

HB2598



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2598

by Rep. Jim Durkin

SYNOPSIS AS INTRODUCED:

765 ILCS 605/12

from Ch. 30, par. 312

Amends the Condominium Property Act. Provides that if a property manager has an insurance policy in the name of the management company for a property managed, the property manager shall, before termination of coverage, provide a 90-day notice to the condominium owners. Provides that if the property manager fails to do so, the property manager is liable for all claims on the building and guilty of a Class B misdemeanor. Effective immediately.

LRB101 10312 LNS 55418 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning civil law.

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 Section 12 as follows:

6 (765 ILCS 605/12) (from Ch. 30, par. 312)

7 Sec. 12. Insurance.

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

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

1 loss, including: Coverage B, demolition costs; and
2 Coverage C, increased cost of construction coverage. The
3 combined total of Coverage B and Coverage C shall be no
4 less than 10% of each insured building value, or \$500,000,
5 whichever is less.

6 (2) General liability insurance. Commercial general
7 liability insurance against claims and liabilities arising
8 in connection with the ownership, existence, use, or
9 management of the property in a minimum amount of
10 \$1,000,000, or a greater amount deemed sufficient in the
11 judgment of the board, insuring the board, the association,
12 the management agent, and their respective employees and
13 agents and all persons acting as agents. The developer must
14 be included as an additional insured in its capacity as a
15 unit owner, manager, board member, or officer. The unit
16 owners must be included as additional insured parties but
17 only for claims and liabilities arising in connection with
18 the ownership, existence, use, or management of the common
19 elements. The insurance must cover claims of one or more
20 insured parties against other insured parties.

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

22 (A) An association with 6 or more dwelling units
23 must obtain and maintain a fidelity bond covering
24 persons, including the managing agent and its
25 employees who control or disburse funds of the
26 association, for the maximum amount of coverage

1 available to protect funds in the custody or control of
2 the association, plus the association reserve fund.

3 (B) All management companies that are responsible
4 for the funds held or administered by the association
5 must be covered by a fidelity bond for the maximum
6 amount of coverage available to protect those funds.
7 The association has standing to make a loss claim
8 against the bond of the managing agent as a party
9 covered under the bond.

10 (C) For purposes of paragraphs (A) and (B), the
11 fidelity bond must be in the full amount of association
12 funds and reserves in the custody of the association or
13 the management company.

14 (D) The board of directors must obtain directors
15 and officers liability coverage at a level deemed
16 reasonable by the board, if not otherwise established
17 by the declaration or bylaws. Directors and officers
18 liability coverage must extend to all contracts and
19 other actions taken by the board in their official
20 capacity as directors and officers, but this coverage
21 shall exclude actions for which the directors are not
22 entitled to indemnification under the General Not For
23 Profit Corporation Act of 1986 or the declaration and
24 bylaws of the association. The coverage required by
25 this subparagraph (D) shall include, but not be limited
26 to, coverage of: defense of non-monetary actions;

1 defense of breach of contract; and defense of decisions
2 related to the placement or adequacy of insurance. The
3 coverage required by this subparagraph (D) shall
4 include as an insured: past, present, and future board
5 members while acting in their capacity as members of
6 the board of directors; the managing agent; and
7 employees of the board of directors and the managing
8 agent.

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

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

1 purchased by any unit owner.

2 (c) Deductibles. The board of directors of the association
3 may, in the case of a claim for damage to a unit or the common
4 elements, (i) pay the deductible amount as a common expense,
5 (ii) after notice and an opportunity for a hearing, assess the
6 deductible amount against the owners who caused the damage or
7 from whose units the damage or cause of loss originated, or
8 (iii) require the unit owners of the units affected to pay the
9 deductible amount.

10 (d) Other coverages. The declaration may require the
11 association to carry any other insurance, including workers
12 compensation, employment practices, environmental hazards, and
13 equipment breakdown, the board of directors considers
14 appropriate to protect the association, the unit owners, or
15 officers, directors, or agents of the association.

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

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

23 (2) The insurer waives its right to subrogation under
24 the policy against any unit owner of the condominium or
25 members of the unit owner's household and against the
26 association and members of the board of directors.

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

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

8 (g) Adjustment of losses; distribution of proceeds. Any
9 loss covered by the property policy under subdivision (a)(1)
10 must be adjusted by and with the association. The insurance
11 proceeds for that loss must be payable to the association, or
12 to an insurance trustee designated by the association for that
13 purpose. The insurance trustee or the association must hold any
14 insurance proceeds in trust for unit owners and secured parties
15 as their interests may appear. The proceeds must be disbursed
16 first for the repair or restoration of the damaged common
17 elements, the bare walls, ceilings, and floors of the units,
18 and then to any improvements and betterments the association
19 may insure. Unit owners are not entitled to receive any portion
20 of the proceeds unless there is a surplus of proceeds after the
21 common elements and units have been completely repaired or
22 restored or the association has been terminated as trustee.

23 (h) Mandatory unit owner coverage. The board of directors
24 may, under the declaration and bylaws or by rule, require
25 condominium unit owners to obtain insurance covering their
26 personal liability and compensatory (but not consequential)

1 damages to another unit caused by the negligence of the owner
2 or his or her guests, residents, or invitees, or regardless of
3 any negligence originating from the unit. The personal
4 liability of a unit owner or association member must include
5 the deductible of the owner whose unit was damaged, any damage
6 not covered by insurance required by this subsection, as well
7 as the decorating, painting, wall and floor coverings, trim,
8 appliances, equipment, and other furnishings.

9 (i) Certificates of insurance. Contractors and vendors
10 (except public utilities) doing business with a condominium
11 association under contracts exceeding \$10,000 per year must
12 provide certificates of insurance naming the association, its
13 board of directors, and its managing agent as additional
14 insured parties.

15 (j) Non-residential condominiums. The provisions of this
16 Section may be varied or waived in the case of a condominium
17 community in which all units are restricted to nonresidential
18 use.

19 (k) Settlement of claims. Any insurer defending a liability
20 claim against a condominium association must notify the
21 association of the terms of the settlement no less than 10 days
22 before settling the claim. The association may not veto the
23 settlement unless otherwise provided by contract or statute.

24 (l) The changes to this Section made by this amendatory Act
25 of the 98th General Assembly apply only to insurance policies
26 issued or renewed on or after June 1, 2015.

1 (m) Property managers. If a property manager has an
2 insurance policy in the name of the management company for a
3 property managed, the property manager shall, before
4 termination of coverage, provide a 90-day notice to the
5 condominium owners. If the property manager fails to do so, the
6 property manager is liable for all claims on the building and
7 guilty of a Class B misdemeanor.

8 (Source: P.A. 98-762, eff. 6-1-15.)

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.