

### **381.9187 Insurance.**

- (1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:
  - (a) Property insurance on the common elements insuring against fire and extended coverage perils and such other risks as may be determined by the association. The total amount of insurance after application of any deductibles shall be not less than one hundred percent (100%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, and other items normally excluded from property policies; and
  - (b) Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.
- (2) If the insurance described in subsection (1) of this section is not reasonably available, the association shall immediately cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association may carry any other insurance it deems appropriate to protect the association or the unit owners.
- (3) Insurance policies carried pursuant to subsection (1) of this section shall provide that:
  - (a) Each unit owner is an insured person under the policy with respect to liability arising out of his or her interest in the common elements or membership in the association;
  - (b) The insurer waives its right to subrogation under the policy against any unit owner or member of his or her household;
  - (c) No act or omission by any unit owner, unless acting within the scope of his or her authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and
  - (d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.
- (4) Any loss covered by the property policy under subsection (1) of this section shall be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to subsection (6) of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless

there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

- (5) An insurance policy issued to the association shall not prevent a unit owner from obtaining insurance for his or her own benefit.
- (6) Disposition of insurance proceeds shall be made as follows:
  - (a) Any portion of the condominium for which insurance is required under this section and which is damaged or destroyed shall be repaired or replaced promptly by the association unless:
    - 1. The condominium is terminated;
    - 2. Repair or replacement would be illegal under any state statute or local health or safety ordinance; or
    - 3. Eighty percent (80%) of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild.

The cost of repair or replacement in excess of insurance proceeds and reserves shall be a common expense;

- (b) If the entire condominium is not repaired or replaced:
  - 1. The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium;
  - 2. The insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear; and
  - 3. The remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units.

If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been acquired by eminent domain under KRS 381.9113, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations; and

- (c) Notwithstanding the provisions of this subsection, KRS 381.9157 governs the distribution of insurance proceeds if the condominium is terminated.
- (7) The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to nonresidential use.

**Effective:** April 11, 2012

**History:** Amended 2012 Ky. Acts ch. 99, sec. 7, effective April 11, 2012. -- Created 2010 Ky. Acts ch. 97, sec. 44, effective January 1, 2011.

**Legislative Research Commission Note** (4/11/2012). In subsection (4) of this statute, a reference to "subsection (7)" has been changed to read "subsection (6)," in conformity with the renumbering of subsections under 2012 Ky. Acts ch. 99, sec. 7.

The Reviser of Statutes has made this correction of a manifest clerical or typographical error under KRS 7.136(1).