



House of Representatives

General Assembly

File No. 240

January Session, 2007

House Bill No. 5286

House of Representatives, April 2, 2007

The Committee on Insurance and Real Estate reported through REP. O'CONNOR of the 35th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

***AN ACT CONCERNING INSURANCE ON RESIDENTIAL
CONDOMINIUMS AND FLOOD INSURANCE FOR CONDOMINIUMS
LOCATED IN FLOOD HAZARD AREAS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 47-255 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 (a) Commencing not later than the time of the first conveyance of a
4 unit to a person other than a declarant, the association shall maintain,
5 to the extent reasonably available: (1) Property insurance on the
6 common elements and, in a planned community, also on property that
7 must become common elements, insuring against all risks of direct
8 physical loss commonly insured against or, in the case of a conversion
9 building, against fire and extended coverage perils. The total amount
10 of insurance after application of any deductibles shall be not less than
11 eighty per cent of the actual cash value of the insured property at the
12 time the insurance is purchased and at each renewal date, exclusive of
13 land, excavations, foundations and other items normally excluded

14 from property policies; and (2) liability insurance, including medical
15 payments insurance, in an amount determined by the executive board
16 but not less than any amount specified in the declaration, covering all
17 occurrences commonly insured against for death, bodily injury and
18 property damage arising out of or in connection with the use,
19 ownership or maintenance of the common elements and, in
20 cooperatives, also of all units. The amount of any deductible on any
21 property and liability insurance maintained by the association is a
22 common expense.

23 [(b) In the case of a building that is part of a cooperative or that
24 contains units having horizontal boundaries described in the
25 declaration, the insurance maintained under subdivision (1) of
26 subsection (a) of this section, to the extent reasonably available, shall
27 include the units, but need not include improvements and betterments
28 installed by unit owners.]

29 [(c)] (b) If the insurance described in [subsections (a) and (b)]
30 subsection (a) of this section is not reasonably available, the association
31 promptly shall cause notice of that fact to be hand-delivered or sent
32 prepaid by United States mail to all unit owners. The declaration may
33 require the association to carry any other insurance, and the
34 association in any event may carry any other insurance it considers
35 appropriate to protect the association or the unit owners.

36 [(d)] (c) Insurance policies carried pursuant to [subsections (a) and
37 (b)] subsection (a) of this section shall provide that: (1) Each unit owner
38 is an insured person under the policy with respect to liability arising
39 out of his interest in the common elements or membership in the
40 association; (2) the insurer waives its right to subrogation under the
41 policy against any unit owner or member of his household; (3) no act
42 or omission by any unit owner, unless acting within the scope of his
43 authority on behalf of the association, will void the policy or be a
44 condition to recovery under the policy; and (4) if, at the time of a loss
45 under the policy, there is other insurance in the name of a unit owner
46 covering the same risk covered by the policy, the association's policy

47 provides primary insurance.

48 [(e)] ~~(d)~~ Any loss covered by the property policy under subdivision
49 (1) of subsection (a) [and subsection (b)] of this section shall be
50 adjusted with the association, but the insurance proceeds for that loss
51 are payable to any insurance trustee designated for that purpose, or
52 otherwise to the association, and not to any holder of a security
53 interest. The insurance trustee or the association shall hold any
54 insurance proceeds in trust for the association, unit owners and lien
55 holders as their interests may appear. Subject to the provisions of
56 subsection [(h)] ~~(g)~~ of this section, the proceeds shall be disbursed first
57 for the repair or restoration of the damaged property, and the
58 association, unit owners and lien holders are not entitled to receive
59 payment of any portion of the proceeds unless there is a surplus of
60 proceeds after the property has been completely repaired or restored,
61 or the common interest community is terminated.

62 [(f)] ~~(e)~~ An insurance policy issued to the association does not
63 prevent a unit owner from obtaining insurance for his own benefit.

64 [(g)] ~~(f)~~ An insurer that has issued an insurance policy under this
65 section shall issue certificates or memoranda of insurance to the
66 association and, on written request, to any unit owner or holder of a
67 security interest. The insurer issuing the policy may not cancel or
68 refuse to renew it until sixty days after notice of the proposed
69 cancellation or nonrenewal has been mailed to the association, each
70 unit owner and each holder of a security interest to whom a certificate
71 or memorandum of insurance has been issued at their respective last
72 known addresses.

73 [(h)] ~~(g)~~ (1) Any portion of the common interest community for
74 which insurance is required under this section which is damaged or
75 destroyed shall be repaired or replaced promptly by the association
76 unless (A) the common interest community is terminated, in which
77 case section 47-237 applies, (B) repair or replacement would be illegal
78 under any state or local statute or ordinance governing health or
79 safety, or (C) eighty per cent of the unit owners, including every owner

80 of a unit or assigned limited common element that will not be rebuilt,
81 vote not to rebuild. The cost of repair or replacement in excess of
82 insurance proceeds and reserves is a common expense. (2) If the entire
83 common interest community is not repaired or replaced, (A) the
84 insurance proceeds attributable to the damaged common elements
85 shall be used to restore the damaged area to a condition compatible
86 with the remainder of the common interest community, and (B) except
87 to the extent that other persons will be distributees, (i) the insurance
88 proceeds attributable to units and limited common elements that are
89 not rebuilt shall be distributed to the owners of those units and the
90 owners of the units to which those limited common elements were
91 allocated, or to lien holders, as their interests may appear, and (ii) the
92 remainder of the proceeds shall be distributed to all the unit owners or
93 lien holders, as their interests may appear, in proportion to the
94 common expense liabilities of all the units. (3) If the unit owners vote
95 not to rebuild any unit, that unit's allocated interests are automatically
96 reallocated on the vote as if the unit had been condemned under
97 subsection (a) of section 47-206, and the association promptly shall
98 prepare, execute and record an amendment to the declaration
99 reflecting the reallocations.

100 [(i)] (h) The provisions of this section may be varied or waived in
101 the case of a common interest community all of whose units are
102 restricted to nonresidential use.

103 Sec. 2. Section 47-83 of the general statutes is repealed and the
104 following is substituted in lieu thereof (*Effective October 1, 2007*):

105 The declarant and the association of unit owners, by its board of
106 directors, manager or other authorized agent shall, without prejudice
107 to the right of each unit owner to insure his own unit for his own
108 benefit, obtain for the condominium the following forms of insurance:
109 (1) A master policy affording fire, extended coverage and additional
110 perils in an amount sufficient for repair or replacement of the
111 buildings and improvements, or portions of the buildings and
112 improvements that in whole or in part comprise the common elements,

113 with reasonable deductibles and coinsurance clause as the board of
 114 directors deems appropriate; and (2) a liability master policy, in an
 115 amount specified by the condominium instruments, covering the unit
 116 owners' association, the board of directors, the managing agent, if any,
 117 all persons acting or who may come to act as agents or employees of
 118 the foregoing, and all unit owners and other persons entitled to occupy
 119 any unit or other portion of the condominium. The declarant and the
 120 association, by its board of directors, the managing agent or other
 121 authorized agent, [may] shall obtain such other policies as may be
 122 required or authorized by the condominium instruments, or as the unit
 123 owners may by vote direct, including, without limitation, workers'
 124 compensation insurance, liability insurance on motor vehicles owned
 125 by the association and nonowned and rented vehicles, officers' and
 126 directors' indemnity policies, flood insurance in the event the
 127 condominium is located in a flood hazard area, as defined and
 128 determined by the National Flood Insurance Act, as amended (USC 42
 129 Section 4101, P.L. 93-234), and specialized policies covering lands or
 130 improvements in which the unit owners' association has or shares
 131 ownership or other rights. When any policy or instrument has been
 132 obtained by or on behalf of the declarant or the unit owners'
 133 association, written notice thereof and of any subsequent changes in
 134 values or limits therein or termination thereof shall be promptly
 135 furnished to each unit owner. All insurance coverage obtained for the
 136 condominium under this section shall be written in the name of the
 137 association of unit owners, for the benefit of each of the unit owners
 138 and their mortgagees as their interests may appear in the percentages
 139 of their undivided interest in the common elements established in the
 140 condominium instruments. Premiums shall be common expenses.
 141 Losses may be made payable to a trustee for restoration or distribution
 142 for the benefit of such unit owners and mortgagees as their interest
 143 may appear.

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| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | October 1, 2007 | 47-255 |

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| Sec. 2 | October 1, 2007 | 47-83 |
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INS *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

This bill requires that the deductible for flood insurance is considered a common expense to condominium communities located in flood zones, and has no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**HB 5286*****AN ACT CONCERNING INSURANCE ON RESIDENTIAL
CONDOMINIUMS AND FLOOD INSURANCE FOR CONDOMINIUMS
LOCATED IN FLOOD HAZARD AREAS.*****SUMMARY:**

This bill eliminates the Common Interest Ownership Act (CIOA) requirement that certain insurance the association of unit owners maintains must cover the units, to the extent the insurance is reasonably available (see BACKGROUND). The requirement applies to all buildings that are part of a cooperative governed by CIOA. It also applies to all buildings in a condominium and other common interest community governed by CIOA that contain units having horizontal boundaries described in the declaration. The requirement only applies to insurance the association is required to maintain by law, the condominium instruments, or by vote of the unit owners. The eliminated requirement does not cover improvements unit owners install.

For condominiums created before October 1, 1984, that are governed by the Condominium Act (see Background), the bill requires the association or declarant to obtain flood insurance if (1) the condominium is located in a flood hazard area, as defined and determined by the National Flood Insurance Act, and (2) the condominium instruments or unit owners' vote requires it. It also requires for condominiums covered by the Condominium Act, instead of permits, declarants, and associations of unit owners to obtain certain other types of insurance if the condominium instruments require it or the owners vote for it.

This bill specifies that a deductible on any property and liability insurance policy a condominium association or declarant maintains be treated as a common expense. This requirement applies only to

condominiums and other common interest communities governed by the CIOA (see BACKGROUND- RELATED STATUTE).

EFFECTIVE DATE: October 1, 2007

REQUIRED INSURANCE FOR CONDOMINIUMS COVERED BY THE CONDOMINIUM ACT

The law requires declarants and the associations of unit owners to obtain, for condominiums governed by the Condominium Act:

1. a master fire insurance policy (including extended coverage and additional perils) in an amount sufficient to repair or replace the buildings and improvements, or portions of them that comprise the common elements, with reasonable deductibles and coinsurance clause as the board of directors deems appropriate; and
2. a liability master policy, in an amount specified by the condominium instruments, covering the unit owners' association, the board of directors, the managing agent, if any, all those acting or who may come to act as agents or employees, and all unit owners and others entitled to occupy any unit or other portion of the condominium.

The bill requires, instead of permits, the declarant and the association to obtain such other policies as may be required or authorized by the condominium instruments, or required by vote of the unit owners. This includes workers' compensation insurance, liability insurance on motor vehicles the association owns or rents, and officers' and directors' indemnity policies.

The bill requires the declarant or association to obtain flood insurance for such condominiums if (1) the condominium is located in a flood hazard area, as defined and determined by the National Flood Insurance Act, and (2) the condominium instruments or unit owners' vote requires it.

By law, all such insurance coverage the association obtains for the

condominium must be written in the name of the association of unit owners, for the benefit of each of the unit owners and their mortgagees as their interests may appear in the percentages of their undivided interest in the common elements established in the condominium instruments. Premiums must be common expenses.

BACKGROUND

CIOA and the Condominium Act

The Common Interest Ownership Act (CIOA) governs the creation, alteration, management, termination, and sale of condominiums and other common interest communities formed in Connecticut after January 1, 1984 (CGS § 47-200 et seq.). Condominiums created before CIOA was adopted were governed by the Condominium Act (CGS §§ 47-68a to 47-90c).

Certain CIOA provisions automatically apply to any condominium created in Connecticut before January 1, 1984, but only with respect to events and circumstances that occur after December 31, 1983. The CIOA insurance provisions amended by this bill do not automatically apply to pre-CIOA condominiums (CGS § 47-216).

The law permits condominiums created before January 1, 1984, to amend their governing instruments (declaration, bylaws, survey, or plans) to conform to portions of CIOA that do not automatically apply. Thus, a pre-CIOA condominium may adopt any of these CIOA provisions it wishes and does not have to adopt all of CIOA. Any amendment must be adopted in accordance with ~~comply with~~ the law that applied when the condominium was created and with the procedures and requirements specified by the condominium's declaration and bylaws (CGS § 47-218).

Declarant

A "declarant" means any person or group of people acting in concert who (1) as part of a common promotional plan, offers to dispose of an interest in a unit not previously disposed of or (2) reserves or succeeds to any special declarant right (CGS § 47-202 (12)).

“Special declarant rights” means rights reserved for the benefit of a declarant to do certain things the statutes specify (CGS § 47-202 (29)).

Cooperative

A “cooperative” is a common interest community in which the real property is owned by an association, each of whose members is entitled by virtue of his ownership interest in the association to exclusive possession of a unit (CGS § 47-202 (10)).

Common Interest Community

“Common interest community” means real property described in a declaration on which a person, by virtue of his ownership of a unit, is obligated to make payments for (1) real property taxes, (2) insurance premiums, (3) maintenance, or (4) improvement of any other real property other than the unit described in the declaration (CGS § 47-202 (7)).

Related Statute

By law, any portion of the common interest community for which insurance is required by CIOA that is damaged or destroyed must be repaired or replaced promptly by the association unless (1) the common interest community is terminated, (2) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety, or (3) 80% of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild.

The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense (CGS § 47-255(h) (1)).

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable

Yea 16 Nay 3 (03/13/2007)