

Community Association Insurance

Condominium Ownership Act (57-8-43)
Community Association Act (57-8a-401/407)



DECEMBER 13, 2023

SentryWest Ins Services
LaMond C. Woods, CIRM

Real Estate Code:

57-8-43 Condominium Ownership Act

57-8a-(401-407) Community Association Act

**Primary emphasis on "Property" Insurance for attached Units/Lots.
(Property Insurance not applicable to detached standalone homes)**

Necessity for change

- Background and Issues with Previous Law (57-8-29 Insurance) (Exhibit 1)
 - **Reliance on CC&Rs** leading to inconsistencies, duplication of coverage, and potential overburdening of the association's master insurance policy.
 - **Ambiguity in determining** coverage for interior elements (e.g., floor coverings, cabinets, paint).
- **Example: Insurer** (HO6) shifts responsibility to the association's insurance policy. Chestnut Place (Exhibit 2)
- The Community Association Act's **Lack of Insurance Provisions**
 - Absence of any guidelines for Insurance.
 - **Reliance on the Association's CC&Rs.**
 - Interpretation by claim adjusters.
 - Insurance policy - Condominium Endorsement:

(Exhibit 3)

(9) Any of the following types of property contained within a unit, regardless of ownership, if your Condominium Association Agreement requires you to insure it:

(a) Fixtures, improvements, and alterations that are part of the building or structure;



1. Original passage 2011 (SB167), modified in 2014

2. Insuring agreements

Bare Walls, Single Entity (aka Original Specifications), **All Inclusive or "Walls In."** The latter is the term lenders use. **Utah law is equivalent to All In/Walls In.** (Exhibit 4)

3. Summary (Property Insurance)

Applicability. Note the requirement for a master property policy is **not applicable** if the "initial declaration for the project is recorded before January 1, 2012" and **"requires** each lot owner to insure the lot owner's dwelling." (57-8a-402)

- "This section applies to an insurance policy or combination of insurance policies: (i) issued or renewed on or after July 1, 2011..."

Commercial Condominiums

- "Unless otherwise provided in the declaration, this section **does not apply to a commercial condominium** project insured under a policy or combination of policies issued or renewed on or after July 1, 2014."

Coverage must start

Beginning not later than the day on which the first unit is conveyed to a person other than a declarant, an association of unit owners shall maintain, to the extent reasonably available:

Insurance Coverage (Insurer)

- "**Blanket** property insurance or **guaranteed replacement cost** insurance" (GRC).
- "May not be **less than 100%** of the full replacement cost of the insured property at the time the Insurance is purchased and at **each renewal date.**"
- "Property insurance **shall include** coverage for any fixture, improvement, or betterment installed at any time to a unit or to a limited common area associated with a unit, whether installed in the original construction or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, **and any other item permanently part of or affixed to a unit or to a limited common element associated with a unit.**"
- "The **association's policy provides primary** insurance coverage."
- "An insurance policy issued to an association...may **not be inconsistent** with any provision of this section."

Association

- Maintain **property insurance** on attached Units/Lots.
- "If an association...**becomes aware** that property...or liability insurance is not reasonably available, the association...within seven calendar days after becoming aware, give all unit owners notice, that the insurance is not reasonably available."
- "A provision of a declaration, bylaw, rule, or other document governing the association of unit owners that is **contrary to a provision of this section has no effect.**"
- "Association...shall set aside an **amount equal** to the...the association's property...deductible or, if the policy **deductible exceeds \$10,000**, an amount not less than \$10,000."
- "Association...**shall provide notice**...to each unit owner of the unit owner's obligation...for the association's policy deductible and of any change in the amount of the deductible." "An association...**that fails to provide notice...is responsible** for the portion...the association...could have assessed...but only to the extent that the unit owner does not have insurance coverage that would otherwise apply..."
- "An association...that provides notice of the association's policy deductible...**but fails to provide notice of a later increase** in the... the deductible is responsible only for the amount of the increase for which notice was not provided."

Unit Owner

- "**The unit owner is responsible for the deductible of the association of unit owners.**"
- "Building property coverage, often referred to as **coverage A**, of the unit owner's policy applies to that portion of the loss attributable to the policy deductible of the association of unit owners"

Property Claims

- "**Covered loss**" means a loss, resulting from a single event or occurrence, that is covered by a property insurance policy of an association of unit owners."
- "**A unit owner's policy is considered the policy for primary coverage** for a loss occurring to the unit owner's unit or to a limited common area or facility appurtenant to the unit;"
- "The unit **owner is responsible for the deductible** of the association...building...coverage, often referred to as **coverage A**, of the lot owner's policy applies to that portion of the loss attributable to the association's policy deductible.

-
- "A unit **owner who does not have a policy** to cover the damage to that unit owner's unit...is responsible for that damage."
 - "**Association...is responsible** for any covered loss to any common areas..."
 - "If, in the exercise of the **business judgment rule**, the management committee determines that a covered loss is likely not to exceed the...deductible...and until it becomes apparent the loss exceeds the deductible...a unit **owner's policy is considered the policy for primary** coverage for a loss occurring to the unit owner's unit." "**Association...need not tender** the claim to the association's insurer."
 - "**Lot damage percentage**" means **the percentage of total** damage resulting in a covered loss that is attributable to lot damage."

Impact on Insurance Costs & Claims

- Eliminate coverage **duplication**
- Unit owners primarily only need to know **what the deductible** amount on the master policy.
- **Streamlining** claim processes.
- Improved efficiency in **claims handling** and reduced disputes.
- Deductible can assist with the association with **risk management**.

Title/Chapter/Section: [Utah Code](#)[Title 57](#) Real Estate[Chapter 8](#) Condominium Ownership Act**Section 29** Insurance.

**This section will be
replaced July 1, 2011 by
SB167 -
Condominium &
Community Association
Revisions**

57-8-29. Insurance.

(1) The manager, management committee, or association of unit owners shall obtain insurance against loss or damage by fire and other hazards for:

(a) all common areas and facilities; and

(b) all buildings that contain more than one condominium unit, including any improvement which is a permanent part of a building.

(2) Insurance coverage shall be written on the property in the name of the manager, management committee, or association of unit owners, as trustee for each of the unit owners in the percentages established in the declaration.

(3) Premiums on insurance required by this section shall be common expenses.

(4) Provision for insurance shall be without prejudice to the right of each unit owner to insure his own unit for his benefit.

Amended by Chapter 99, 2000 General Session

Download Code Section [Zipped](#) WordPerfect [57_08_002900.ZIP](#) 1,926 Bytes

[<< Previous Section \(57-8-28\)](#) [Next Section \(57-8-30\) >>](#)

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Exhibit 2



entative
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February 9, 2009

5371 NEW HAMPTON DR.
MURRAY UT 84123

Claim No: UFR9427
Policy No: 0B2167-981229882-838-1
Date of Loss: 02/02/2009

Dear Mr. Henderson:

Please accept this letter as a follow up to the claim that has been submitted for water damage to the above referenced unit.

We have determined that you had returned home to find that your toilet supply line had ruptured and had sprayed water all over your structure causing damage.

In the State of Utah, there is statutory law requiring all HOA's to provide insurance for their buildings containing more than one unit. This would make the HOA policy primary to yours. Please refer to Utah Code -- Title 57 -- Chapter 08 -- Condominium Ownership Act:

57-8-29. Insurance.

- (1) The manager, management committee, or association of unit owners shall obtain insurance against loss or damage by fire and other hazards for:
 - (a) all common areas and facilities; and
 - (b) all buildings that contain more than one condominium unit, including any improvement which is a permanent part of a building.
- (2) Insurance coverage shall be written on the property in the name of the manager, management committee, or association of unit owners, as trustee for each of the unit owners in the percentages established in the declaration.
- (3) Premiums on insurance required by this section shall be common expenses.

- (4) Provision for insurance shall be without prejudice to the right of each unit owner to insure his own unit for his benefit.

Amended by Chapter 99, 2000 General Session

Furthermore, your CC&R's and BYLAW's for Chestnut Place Condominiums state:

Pages 2 & 5-6

I. **DEFINITIONS**

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated. Any term used herein which is defined by the Act shall, to the extent permitted by the context hereof, have the meaning ascribed by the Act. ...

22. Unit shall mean and refer to one or more rooms or spaces located in a Building and intended for independent use and which is designated as a Unit on the Record of Survey Map and Exhibit "A" attached hereto (and incorporated herein by this reference). All walls on the perimeters of a Unit shall constitute a part of the Common Area and Facilities. A Unit shall include any walls, partitions, floors, ceilings, and stairs which are wholly contained within its vertical and horizontal perimeters and the surfaces of any floors ceilings, walls, or coverings which bound it provided, however, that a Unit shall not include pipes, wires, conduits, or other utility lines running through it which are utilized for or which serve more than one Unit and shall not include any load bearing walls or floors comprising a part of the Building in which the unit is contained. A Unit shall also include all fixtures contained within its vertical and horizontal perimeters and intended for the sole use of such Units. ...

Pages 17 - 18.

Hazard Insurance. The Management Committee or Association of Unit Owners shall at all times maintain in force, and pay the premiums for, hazard insurance meeting the following requirements:

- (i) A "master" or "blanket" type policy of property insurance shall be maintained covering the entire area of Chestnut Place, including: Common Areas and facilities; Limited Common Areas; Units; Fixtures; building service equipment, personal property, and supplies comprising a part of the Common Areas and Facilities or owned by the Management Committee or the Owners Association; and fixtures, equipment or other property comprising a part of or located within any Unit and which are of a class typically encumbered by Mortgages held by the Federal National Mortgage Association (hereinafter, "FNMA") or other similar institutional Mortgage investors, but excluding land, foundations, excavation and other items normally not covered by such policies. ...

- (vi) Each policy required to be maintained by the foregoing items (i), (ii) and (iii) shall also contain or provide for the following: Recognition of any insurance trust agreement; a waiver of the right of subrogation against Unit Owners individually; the insurance is not prejudiced by any act or neglect of individual Unit Owners which is not in the control of such Unit Owners collectively; and the policy is primary in the event the Unit owner has other insurance covering the same loss. The requirements stated in this Item (vi) are generally provided by the insurer in the form of a 'Special Condominium Endorsement' or its equivalent. ...

Based upon the above language, it is the responsibility of the Homeowners Association to provide insurance for the Units as defined above. Therefore, the damages to your unit will need to be submitted through the HOA policy as the primary insurer.

The action being taken by this company, as described in this letter, constitutes our position on your claim based on the information and documentation we have received. If you have any new or different information that might lead us to reconsider our decision on this matter, please contact us immediately.

We are relying on the policy conditions or exclusions that we have reasonably been able to conclude are applicable to the facts of this loss. We do not intend to waive, but rather expressly reserve, our right to assert any other policy conditions or exclusions that we might later learn may be applicable to this loss.

If you have any further questions regarding this claim, please contact me at 8 [REDACTED]

Sincerely,

[REDACTED]

Company

cc: File

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDATORY PROVISIONS CONDOMINIUM ASSOCIATION COVERAGE

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE PART

A. The BUSINESSOWNERS PROPERTY COVERAGE SPECIAL FORM is changed as follows:

1. Paragraph A.1.a. is replaced by the following:

a. Building, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fences;
- (3) Fixtures, outside of individual units, including outdoor fixtures;
- (4) Retaining walls, whether or not attached;
- (5) Permanently attached:
 - (a) Machinery; and
 - (b) Equipment;
- (6) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
 - (a) Fire extinguishing equipment;
 - (b) Outdoor furniture;
 - (c) Lobby and hallway furnishings;
 - (d) Floor, wall and ceiling coverings;
 - (e) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering, that are not contained within individual units;
 - (f) Lawn maintenance or snow removal equipment;
 - (g) Personal property used for maintaining and servicing of pools and other recreational facilities on the premises; and
 - (h) Alarm systems;
- (7) Outdoor swimming pools, associated structures and appurtenant structures and equipment, including pumps;

(8) If not covered by other insurance:

- (a) Additions under construction, alterations and repairs to the building or structure; and
- (b) Materials, equipment, supplies and temporary structures, on or within 1,000 feet of the described premises, used for making additions, alterations or repairs to the building or structure; and

(9) Any of the following types of property contained within a unit, regardless of ownership, if your Condominium Association Agreement requires you to insure it:

- (a) Fixtures, improvements and alterations that are part of the building or structure; and
- (b) Appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping.

But Building does not include personal property owned by, used by or in the care, custody or control of a unit-owner except for personal property listed in Paragraph (9) above.

2. Paragraph A.1.b. is replaced by the following:

b. Business Personal Property located in or on the buildings described in the Declarations or in the open (or in a vehicle) within 1,000 feet of the described premises, including:

- (1) Property owned by you or owned indivisibly by all unit-owners;
- (2) Your interest in the labor, materials or services furnished or arranged by you on personal property of others;
- (3) Property of others that is in your care, custody or control; and
- (4) "Money" and "securities".

Business Personal Property does not include personal property owned only by a unit-owner, unless it is in your care, custody or control as covered in Paragraph (3) above.

3. The following is added to Paragraph E.:

a. Unit-Owner's Insurance

A unit-owner may have other insurance covering the same property as this insurance. This insurance is intended to be primary, and not to contribute with such other insurance.

b. Insurance Trustee

If you name an insurance trustee, we will adjust losses with you, but we will pay the insurance trustee. If we pay the trustee, the payments will satisfy your claims against us.

4. The following is added to Paragraph F.9.:

a. Waiver of Rights of Recovery

We waive our rights to recover payment from any unit-owner of the condominium that is shown in the Declarations, except for losses that are payable under the Employee Dishonesty or Forgery or Alteration Additional Coverages.

B. The COMMERCIAL GENERAL LIABILITY COVERAGE FORM is changed as follows:

1. The following is added to **SECTION II – WHO IS AN INSURED:**

- a.** Each individual unit-owner of the insured condominium, but only for liability arising out of the ownership, maintenance or repair of that portion of the premises which is not reserved for that unit-owner's exclusive use or occupancy.

Lamond Woods

To: Lamond Woods
Subject: Bare Walls, Single Entity, All In (All Inclusive)

Background

When the first condominium was built in the continental United States in 1960, it involved a novel concept: home ownership without owning land. No statutes governed the insurance-related responsibilities of condominium associations and unit-owners. The delineation of responsibilities was initially left to private contractual arrangements between associations and unit-owners. Though contracts were not uniform, they tended to incorporate one of three basic approaches regarding insurance.

"Bare Walls"

Early on, the prevailing method for insuring real property in residential condominium developments was the "bare walls" approach. Under this approach, a condominium association insures only:

- The structure of a condominium building;
- The fixtures and furnishings of the common areas; and
- The association's personal property.

Unit-owners are responsible for purchasing insurance for damage to building property beyond the unfinished bare walls. This includes paint and decorations, and fixtures they own and use exclusively, such as sinks and cabinets, as well as their own personal property.

A few states still mandate use of the bare walls approach to insuring condominium property.

Single Entity

Over time, Condominium association policies, commonly known as master policies, have generally shifted being from bare walls policies to "single entity," or "original specification," policies that cover virtually all building property, including original fixtures in individually owned units. Unit-owners, however, are responsible for the costs of betterments and additions.

Adoption of the single entity approach was spurred by its codification in the Uniform Condominium Act (UCA) of 1980 and two subsequent model acts developed by the National Conference of Commissioners on Uniform State Laws and later adopted by 18 states.¹ Other states, including Illinois, have also mandated the single entity approach, although their statutes are not based on the UCA.

Use of the single-entity approach was also spurred by the secondary mortgage market agencies, "Fannie Mae" and "Freddie Mac," which required condominium associations to implement single-entity coverage to qualify their unit-owners for inclusion in loan packages. That requirement was rescinded by Fannie Mae in November 2007, and by Freddie Mac about a year later.

All Inclusive

The least common (and newest) approach is called "all inclusive," or "all in," coverage.

This approach requires a condominium association to cover all common elements and all structural items, fixtures, and equipment within the association's units, including structural improvements, betterments, and additions made by unit-owners owners.

Basically, all inclusive master policies cover all property within units except the personal property of unit-owners.

Insurance Responsibilities Under Different Condominium Arrangements

Property	"Bare Walls"	"Single Entity"	"All Inclusive"	Coverage under HO6 unit-owners form
Building and common areas	Association's responsibility	Association's responsibility	Association's responsibility	Association's responsibility
Original fixtures	Unit-owner's responsibility	Association's responsibility	Association's responsibility	Coverage provided if required
Betterments and additions	Unit-owner's responsibility	Unit-owner's responsibility	Association's responsibility	Coverage provided if required
Unit-owner's personal property	Unit-owner's responsibility	Unit-owner's responsibility	Unit-owner's responsibility	Coverage provided