filed suit. It alleged that Citizens' policy provided that "[a]ny terms of this policy which are in conflict with the statute of the State wherein the property is located are amended to conform to such statutes," and that this language, combined with the requirement in Section 718.111, Florida Statutes, that every property insurance policy issued or renewed on or after January 1, 2009 provide primary coverage for all portions of the condominium property, required Citizens to amend the terms of its policy to remove the exclusion in order that the policy conform to the statute. The trial court agreed and awarded River Manor the amounts Citizens claimed to be excluded under the policy. Citizens appealed the decision to the Fourth District Court of Appeal.

In a recently published decision, the Fourth DCA reversed the trial court's decision. In doing so, the appellate court drew attention to what it saw as the purpose of the statute- namely, to impose on a condominium association the obligation to use its best efforts to obtain insurance coverage for all portions of the condominium property. The intent of the statute, the appellate court held, was not to regulate the insurance industry or to compel insurers to provide coverage insurers may not wish to provide. If, by regulation, the only policies that could be made available in the marketplace were policies that

provided coverage for all portions of the condominium property, the court held, then Section 718.111(b), Florida Statutes, providing that "an association shall exercise its best efforts to obtain and maintain insurance [covering all portions of the condominium property]," would make little sense. If all policies were required to provide such coverage, no effort at all would be required to obtain one, let alone "best efforts."

The Fourth DCA's decision should cause condominium association Boards to carefully examine the association's insurance policies to determine whether the association does, in fact, maintain insurance coverage on "all portions of the condominium property as originally installed" as required under Florida law. If the association finds that it does not maintain such coverage, the association must use its best efforts to obtain such coverage. The failure to do so may expose the Board of Directors to claims for breach of fiduciary duty, and when uninsured losses are large, as in *River Manor*, the exposure to liability may be significant as well.

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