

§ 47F-3-113. Insurance.

(a) Commencing not later than the time of the first conveyance of a lot to a person other than a declarant, the association shall maintain, to the extent reasonably available:

- (1) Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and
- (2) Liability insurance in reasonable amounts, 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.

(b) If the insurance described in subsection (a) of this section is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all lot owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the lot owners.

(c) Insurance policies carried pursuant to subsection (a) of this section shall provide that:

- (1) Each lot owner is an insured person under the policy to the extent of the lot owner's insurable interest;
- (2) The insurer waives its right to subrogation under the policy against any lot owner or member of the lot owner's household;
- (3) No act or omission by any lot owner, unless acting within the scope of the owner's authority on behalf of the association, will preclude recovery under the policy; and
- (4) If, at the time of a loss under the policy, there is other insurance in the name of a lot owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(d) Any loss covered by the property policy under subdivision (a)(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 or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for lot owners and lienholders as their interests may appear. Subject to the provisions of subsection (h) of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and lot 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 planned community is terminated.

(e) An insurance policy issued to the association does not prevent a lot owner from obtaining insurance for the lot owner's own benefit.

(f) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any lot owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each lot owner, and each mortgagee or

beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

(g) Any portion of the planned community for which insurance is required under subdivision (a)(1) of this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless (i) the planned community is terminated, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) the lot owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of owners assigned to the limited common elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If any portion of the planned community is not repaired or replaced, (i) 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 planned community, (ii) the insurance proceeds attributable to limited common elements which are not rebuilt shall be distributed to the owners of the lots to which those limited common elements were allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the proceeds shall be distributed to all the lot owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all the lots. Notwithstanding the provisions of this subsection, G.S. 47F-2-118 (termination of the planned community) governs the distribution of insurance proceeds if the planned community is terminated.

(h) The provisions of this section may be varied or waived in the case of a planned community all of whose lots are restricted to nonresidential use. (1998-199, s. 1.)