

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. A condominium association must
9 maintain the following insurance coverage:

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

20 (2) General liability insurance. Commercial general
21 liability insurance against claims and liabilities
22 arising in connection with the ownership, existence, use,
23 or management of the property in a minimum amount of
24 \$1,000,000, or a greater amount deemed sufficient in the
25 judgment of the board, insuring the board, the
26 association, the management agent, and their respective
27 employees and agents and all persons acting as agents.
28 The developer must be included as an additional insured
29 in its capacity as a unit owner, manager, board member,
30 or officer. The unit owners must be included as
31 additional insured parties but only for claims and

1 liabilities arising in connection with the ownership,
2 existence, use, or management of the common elements. The
3 insurance must cover claims of one or more insured
4 parties against other insured parties.

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

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

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

21 (C) For purposes of paragraphs (A) and (B),
22 the fidelity bond must be in the full amount of
23 association funds and reserves in the custody of the
24 association or the management company.

25 (D) The board of directors must obtain
26 directors and officers liability coverage at a level
27 deemed reasonable by the board, if not otherwise
28 established by the declaration or bylaws. Directors
29 and officers liability coverage must extend to all
30 contracts and other actions taken by the board in
31 their official capacity as directors and officers,
32 but this coverage shall exclude actions for which
33 the directors are not entitled to indemnification
34 under the General Not For Profit Corporation Act of

1 1986 or the declaration and bylaws of the
2 association.

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

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

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

29 (d) Other coverages. The declaration may require the
30 association to carry any other insurance, including workers
31 compensation, employment practices, environmental hazards,
32 and equipment breakdown, the board of directors considers
33 appropriate to protect the association, the unit owners, or
34 officers, directors, or agents of the association.

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

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

8 (2) The insurer waives its right to subrogation
9 under the policy against any unit owner of the
10 condominium or members of the unit owner's household and
11 against the association and members of the board of
12 directors.

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

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

20 (g) Adjustment of losses; distribution of proceeds. Any
21 loss covered by the property policy under subdivision (a)(1)
22 must be adjusted by and with the association. The insurance
23 proceeds for that loss must be payable to the association, or
24 to an insurance trustee designated by the association for
25 that purpose. The insurance trustee or the association must
26 hold any insurance proceeds in trust for unit owners and
27 secured parties as their interests may appear. The proceeds
28 must be disbursed first for the repair or restoration of the
29 damaged common elements, the bare walls, ceilings, and floors
30 of the units, and then to any improvements and betterments
31 the association may insure. Unit owners are not entitled to
32 receive any portion of the proceeds unless there is a surplus
33 of proceeds after the common elements and units have been
34 completely repaired or restored or the association has been

1 terminated as trustee.

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

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

23 (i) Certificates of insurance. An insurer that has
24 issued an insurance policy under this Section must issue
25 certificates or memoranda of insurance, upon request, to any
26 unit owner or secured party. The insurance may not be
27 canceled until 60 days after notice of the proposed
28 cancellation has been mailed to the association, each unit
29 owner, and each secured party for an obligation to whom
30 certificates of insurance have been issued.

31 Contractors and vendors (except public utilities) doing
32 business with a condominium association under contracts
33 exceeding \$10,000 per year must provide certificates of
34 insurance naming the association, its board of directors, and

1 its managing agent as additional insured parties.

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

6 (k) Settlement of claims. Any insurer defending a
7 liability claim against a condominium association must notify
8 the association of the terms of the settlement no less than
9 10 days before settling the claim. The association may not
10 veto the settlement unless otherwise provided by contract or
11 statute.

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

1 (2)--Such insurance coverage shall be written in the name
2 of, and the proceeds thereof shall be deemed payable to, the
3 board of managers, as trustee for each of the unit owners in
4 the percentages established in the declaration. Any insurance
5 policy obtained for the property pursuant to paragraph (1) of
6 subsection (a) of this Section, which fails to contain the
7 trustee provisions required by this paragraph (2), shall be
8 deemed to incorporate such provisions into the policy by
9 operation of law.

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

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

1 by--the--insuring--company--against--any--of--the--above--named
2 insured--persons.--Premiums--for--such--insurance--shall--be--common
3 expenses.

4 (c)--The--board--of--managers--shall--notify--insured--persons
5 concerning--the--cancellation--of--insurance--obtained--pursuant--to
6 the--terms--of--this--Section.

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

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

13 (765 ILCS 605/12.1) (from Ch. 30, par. 312.1)

14 Sec. 12.1. Insurance risk pooling trusts.

15 (a) This Section shall be known and may be cited as the
16 Condominium and Common Interest Community Risk Pooling Trust
17 Act.

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

1 community-association.

2 (c) The trust fund shall be established and amended only
3 by a written instrument which shall be filed with and
4 approved by the Director of Insurance prior to its becoming
5 effective. ~~The-Direector-of-Insurance-shall-withhold-approval~~
6 ~~of-any-instrument-if-it-does-not-comply-with--the--provisions~~
7 ~~of--this-Section-or-any-rule-or-regulation-of-the-Director-of~~
8 ~~Insurance.~~

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

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

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

34 (g) (Blank). ~~The-trustees-of-all-trust-funds-established~~

1 under--this--Act--shall-be-natural-persons-over-the-age-of-18
2 who-are-residents-of-this-State.

3 (h) (Blank). Every-such-trust-fund-shall-have--no--fewer
4 than--3--nor--more-than-30-trustees.--No-less-than-2/3-of-the
5 trustees-shall-be-officers,-directors,-trustees-or-full--time
6 employees--of--a--condominium--or--common--interest-community
7 association-beneficiary-of-the-trust-fund.

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

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

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

27 (l) (Blank). The--trustees-of-the-trust-fund-shall-have
28 the-powers-specified-in-the-written--trust--instrument--which
29 established-the-trust-fund.

30 (m) Each trust fund shall by-June-1-of-each-year file
31 annually with the Director of Insurance a full independently
32 audited financial statement. as--of--December--31--of--the
33 preceding--year,-and-by-April-1-of-each-year-a-report-of-the
34 trustees-of-the-trust-fund-detailing-the--operations--of--the

1 trust--fund--and--including--a--list--of--all--beneficiaries--during
2 the--year--and--a--statement--that--each--beneficiary--was--not
3 ineligible--except--as--provided--for--in--this--Section.--The--truth
4 and--accuracy--of--the--financial--statement--and--report--shall--be
5 attested--to--by--each--trustee.--The--financial--statement--shall
6 include--the--opinion--of--an--independent--certified--public
7 accountant--on--the--financial--condition--of--the--trust--fund--for
8 the--most--recent--calendar--year--and--the--results--of--its
9 operations,--changes--in--financial--position--and--changes--in
10 capital--and--surplus--for--the--year--then--ended--in--conformity
11 with--accounting--practices--permitted--or--prescribed--by--the
12 Illinois--Department--of--Insurance.

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

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

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

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

34 (r) (Blank). Trust--funds--established--under--this--Section

1 and all persons interested therein or dealing therewith shall
 2 be subject to the provisions of Sections 133, 144, 144.1,
 3 149, 401, 401.1, 402, 403, 403A, 412 and all of the
 4 provisions of Articles VII, VIII, VIII-1/2, XII-1/2 and XIII
 5 of the Illinois Insurance Code. Except as otherwise provided
 6 in this Section, trust funds established under and which
 7 fully comply with this Section shall not be subject to any
 8 other provision of the Illinois Insurance Code.

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

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

18 (i) For filing trust instruments, amendments
 19 thereto and financial statement and report of the
 20 trustees, \$25.

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

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

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

25 (u) (Blank). This Section shall apply regardless of any
 26 contrary provisions of any instrument.

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

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

1 Section.

2 (x) The Director of Insurance shall adopt reasonable
3 rules pertaining to the standards of coverage and
4 administration of trust funds authorized under this Section.

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