

1 AN ACT in relation to property.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Condominium Property Act is amended by
5 changing Sections 12 and 12.1 as follows:

6 (765 ILCS 605/12)

7 Sec. 12. Insurance.

8 (a) Required coverage. No policy of insurance shall be
9 issued or delivered to a condominium association, and no
10 policy of insurance issued to a condominium association shall
11 be renewed, unless the insurance coverage under the policy
12 includes the following:

13 (1) Property insurance. Property insurance (i) on
14 the common elements and the units, including the limited
15 common elements and except as otherwise determined by the
16 board of managers, the bare walls, floors, and ceilings
17 of the unit, (ii) providing coverage for special form
18 causes of loss, and (iii) in a total amount of not less
19 than the full insurable replacement cost of the insured
20 property, less deductibles, but including coverage for
21 the increased costs of construction due to building code
22 requirements, at the time the insurance is purchased and
23 at each renewal date.

24 (2) General liability insurance. Commercial general
25 liability insurance against claims and liabilities
26 arising in connection with the ownership, existence, use,
27 or management of the property in a minimum amount of
28 \$1,000,000, or a greater amount deemed sufficient in the
29 judgment of the board, insuring the board, the
30 association, the management agent, and their respective
31 employees and agents and all persons acting as agents.

1 The developer must be included as an additional insured
2 in its capacity as a unit owner, manager, board member,
3 or officer. The unit owners must be included as
4 additional insured parties but only for claims and
5 liabilities arising in connection with the ownership,
6 existence, use, or management of the common elements. The
7 insurance must cover claims of one or more insured
8 parties against other insured parties.

9 (3) Fidelity bond; directors and officers coverage.

10 (A) An association with 6 or more dwelling
11 units must obtain and maintain a fidelity bond
12 covering persons, including the managing agent and
13 its employees who control or disburse funds of the
14 association, for the maximum amount of coverage
15 available to protect funds in the custody or control
16 of the association, plus the association reserve
17 fund.

18 (B) All management companies that are
19 responsible for the funds held or administered by
20 the association must be covered by a fidelity bond
21 for the maximum amount of coverage available to
22 protect those funds. The association has standing to
23 make a loss claim against the bond of the managing
24 agent as a party covered under the bond.

25 (C) For purposes of paragraphs (A) and (B),
26 the fidelity bond must be in the full amount of
27 association funds and reserves in the custody of the
28 association or the management company.

29 (D) The board of directors must obtain
30 directors and officers liability coverage at a level
31 deemed reasonable by the board, if not otherwise
32 established by the declaration or bylaws. Directors
33 and officers liability coverage must extend to all
34 contracts and other actions taken by the board in

1 their official capacity as directors and officers,
2 but this coverage shall exclude actions for which
3 the directors are not entitled to indemnification
4 under the General Not For Profit Corporation Act of
5 1986 or the declaration and bylaws of the
6 association.

7 (b) Contiguous units; improvements and betterments. The
8 insurance maintained under subdivision (a)(1) must include
9 the units, the limited common elements except as otherwise
10 determined by the board of managers, and the common elements.
11 The insurance need not cover improvements and betterments to
12 the units installed by unit owners, but if improvements and
13 betterments are covered, any increased cost may be assessed
14 by the association against the units affected.

15 Common elements include fixtures located within the
16 unfinished interior surfaces of the perimeter walls, floors,
17 and ceilings of the individual units initially installed by
18 the developer. Common elements exclude floor, wall, and
19 ceiling coverings. "Improvements and betterments" means all
20 decorating, fixtures, and furnishings installed or added to
21 and located within the boundaries of the unit, including
22 electrical fixtures, appliances, air conditioning and heating
23 equipment, water heaters, or built-in cabinets installed by
24 unit owners.

25 (c) Deductibles. The board of directors of the
26 association may, in the case of a claim for damage to a unit
27 or the common elements, (i) pay the deductible amount as a
28 common expense, (ii) after notice and an opportunity for a
29 hearing, assess the deductible amount against the owners who
30 caused the damage or from whose units the damage or cause of
31 loss originated, or (iii) require the unit owners of the
32 units affected to pay the deductible amount.

33 (d) Other coverages. The declaration may require the
34 association to carry any other insurance, including workers

1 compensation, employment practices, environmental hazards,
2 and equipment breakdown, the board of directors considers
3 appropriate to protect the association, the unit owners, or
4 officers, directors, or agents of the association.

5 (e) Insured parties; waiver of subrogation. Insurance
6 policies carried pursuant to subsections (a) and (b) must
7 include each of the following provisions:

8 (1) Each unit owner and secured party is an insured
9 person under the policy with respect to liability arising
10 out of the unit owner's interest in the common elements
11 or membership in the association.

12 (2) The insurer waives its right to subrogation
13 under the policy against any unit owner of the
14 condominium or members of the unit owner's household and
15 against the association and members of the board of
16 directors.

17 (3) The unit owner waives his or her right to
18 subrogation under the association policy against the
19 association and the board of directors.

20 (f) Primary insurance. If at the time of a loss under
21 the policy there is other insurance in the name of a unit
22 owner covering the same property covered by the policy, the
23 association's policy is primary insurance.

24 (g) Adjustment of losses; distribution of proceeds. Any
25 loss covered by the property policy under subdivision (a)(1)
26 must be adjusted by and with the association. The insurance
27 proceeds for that loss must be payable to the association, or
28 to an insurance trustee designated by the association for
29 that purpose. The insurance trustee or the association must
30 hold any insurance proceeds in trust for unit owners and
31 secured parties as their interests may appear. The proceeds
32 must be disbursed first for the repair or restoration of the
33 damaged common elements, the bare walls, ceilings, and floors
34 of the units, and then to any improvements and betterments

1 the association may insure. Unit owners are not entitled to
2 receive any portion of the proceeds unless there is a surplus
3 of proceeds after the common elements and units have been
4 completely repaired or restored or the association has been
5 terminated as trustee.

6 (h) Mandatory unit owner coverage. The board of
7 directors may, under the declaration and bylaws or by rule,
8 require condominium unit owners to obtain insurance covering
9 their personal liability and compensatory (but not
10 consequential) damages to another unit caused by the
11 negligence of the owner or his or her guests, residents, or
12 invitees, or regardless of any negligence originating from
13 the unit. The personal liability of a unit owner or
14 association member must include the deductible of the owner
15 whose unit was damaged, any damage not covered by insurance
16 required by this subsection, as well as the decorating,
17 painting, wall and floor coverings, trim, appliances,
18 equipment, and other furnishings.

19 If the unit owner does not purchase or produce evidence
20 of insurance requested by the board, the directors may
21 purchase the insurance coverage and charge the premium cost
22 back to the unit owner. In no event is the board liable to
23 any person either with regard to its decision not to purchase
24 the insurance, or with regard to the timing of its purchase
25 of the insurance or the amounts or types of coverages
26 obtained.

27 (i) Certificates of insurance. Contractors and vendors
28 (except public utilities) doing business with a condominium
29 association under contracts exceeding \$10,000 per year must
30 provide certificates of insurance naming the association, its
31 board of directors, and its managing agent as additional
32 insured parties.

33 (j) Non-residential condominiums. The provisions of this
34 Section may be varied or waived in the case of a condominium

1 community in which all units are restricted to nonresidential
2 use.

3 (k) Settlement of claims. Any insurer defending a
4 liability claim against a condominium association must notify
5 the association of the terms of the settlement no less than
6 10 days before settling the claim. The association may not
7 veto the settlement unless otherwise provided by contract or
8 statute.

~~}--(a)-(1)-The-board--of--managers--shall--have--the
9 authority--to--and--shall--obtain,--except--as--otherwise--provided
10 in--Section--12.1,--insurance--for--the--property--against--loss--or
11 damage--by--fire--and--such--other--hazards--as--are--covered--under
12 standard--extended--coverage--provisions--for--the--full--insurable
13 replacement--cost--of--the--common--elements--and--the--units.--Every
14 insurer--issuing--a--policy--against--loss--or--damage--by--fire--and
15 such--other--hazards--as--are--covered--under--standard--extended
16 coverage--to--a--condominium--association--shall--print--on--or
17 attach--to--the--premium--notice--the--following--statement:--"The
18 Condominium--Property--Act--requires--every--condominium
19 association--to--obtain--insurance--for--the--property--against--loss
20 or--damage--by--fire--and--such--other--hazards--as--are--covered--under
21 the--standard--extended--coverage--provisions--for--the--full
22 insurable--replacement--costs.--This--policy--may--or--may--not
23 satisfy--this--requirement.--Please--examine--your--policy
24 carefully--to--determine--if--it--complies--with--these
25 requirements."--The--full--insurable--replacement--cost--of--the
26 units--may--include--the--replacement--cost--value--of--betterments
27 and--improvements--made--in--and--to--a--unit--by--a--unit--owner--if--it
28 is--so--provided--by--the--condominium--declaration,--and--if--it--is
29 so--provided--in--the--condominium--instruments,--any--increase
30 premium--charge--therefor--shall--be--assessed--to--that--unit--owner
31 under--the--provisions--of--Section--9--hereof.~~

32 (2)--Such--insurance--coverage--shall--be--written--in--the--name
33 of,--and--the--proceeds--thereof--shall--be--deemed--payable--to,--the
34 board--of--managers,--as--trustee--for--each--of--the--unit--owners--in

1 the percentages established in the declaration. Any insurance
2 policy obtained for the property pursuant to paragraph (1) of
3 subsection (a) of this Section, which fails to contain the
4 trustee provisions required by this paragraph (2), shall be
5 deemed to incorporate such provisions into the policy by
6 operation of law.

7 (3) The board of managers, or the persons acting in such
8 capacity pursuant to Section 18.2 of this Act, shall have
9 authority to designate any corporation qualified to accept
10 and execute trusts in this state to act as agent or trustee
11 for, or as successor trustee to, said board of managers for
12 the purpose of collecting and disbursing the proceeds of such
13 insurance in the manner provided by the declaration, the
14 bylaws, and this Act. Premiums for such insurance and other
15 expenses in connection therewith shall be common expenses.

16 (b) The board of managers shall have the authority and
17 duty to obtain comprehensive public liability insurance
18 against claims and liabilities arising in connection with the
19 ownership, existence, use or management of the property in
20 amounts, if any, specified by the condominium instruments or
21 otherwise deemed sufficient in the judgment of the board of
22 managers, insuring the board of managers, the unit owners'
23 association, the management agent, and their respective
24 employees, agents and all persons acting as agents. The
25 developer shall be included as an additional insured in his
26 capacity as unit owner and board member. The unit owners
27 shall be included as additional insureds but only with
28 respect to that portion of the premises not reserved for
29 their exclusive use. The insurance shall cover claims of one
30 or more insured parties against other insured parties. The
31 insurance shall contain a waiver of any rights to subrogation
32 by the insuring company against any of the above named
33 insured persons. Premiums for such insurance shall be common
34 expenses.

1 ~~(c) The board of managers shall notify insured persons~~
 2 ~~concerning the cancellation of insurance obtained pursuant to~~
 3 ~~the terms of this Section.~~

4 ~~(d) Any insurer defending a claim against a condominium~~
 5 ~~association shall notify the association of the terms of the~~
 6 ~~settlement before settling the claim. The association shall~~
 7 ~~not have power to veto such settlement, unless otherwise~~
 8 ~~provided by contract or statute.~~

9 (Source: P.A. 84-1431; 84-1464.)

10 (765 ILCS 605/12.1) (from Ch. 30, par. 312.1)

11 Sec. 12.1. Insurance risk pooling trusts.

12 (a) This Section shall be known and may be cited as the
 13 Condominium and Common Interest Community Risk Pooling Trust
 14 Act.

15 (b) The boards of managers or boards of directors, as
 16 the case may be, of two or more condominium associations or
 17 common interest community associations, are authorized to
 18 establish, with the unit owners and the condominium or common
 19 interest community associations as the beneficiaries thereof,
 20 a trust fund for the purpose of providing protection of the
 21 participating condominium and common interest community
 22 associations against the risk of financial loss due to damage
 23 to, destruction of or loss of property, or the imposition of
 24 legal liability as required or authorized under this Act or
 25 the declaration of the condominium or common interest
 26 community association. ~~Such trust fund shall initially~~
 27 ~~assess unit owners an amount actuarially adequate to~~
 28 ~~establish such fund and shall assess such amounts as are~~
 29 ~~required to maintain such fund. Such amounts may be treated~~
 30 ~~as assessments of the condominium or common interest~~
 31 ~~community association.~~

32 (c) The trust fund shall be established and amended only
 33 by a written instrument which shall be filed with and

1 approved by the Director of Insurance prior to its becoming
2 effective. ~~The-Director-of-Insurance-shall-withhold--approval~~
3 ~~of--any--instrument-if-it-does-not-comply-with-the-provisions~~
4 ~~of-this-Section-or-any-rule-or-regulation-of-the-Director--of~~
5 ~~Insurance.~~

6 (d) No ~~common-interest-community~~ association shall be a
7 beneficiary of the trust fund unless it either shall be
8 incorporated under the laws of this State ~~or-shall-have-first~~
9 ~~procured--a--Certificate--of--Authority-from-the-Secretary-of~~
10 ~~State.~~

11 (e) The trust fund is authorized to indemnify the
12 condominium and common interest community association
13 beneficiaries thereof against the risk of loss due to damage,
14 destruction or loss to property or imposition of legal
15 liability as required or authorized under this Act or the
16 declaration of the condominium or common interest community
17 association. ~~The-trustee-of-the-trust-fund-may-determine--and~~
18 ~~establish---contributions---to--the--trust--fund--actuarially~~
19 ~~required-to-fund-the-operations-and-carry-out-the-purposes-of~~
20 ~~the-trust-fund-and-may-enter-into-contracts-in-order-to-carry~~
21 ~~out-the-purposes-for-which-the-trust--fund--was--established,~~
22 ~~provided--however,--that-any-such-contracts-shall-not-provide~~
23 ~~for-compensation-or-payments--in--excess--of--that--which--is~~
24 ~~reasonable--in--relation--to--the-services-actually-performed~~
25 ~~thereunder.~~

26 (f) ~~The-trust-fund-may--enter--into--written--agreements~~
27 ~~with-other-trust-funds-established-under-this-Section-whereby~~
28 the Risks assumed by the any-such trust fund may be pooled
29 and shared with such other trust funds established under this
30 Section.

31 (g) (Blank). ~~The-trustees-of-all-trust-funds-established~~
32 ~~under-this-Act-shall-be-natural-persons-over-the--age--of--18~~
33 ~~who-are-residents-of-this-State.~~

34 (h) (Blank). ~~Every--such-trust-fund-shall-have-no-fewer~~

1 than-3-not-more-than-30-trustees.--No-less-than--2/3--of--the
 2 trustees--shall-be-officers,-directors,-trustees-or-full-time
 3 employees-of--a--condominium--or--common--interest--community
 4 association-beneficiary-of-the-trust-fund.

5 (i) No trustee of the trust fund shall be paid a salary
 6 or receive other compensation, except that the written trust
 7 instrument may provide for reimbursement for actual expenses
 8 incurred on behalf of the trust fund. No--trustee--or--any
 9 employer--or--affiliate-of-any-trustee-of-the-trust-fund--shall
 10 enter-into-any-contract-with-the-trust-fund-for,-or--receive
 11 any-moneys-or-other-compensation-or-thing-of-value-whatsoever
 12 from,-the-trust-fund-for-services-performed-for-or-on-behalf
 13 of-such-trust-fund,-except--as--otherwise--provided--in--this
 14 Section.

15 (j) (Blank). The--trustees--shall-serve-pursuant-to-the
 16 terms-of-the-written-trust-instrument-except-that-the-written
 17 trust-instrument--shall--set--forth--the--manner--in--which--a
 18 trustee--of--a--trust--fund--may-be-removed-and-the-manner-in
 19 which-vacancies-among-the-trustees-of-the-trust-fund--may--be
 20 filled.

21 (k) (Blank). No--trustee--of-the-trust-fund--shall-serve
 22 for-more-than-3-consecutive-years-unless-he-is-reappointed-in
 23 the-manner-provided-for-in-the-written-trust-instrument.

24 (l) (Blank). The-trustees-of-the-trust-fund--shall--have
 25 the--powers--specified--in-the-written-trust-instrument-which
 26 established-the-trust-fund.

27 (m) Each trust fund shall by-June-1-of--each--year file
 28 annually with the Director of Insurance a full independently
 29 audited financial statement, as--of--December--31--of--the
 30 preceding-year,-and-by-April-1-of-each-year-a-report--of--the
 31 trustees--of--the--trust-fund-detailing-the-operations-of-the
 32 trust-fund-and-including-a-list-of-all--beneficiaries--during
 33 the--year--and--a--statement--that--each--beneficiary-was-not
 34 ineligible-except-as-provided-for-in-this-Section.--The-truth

1 and-accuracy-of-the-financial-statement-and-report--shall--be
 2 attested--to--by--each-trustee.-The-financial-statement-shall
 3 include--the--opinion--of--an--independent--certified--public
 4 accountant-on-the-financial-condition-of-the-trust--fund--for
 5 the--most--recent--calendar--year--and--the--results--of--its
 6 operations,-changes--in--financial--position--and-changes-in
 7 capital-and-surplus-for-the-year--then--ended--in--conformity
 8 with--accounting--practices--permitted--or--prescribed-by-the
 9 Illinois-Department-of-Insurance.

10 (n) (Blank). A-beneficiary-is-ineligible-if-he--or--she
 11 ceases-to-be-a-unit-owner-of-a-condominium-or-common-interest
 12 community--association,-except--where--liability--of--such
 13 beneficiary-was-incurred-at-the-time-he-or--she--was--a--unit
 14 owner.

15 (o) (Blank). No--beneficiary--shall--have--any-cause-of
 16 action-against-any-other-beneficiary-arising--solely--out--of
 17 the--insolvency--or--inability--of-the-trust-fund-to-meet-its
 18 obligations,-unless-such-other-beneficiary-is--a--trustee--of
 19 such--trust--fund--and--has--breached--a--fiduciary--duty--in
 20 connection--with--such--trust-fund.-This-subsection-shall-not
 21 preclude-the-assessment-and-collection-of-any-payments-to-the
 22 trust-fund-to-correct-such-insolvency--or--inability--of--the
 23 trust-fund-to-meet-its-obligations.

24 (p) (Blank). No--trust--fund--established--under--this
 25 subsection-(d)-shall-grant-any-power-to-the-trustees--of--the
 26 trust--fund--which--is--inconsistent-with-this-Section-or-any
 27 other-law-of-this-State.

28 (q) (Blank). Every--trust--fund--established--hereunder
 29 shall-include-in-the-written-trust-instrument-the-basis--upon
 30 which-payments-are-made-to-and-from-the-trust-fund.

31 (r) (Blank). Trust-funds-established-under-this-Section
 32 and-all-persons-interested-therein-or-dealing-there-with-shall
 33 be-subject-to-the-provisions-of--Sections--133,-144,-144.1,
 34 149,-401,-401.1,-402,-403,-403A,-412--and--all--of--the

1 provisions of Articles VII, VIII, VIII-1/2, XII-1/2, and XIII
 2 of the Illinois Insurance Code. Except as otherwise provided
 3 in this Section, trust funds established under and which
 4 fully comply with this Section shall not be subject to any
 5 other provision of the Illinois Insurance Code.

6 (s) The Director of Insurance shall have with respect to
 7 trust funds established under this Section the powers of
 8 examination conferred upon him relative to insurance
 9 companies by Section Sections 132 through 132.7 of the
 10 Illinois Insurance Code. The cost of any such examination
 11 shall be paid by the trust fund examined.

12 (t) (Blank). The Director of Insurance shall charge,
 13 collect and give proper acquittances for the payment of the
 14 following fees and charges:

15 (i) For filing trust instruments, amendments
 16 thereto and financial statement and report of the
 17 trustees, \$25.

18 (ii) For copies of papers or records per page, \$1.

19 (iii) For certificate to copy of paper, \$5.

20 (iv) For filing an application for the licensing of
 21 a condominium risk pooling trust, \$500.

22 (u) (Blank). This Section shall apply regardless of any
 23 contrary provisions of any instrument.

24 (v) Trust funds established under and which fully comply
 25 with this Section shall not be considered member insurance
 26 companies or to be in the business of insurance nor shall the
 27 provision of Article XXXIV of the Illinois Insurance Code
 28 apply to any such trust fund established under this Section.

29 (w) (Blank). The provisions of the Administrative Review
 30 Law shall apply to and govern all proceedings for the
 31 judicial review of final administrative decisions under this
 32 Section.

33 (x) The Director of Insurance shall adopt reasonable
 34 rules pertaining to the standards of coverage and

1 administration of trust funds authorized under this Section.

2 (Source: P.A. 89-97, eff. 7-7-95.)