# Insurance Challenges and Strategies for Community Associations

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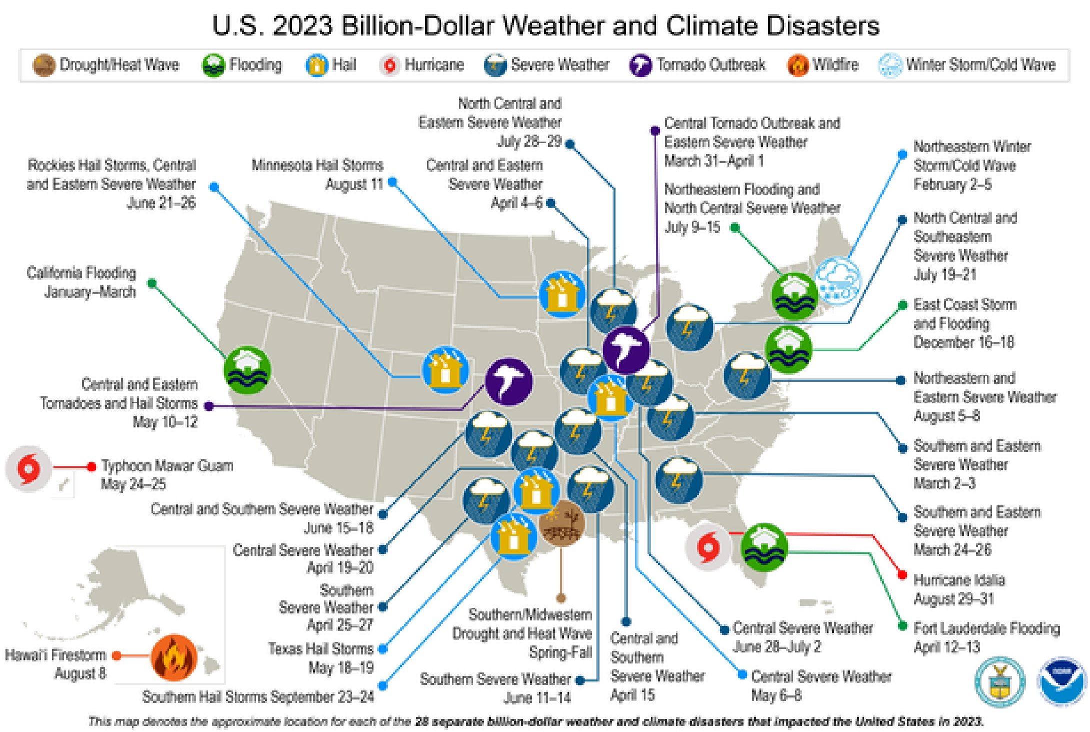
The insurance industry has changed significantly in the past couple of years due to several factors, including increased losses nationally. Carriers are leaving the market or refusing to take on risks they used to carry, and premiums are skyrocketing. The changes in the insurance industry have hit homeowners associations especially hard. More and more associations are being forced to go to the secondary insurance market. Premiums have gone up anywhere from 30%-500% over the past several years, making it difficult for associations to budget and pay for insurance. Deductibles are increasing just to keep the cost of insurance down, meaning that associations are self-insuring much more of the risk and/or relying on owners to have adequate HO6 policies to cover claims under the master policy deductible. Some associations are unable to get anyone to write a policy if they have a bad claims history or if they are in the process of resolving a pending claim.

**How Did We Get Here?** Eighteen or more separate billion-dollar disaster events impacted the U.S. every year of the last 4-years running as of 2023. There were 28 separate weather events that resulted in over $1 billion in damages in 2023 alone. Is this the new normal?




In 2023, the United States experienced 28 separate weather or climate disasters that each resulted in at least $1 billion in damages. NOAA map by NCEI.

California (and the Western United States) has experienced massive wildfire losses. All five of the costliest US wildfires have occurred in California, four since 2017[1].

**Figure 4. California Homeowners Underwriting Profit as Percent of Direct Premiums Earned (percent)**

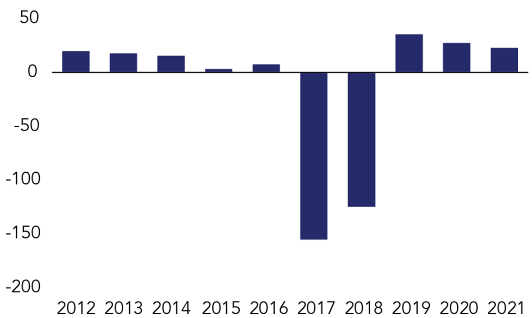
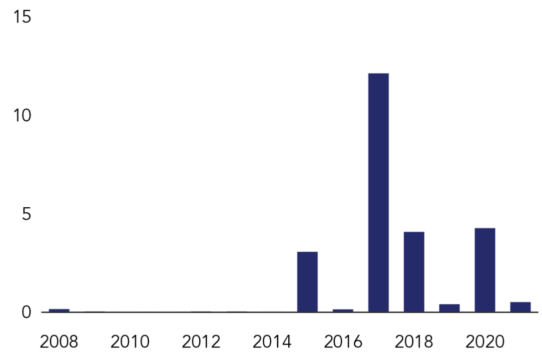



**Figure 5. California Losses Due to Wildfires ($ billions)**




A recent internet article published by Yahoo!News suggested that California properties are virtually "uninsurable" in the eyes of insurance underwriters[2]. California has experienced $30 billion in wildfire losses since 2017. In 2023, Cal Fire reported over 1 million acres of ongoing incidents, damaging or destroying more than 1,700 structures[3]. These wildfires have forced preferred carriers out of the market where wildfire exposure is highest. Some carriers take a more conservative approach to defining what is or isn't exposed to wildfire, limiting the availability of coverage for many community associations from a preferred carrier. Most of these locations are pushed to the surplus lines market, where premiums are typically at least 3x that of admitted carriers. In California, while the Department of Insurance has offered solutions to incentivize preferred carriers back into the market, those solutions are not removing the exposure the carriers are worried about. In fact, the most recent offering would require carriers to take on more risk in wildfire- exposed areas.

In Florida and the Eastern Seaboard, hurricanes and tropical storms are the largest weather-related risk affecting insurance premiums. According to NOAA, the estimated losses for Hurricanes Helene and Milton each exceeded $50 billion and Hurricane Beryl inflicted another estimated $32 billion in damage. The damage was not only from wind and flooding, but after Helene, western Tennessee and North Carolina experienced a large number of landslides and other catastrophic impacts damaging crops, water and sewer systems, roads, bridges and in excess of 126,000 homes. According to a report by the Associated Press[4], close to 93% of those homes with flood damage verified by the Federal Emergency Management Agency lacked flood insurance.

[1] Office of Financial Research, "Wind, Fire, Water, Hail: What Is Going on In the Property Insurance Market and Why Does It Matter?" December 14, 2023

[2] "Homeowners left in the lurch after major insurance companies deem state 'essentially uninsurable': 'Too many landscapes are ready to explode'; October 24, 2024

[3] https://www.fire.ca.gov/incidents

[4] "North Carolina government calculates Hurricane Helene damages, needs at least $53B," NPR, October 24, 2024

Homes lie in a debris field in the aftermath of Hurricane Helene, Thursday, Oct. 3, 2024, in Pensacola, N.C.

*Mike Stewart/AP*

Florida laws were amended to require carriers to report catastrophe claims data to the Office of Insurance Regulation. Not all states have a similar requirement, however, making it harder to track the statistics. While Florida is dealing with hurricanes and California is dealing with wildfires, the midwest has seen a large increase in damage due to hail and wind. Minnesota saw its costliest storm year on record in 2022, with over $6.3 billion in property damage from extreme weather.[5] On August 11, 2023 a single hailstorm in Minnesota caused over $1.5 billion in damage.[6] In fact, Minnesota is the only state in the country that has seen losses in the insurance industry 6 of the last 7 years.[7] Ice dams and frozen pipes are also perennial issues that result in a large number of property damage claims in the north and Midwest. Other parts of the country deal with drought, flooding and other weather-related issues.

Some community associations are finding it hard to obtain insurance for their total exposure whereas many lenders and/or state laws are requiring them to carry full replacement coverage on the structures. While a few states offer a state-backed high risk insurance plan for property owners that cannot obtain insurance through private carriers, these plans typically only cover a limited number of causes of loss and are not for full replacement value, and thus likely do not

[5] https://mn.gov/commerce/news/?id=17-619616
[6] https://www.dnr.state.mn.us/climate/journal/august-11-2023-hail-and-winds.html
[7] https://www.cbsnews.com/minnesota/news/uncertain-future-of-homeowners-insurance-in-minnesota/

meet the insurance requirements for community associations as specified under state law or their governing documents. Some carriers are implementing special deductibles for certain types of losses and/or per unit per claim deductibles that can create a situation where the total deductible is more than 5% of the Association's total insurable value, which causes issues with government lending institutions. Rising replacement costs, increased claim expenses, and increased frequency of large losses are leading insurance carriers to re-evaluate their exposure. These challenges are forcing carriers to require additional premiums to protect that exposure. Community associations are not prepared for the dramatic change in the cost of insurance, causing budgeting and assessment issues. Combined with increasing operating costs, new legislation on reserve funding,[8] a need to catch up on deferred maintenance to comply with state laws and lender guidelines, and increasing pushback from homeowners and legislatures that are seeking to impose restrictions on the ability of associations to levy and/or collect assessments, this insurance crisis has left many associations in a difficult or downright impossible financial position. So what does it all mean?

**A. Reducing risk.** Associations have to look at things differently in terms of reducing risks to keep premiums down and make their properties more insurable. One thing associations have done is prohibit any type of grills (even electric grills), firepits or anything involving an open flame within 10-20 feet of the building. It may not be enough that the association has rules restricting or prohibiting grills. Some carriers are requiring that the governing documents be amended to specifically prohibit grills while other carriers are actually flying drones over properties to determine whether these restrictions are being enforced.

In this hardened market, carriers are also taking the opportunity to revise their underwriting appetite. Many associations are starting to receive the underwriter's loss risk assessment where they may not have in the past. Carriers are looking at older communities (30+ years) and investigating the plumbing and electrical components. For many associations, this results in the discovery of components carriers are not comfortable with, particularly when it comes to electrical panels and components, and demands that they make significant changes to the development with very short notice to do so, or face non-renewal of their insurance. If the roofs or siding are too old, the association may not be able to get coverage for them, so they are looking at potentially having to replace these major components prior to the end of their remaining useful life, which then throws off their reserve plan. It's not that there is an epidemic in the industry for fires caused by older electrical components (though there have been many). Still, carriers see this as an opportunity to require changes of the association to avoid the potential for future loss.

When asked, "Does the HOA have any of these electrical panels?" The answer has often been, "We don't know" or "That is the unit owner's responsibility." These are no longer viable responses. Associations should look at some of these types of components, and proactively address the need to upgrade. Similarly, older properties that do not have sprinkler systems are finding it more difficult and costly to obtain insurance and may need to consider retrofitting the property with some type of fire suppression system. Moving to the surplus market due to failure to make such changes will result in an increase in annual premiums of two to three times. That, plus the cost of the upgrade, will be extensive. Of course, if the association is facing a

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[8] See, i.e., Section 11-109.4 of the Maryland Code, Real Property.

significant increase in insurance premiums in any case, it may not have available funds to pay for the necessary property upgrades. Additionally, if the electric panels or other components that need replacing are the homeowner's responsibility, the association's authority or ability to inspect inside an owner's unit and/or to require or implement these changes may be limited. Associations will have to look at their governing documents for provisions authorizing the association to take action to protect the property in order to force upgrades or replacements of components that are the owner's obligation. Preferred carriers are routinely retiring from these risks in order to avoid exposure.

In some cases, insurers are demanding that associations amend their governing documents to prohibit or require certain things, providing deadlines of as little as 60 days to accomplish said amendment, or the association will be dropped from coverage. We are now seeing some carriers require the association to amend its governing documents to require the unit owners to carry a minimum level of personal liability coverage on their HO6 policies, despite there being no discernable relationship between this individual coverage and any risk to the association. Insurers making these demands do not seem to understand or care that an amendment to the declaration requires approval from the owners (and may require approval from mortgagees), which approval process likely cannot be completed within the timelines set by the insurers. Further, boards cannot guarantee that the owners will approve something that may cost them more money in their individual insurance premiums. We see this quite often when owners refuse to approve a special assessment or an increase in annual assessments that are necessary to fund association operations or needed maintenance and repair projects. Paying for insurance is no different. Associations are also having to consider insurance costs, coverage, and risks when addressing things such as electric vehicles and chargers or other changes to their common areas and amenities, while at the same time states are adopting laws limiting the ability of associations to regulate these matters within their own properties, making it that much more difficult for associations to address the current insurance crisis.

**B. Trend toward smaller associations.** Of those carriers still writing policies for community associations, many have changed their underwriting requirements. They will not insure a property if it has more than a certain number of buildings or if the total insurable value (not real estate value) is over a certain dollar amount. Larger associations are looking to sever into two or more smaller associations to address these changed insurance underwriting requirements. They will have to weigh the time and expense involved in accomplishing the severance as well as the expense and logistics of operating multiple associations instead of just one association against the potential savings in insurance costs. Builders will likely have to consider these requirements as well when determining the size and structure of new associations.

**C. Paying for insurance premiums.** With the large increases in insurance costs, many associations struggle to figure out how to pay for it. For states that have adopted a version of the Uniform Condominium Act or the Uniform Common Interest Ownership Act (UCIOA)[9], state law generally requires associations to insure the buildings and structures at 80% - 100%

[9] For information on which states have adopted the UCIOA or the Uniform Condominium Act, see https://www.caionline.org/advocacy/advocacy-priorities-overview/uniform-common-interest-ownership-act/

replacement cost to the extent such coverage is reasonably available[10], so not having a master policy of insurance is not an option for many associations, even if it would be less expensive for unit owners to carry full property insurance on their individual units. Mortgage underwriting requirements also often impact the need for insurance as lenders require their mortgagees to maintain insurance for their dwellings. Florida has not adopted the Uniform Code. Its statute requires a condominium association to use its "best efforts" to obtain insurance covering 100% of the replacement cost of the components insured under the master policy. Replacement cost is determined by an appraisal conducted every 36 months. Some state laws prohibit associations from using replacement reserve funds for operating expenses[11], so they can't just take or "borrow" from the reserves to pay for insurance and plan to pay it back later.

Many association declarations contain caps (usually 5%) on how much the assessments can increase yearly without a membership vote. This cap may not even cover the increased contractual service costs, much less cover a 30-500% increase in insurance premiums. Carriers in the surplus or secondary market often require that the full amount of the premium be paid up front in a lump sum and do not accept monthly payments. Insurance financing can be more expensive than loans obtained from other financial institutions. Some associations must levy special assessments to pay for insurance, but depending on the governing documents or state law, this may require approval from the members as well. If the owners do not vote in favor of an increase or special assessment to cover the cost, and the state statutes do not provide any sort of relief for associations to be able to levy assessments without approval from the owners in emergency situations, the association will have to look at other options, such as amending the governing documents and/or reducing expenses by cutting services or deferring projects, which can lead to other issues as discussed below. In some states like California, the caps on special assessments and increases in regular assessments are statutory, meaning that an association cannot eliminate this restriction by amending its governing documents. However, California does allow for emergency special assessments to be levied by the board without owner approval in certain circumstances[12], so some attorneys are advising associations that unforeseen increases in insurance premiums, above what was budgeted, can be considered the basis for an emergency special assessment.

**D. Higher deductibles and reduced coverage.** Another way associations deal with the increased cost of insurance is by reducing the amount of coverage on the property and opting for a higher deductible, meaning that the association is self-insuring more of the risk than it used to. Many state laws permit associations to choose between bare walls or an all-in policy. While an

[10] The comments to the Uniform Acts indicate that "reasonably available" should be interpreted such that an association can comply with the insurance requirements even if certain coverages are unavailable or **unreasonably expensive**. North Carolina has adopted this interpretation in *Porter v. Beaverdam Run Condo. Ass'n*, 259 N.C. App. 326, 333, 815 S.E.2d 714, 718 (2018). However, there is very little statutory guidance or case law indicating how other states are interpreting this requirement or whether an association can consider the cost of insurance when determining whether it is reasonably available.

[11] See, e.g., Minn.Stat. 515B.3-1141(a)(3), "The association shall keep the replacement reserves in an account or accounts separate from the association's operating funds, and shall not use or borrow from the replacement reserves to fund the association's operating expenses…"

[12] See California Civil Code § 5610.

all-in policy makes more sense from a control standpoint, many associations are switching to a bare walls policy unless otherwise required under their governing documents to keep the premiums down, meaning less coverage under the master policy and more that has to be covered under the owners' HO6 policies. Deductibles have gone up from $5K-$10K to $25K-$100K per occurrence. Some carriers have added $25K per unit per occurrence deductibles, which has also created lending issues. Additionally, carriers use a separate deductible for certain types of risk in different markets, such as for wind/hail damage, that is factored as a percentage of the building value. Carriers in California often offer split deductibles for water damage versus other perils. These special deductibles have gone from a 1-2% building value to a minimum of 5%. Some associations are going with an 8%-10% deductible, causing issues with mortgage lenders. In California, a new endorsement is being offered to maximize the deductible in any one loss to 5% of the total insurable value of the community. Associations are usually able to assess back to the owners the amount of the deductible under the master policy or the cost of repairs to the extent not covered by the association's insurance, so the risk ends up falling largely on the HO6 carriers. The issue with shifting more of the risk to the unit owners' HO6 policies is that not all owners carry sufficient loss assessment coverage to take on that risk and are then unable to pay the cost of repairs or the deductible, which leads to higher delinquencies and impacts the association's ability to make repairs. The HO6 carriers are also looking to reduce their risk and exposure, as discussed below.

**E. Amending governing documents.** We are seeing many more requests to amend governing documents to address insurance issues. These requests include removing requirements in the declaration for an all-in master policy where state law permits, along with changing or removing other restrictions on the amount of deductible that the association may have, where possible, addressing limits on increasing assessments to either eliminate them or exempt insurance premiums from the cap, allowing associations to assess the insurance premium separately from the annual assessments, and requiring owners to carry an HO6 policy with appropriate personal liability coverage and loss assessment coverage to cover the higher deductible under the master policy. For townhome and planned community associations, we are also including language indicating that if the required master policy is not reasonably available, the association can require the owners to obtain full property policies covering their units, rather than just an HO6 policy, until a master policy becomes available. (See sample language in the Appendix.)

**F. Reducing costs/deferred maintenance.** If all else fails and an association cannot increase assessments, levy a special assessment, obtain a loan, or otherwise come up with extra funds to pay the increased cost of insurance premiums, the association will have to look at other areas within the annual budget where it can cut costs. This may mean cutting services or going with lower-quality products, reducing the frequency of lawn maintenance or other routine services, deferring maintenance and repair projects to future years, reducing reserve contributions, and even going from professional management to self-management to cut costs. All of these cost-saving measures will likely negatively impact property values and make it more difficult for owners to sell or obtain financing, and may also increase the risk to the association, thus perpetuating the cycle of insurance issues. In states such as California, carriers are starting to assess and decline coverage for associations with "deferred maintenance" or underfunded reserves.

**G. HO6 coverage/loss assessments.** Under state statutes and many associations' governing documents, in the case of an insurance claim, associations can assess back to the unit owners the cost of repairs to the property that are under the master deductible and/or in excess of insurance proceeds. If owners have appropriate property or loss assessment coverage on their HO6 policy, they can recoup the amount of such assessment from the HO6 carrier less their deductible. It's worth noting there is no deductible for the unit owner if an HO6 claim is covered under loss assessment. At least, for now. If loss assessment is being used, it's conceivable to expect coverage terms to change.

That said, HO6 carriers are also changing their policies, making it more difficult for owners to have proper coverage. Some carriers have capped their loss assessment coverage at low amounts, such as $2K, when an assessment can be as much as $50K per unit. Additionally, whereas traditionally the loss assessment coverage was triggered by the assessment being levied by the association, some carriers started writing their policies such that there is no coverage unless their insured owned the unit both at the time of the assessment and at the time of the physical loss to the property that led to the assessment. With many insurance claims taking upwards of a year to settle before the loss assessment is levied, this has caused problems with owners who purchased their units after the storm or physical loss date but before the assessment date. If the assessment is levied after the sale of the unit has closed, the seller will likely not have coverage for it, since they did not own the unit at the time that the assessment was levied and are not personally responsible for payment of the assessment to the association. If the buyer also cannot get coverage for the assessment for which they are personally responsible, they will have to pay it all out of pocket unless they had the foresight to negotiate this with the seller and have funds escrowed at closing to cover the future assessment. Fortunately, some states are addressing this issue to provide some relief for those new homeowners. As an example, the Minnesota legislature addressed this issue by passing a new law in 2024 that requires the buyer's policy to cover these claims in this situation.[13]

Associations are also seeing more pushback from HO6 carriers on covering repair costs or other charges levied by the association to one or more individual units. Association documents often contain provisions that allow for the association to assess repair costs to a particular unit, including for repairs to the common elements and/or other units, if the damage was caused by an act or omission of that unit owner or their occupants or guests or by a condition in that unit that the owner permitted to exist. As discussed below, the owner's HO6 policy may not cover such a loss assessment if it is not levied against all of the units within the association. The HO6 carrier may also decline liability coverage for that assessment if it disagrees with the association's allocation of fault or if the policy uses a different definition of fault or different basis for liability than that provided for in the governing documents. Most homeowners do not know enough to ask these questions when purchasing an HO6 policy and may end up with insufficient coverage or having to fight with their own insurance company before a claim is covered, meanwhile the assessment is not getting paid, creating hardships for the association and/or the other owners

[13] See Minn.Stat. 65A.3025.

impacted by the claim. This situation is leading many associations to abandon the practice of assessing the total cost of repairs not covered by the master policy against the owner who caused the damage in favor of assessing all of the affected owners for damage to their units, as it is often easier for those innocent owners to get coverage for the repairs to their own units under their HO6 policies than it is for the owner at fault to get those costs covered.

State law permitting, some associations have included provisions in their governing documents allowing them to assess the insurance premiums based on risk or coverage (as opposed to the allocation for other expenses set forth in the documents) and/or permitting the association to levy a reimbursement assessment requiring the owner to reimburse the association for increases in insurance premiums resulting from claims for which they are responsible. This, of course, requires the association to be able to determine what the risk or coverage is for each unit or the amount of increase in premiums attributable to a particular owner or claim, and may be an area where we will see increased litigation as owners fight those assessments.

**H. Insurance repairs.** With having larger deductibles and less coverage on the master policy and having issues with owners not having proper loss assessment or other coverage on their HO6 policies, associations with large property claims are left trying to figure out how to bridge the gap between what may be covered under any applicable insurance policy and the actual cost of repairs. For example, the master policy may only cover replacement of the roof that was damaged in a storm, but when the roof is removed, the association discovers rotten or damaged sheathing underneath that must be replaced or other work that must be done before the new roof can be put on. Sometimes the additional work is necessary to bring the property into compliance with current building code. If the code compliance or other work is not covered by insurance, it will lead to a larger repair bill than anticipated and result in more cost to the association. Similarly, if the master policy does not contain a matching endorsement and only one or two elevations of a building sustained damage, the policy may only pay to replace those elevations of siding or a portion of a roof, leading to a patchwork repair and negatively affecting the appearance of the property unless the association pays extra to replace everything or paint the exteriors to match. These different scenarios are leading some boards to look at other options for making repairs. This includes changing to lower-quality products, such as replacing damaged steel siding with lower cost vinyl siding or going with a lower-quality shingle, and even opting not to make certain repairs where possible. However, doing so can lead to other issues.

We are seeing more and more stories in the media about these claims and owners being assessed for a portion of the master deductible and not having proper coverage under their HO6 policy. Often, the owners who do not have proper coverage for the assessment seek to have the association elect not to make repairs or even try to argue that the property was not damaged simply because their untrained eyes cannot detect some types of damage, such as roof damage from a hailstorm. They also fail to comprehend the spiraling effect that can result from damage that is not repaired or how that can accelerate deterioration of roofs and other components of the property. What many of these complaining owners fail to understand is that the association's insurance company would not approve a claim or attribute repair costs to a particular storm or other covered event unless their own adjusters first determined that there was significant damage to the property. Further, the association's board of directors would not risk having a claim on the association's policy unless they were certain that there was sufficient damage to justify doing so, given that a negative claims history can impact the association's ability to get insurance in the future. If there is damage caused by an event that is covered by insurance, it is better to file the claim and have the repairs paid for by insurance proceeds rather than allow the damaged property to deteriorate to the point where it has to be repaired or replaced at a later date when there are no insurance proceeds available to help pay for it. Not all boards understand this point or may feel pressured by the owners to seek out other options to avoid the large loss assessment.

In many states, the law requires the association to promptly repair or replace all portions of the property damaged in an insurable event unless a super-majority (typically at least 80%) of the owners vote not to repair or replace the damage, or vote to terminate the community association.[14] Often the governing documents also mandate that repairs covered under the master insurance policy must be coordinated by the community association. So, choosing not to repair is not a viable option either. Plus, once the association is aware of needed repairs, it must disclose those to new buyers and on any Fannie/Freddie condo questionnaires, which can lead to the association being blacklisted due to having deferred maintenance, not to mention that any portion of the property that is not repaired from known damage will not be insurable going forward.

**I. Navigating the deductible.** There are ways that associations can maximize the effective use of insurance proceeds for both the association and the unit owner(s). First, it should be noted that the deductible isn't a bill, chargeback, or invoice. It is a portion of covered repair costs that were deducted from the payment of a claim (property claim specifically). Boards may need to shift their thinking to consider what the association would be obligated to pay for repairs if there were no such thing as insurance. Absent a liability allegation, the association would pay to repair the common elements and, depending on the type of property, certain portions of the owner's units, as defined in the governing documents, and the owner would pay to repair the remaining portions of their unit.

If an association "pays" the deductible by providing funds to a contractor, and then assesses that amount back to the owner, the association has potentially removed the owner's opportunity to benefit from their own HO6 policy. This type of assessment is not typically covered under loss assessment coverage if the assessment is not levied against all units in the association, so the action could leave the owner with a significant bill that needs to be paid out of pocket.

Insurance carriers are not concerned with where the loss originated, who "caused" the loss, who's "fault" it was, or which party maintains the item that failed. Carriers ask three questions: 1)Was the damage caused by a covered event? 2)Was the damaged property covered under our policy? 3)Was the cost of mitigation and repairs in excess of the deductible? If the answer to all three questions is "yes," the carrier will issue payment for the covered cost of mitigation, remediation, and repair, less the policy deductible.

The following is a suggested plan to implement for the next property loss affecting only one or a few units. First, from the available insurance proceeds the association should pay for the

[14] See Section 3-113(h) of the Uniform Common Interest Ownership Act.

emergency services, dry-out, and clean up invoices. Then, the association can pay contractors for the repair of covered common property such as the exterior structure, property within the perimeter wall, and interior drywall installation. Finally, provide any remaining proceeds to the owner or, better yet, pay the owner's contractor directly for repairs to the unit. When the insurance proceeds from the master policy are exhausted, the remaining property left to be repaired is inside the owner's unit, which is property the owner is responsible for. The owner can tender their loss to their own insurance carrier and have it paid as a property claim rather than as a loss assessment that may not be covered under the unit owner's HO6 policy. This helps ensure that there is coverage for the repairs and avoids disputes between the insurance carriers as to who is responsible for what repairs.

## J. Legislative response to insurance crisis

### CAI California Legislative Action Committee

CLAC is actively working with legislators, the California Department of Insurance (DOI), and the California Fair Plan (CFP) on solutions that invite preferred carriers back to the state. The CFP is revising practices to allow for the writing of up to $20M of coverage per location (i.e., per building), with a total exposure of up to $100M total insurable value. This practice has not yet been implemented; it remains to be seen if it will be a financial fix for an association, and the CFP solvency is often questioned[15].

The California DOI announced changes in rating factors it will allow carriers to use to set premiums, particularly moving to the allowance of predictive modeling and away from historical modeling. This change in rating factors will help carriers forecast future exposure rather than rely on outdated data and techniques. That is, as long as carriers increase their underwriting in distressed areas dramatically. The potential to use updated modeling techniques is currently tied to writing insurance in high-exposure areas.

Improved exposure mapping will be used in the future to "fine tune" the actual area of risks of loss. The current practice is very generalized, and improved mapping will be more specific to incorporate things like building fire hardening (addressing building components that would make it more difficult for a fire to damage the building) and defensible space (a perimeter around a building clear of brush fire fuel). A major challenge is that the city maintains most of the areas surrounding a community, and the community association has no control over the maintenance schedule.

The most radical solution available is a definition of wildfire. The insurance industry does not define wildfire distinctly from any other type of fire. A definition of wildfire would allow carriers to exclude specific types of fires or exclude fire in general and add back coverage for types of fires the carrier is willing to cover. Then, the insured can purchase a separate wildfire insurance policy like we purchase earthquake or other catastrophe insurance today.

[15] Stipulation and Order No. 2024-2 Promulgating the California Fair Plan Association's Revised Plan of Operation

**Florida Legislative Activities regarding Insurance**

State legislators are well aware of the impact of the insurance market on their constituents. Using 2019 as a starting point and Florida as an example, efforts to increase the availability and affordability of insurance coverage for homeowners generally and community associations continue in light of weather events and other factors. According to the Florida Office of Insurance Regulation (OIR), Florida domestic property insurers were predicted to double their losses from 2019 to 2020, continuing the trend of net underwriting losses for five straight years. In actuality, the net underwriting losses of about $400 million in 2019 increased to over $120 million in 2020.[16]

In 2019, the law established restrictions on Assignment of Benefits (AOB), but in 2022 the law changed to prohibit policyholders from assigning any post-loss benefits of a residential or commercial property insurance contract issued or renewed on or after January 1, 2023. The 2019 changes included disclosures and requiring insurance carriers to include a specific notice if the policy did not include law and ordinance coverage and/or flood insurance with the goal of educating consumers about the importance of these coverages.[17]

In 2020 the law specifically defined terms such as "loss run statement" and required both admitted and surplus lines carriers to furnish insureds with this information without charge. There were also changes to the Florida Insurance Guaranty Association (FIGA).[18] Florida law provides for this guarantee association to protect policyholders of insolvent insurers with respect to insurance premiums paid and settlement of outstanding claims. Admitted carriers are required to participate in the guaranty association as a condition of transacting insurance business in Florida. FIGA issues guarantee fund payments for all lines of property and casualty insurance, including policies written to condominium associations, with certain exceptions. FIGA's coverage was capped at $100,000 per unit for condominium association policies, when $200k was available to individual homeowners. Notwithstanding, losses continued. The State Insurance Commissioner attributed losses and increased premiums to claims litigation, claims solicitation and reduced reserve income, so the legislators went back to the drawing board in 2021 with a whole slew of proposals. One way to tackle costs was to reign in awards of attorney's fees to claimants. The legislature limited fee recovery for claims against a property insurance policy or a surplus lines policy using the "lodestar" calculation (determined by multiplying the number of hours reasonably worked by a reasonable hourly rate) and disallowing multipliers under certain circumstances. Carriers were given a break with respect to roof claims allowing adjustment of claims on roofs 10-years old or older based on a roof covering reimbursement schedule or to a stated amount without, rather than having to offer a policy that provided replacement cost adjustment for an older roof. The time to submit an original, supplemental, or to reopen a claim was reduced from 3 to 2 years. The legislature likewise weakened collateral requirements and gave carriers credit for reinsurance in reciprocal jurisdictions.

[16] Florida Office of Insurance Regulation, *Property Insurance Stability Report*, July 1, 2022
[17] House of Representatives Staff Analysis of Bill CS/HB 617, April 4, 2019
[18] Florida Statutes, Section 631.57

The 2021 property insurance reforms attempted to address upsurges in roof claims by prohibiting contractors, and persons acting on behalf of contractors, from soliciting residential property owners by regulating advertisements, prohibiting:

· Advertisements or communications encouraging, instructing, or inducing a consumer to contact a contractor to file an insurance claim for roof damage;

· Offering the residential property owner consideration to perform a roof inspection or file an insurance claim;

· Offering or receiving consideration for referrals when property insurance proceeds are payable;

· Engaging in unlicensed public adjusting; and

· Requiring the insured to sign an authorization agreement without a good faith estimate of the damage.[19]

In 2022 the legislature reduced loss run statements from 5 years to 3 years and created the Hurricane Loss Mitigation Program making funds available to construct new shelters in addition to for hurricane mitigation purposes like retrofitting public facilities to use as shelters and programs for improving wind resistance of mobile homes. The real changes happened at the special session later in that year. This is when SB-4d was adopted. Carriers were now permitted to have separate roof deductibles of up to 2% of the coverage limit or 50% of the cost of the roof rather than full replacement cost, and building code requirements were relaxed, allowing property owners to replace portions of damaged roofs rather than bring the entire roof up to the current code. Policyholders were entitled to a credit or discount if they chose one of these alternative options. Carriers were prohibited from refusing to issue/renew homeowners' policy solely if the roof was 15 years old. If the roof was older, the carrier was required to allow the homeowner to obtain an inspection report indicating there was 5 years remaining of useful life.[20]

The Florida legislature granted $2 billion of reinsurance (RAP) in an effort to cause carriers to reduce premiums in the 2022 special session. It reauthorized the My Safe Florida Home Program and dedicated most of the funds to hurricane mitigation inspections and grants. This year was particularly harsh on public adjusters or contractors, prohibiting certain solicitations and warning policyholders that promises to waive or pay the deductible constituted a crime. The 2022 laws also addressed claims handling, requiring carriers to perform inspections within 45 days (other than hurricanes), requiring the carriers to notify insureds they could review the adjuster's estimate of loss, and requiring the carrier to explain if they deviated from the adjuster's estimate. The fraud discovered and reported on the 60 Minutes program is particularly egregious with this law in place. In fact, the Chief Financial Officer for the State issued an emergency

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[19] Florida Senate, Bill Analysis and Fiscal Impact Statement CS/CS/SB 1598, April 18, 2021, codified into Section 626.854, Florida Statutes

[20] Laws of Florida, Ch. 2022-268; Sections 627.701 & 7011, Florida Statutes

order in October 2024[21] after Hurricanes Helene and Milton, prohibiting desk adjusters from modifying initial estimates prepared by field adjusters unless the revised estimate:

· Indicates all estimates of loss that have been modified from any prior estimate,

· Provides a detailed explanation as to why each change was made; and

· Includes the identity of the adjuster who is responsible for each change to an estimate.

There were additional efforts to reign in claims and attorney fee awards, to wit:

- Claimants filing suit under an AOB were precluded from recovering prevailing party attorney's fees;

- Carriers were permitted to recover attorney's fees if the claimant failed to abide by all protocols for notice of a claim;

- The amount of attorney's fees recoverable by a successful claimant were limited

    - If the claimant recovers less than 20% more than a carrier's pre-suit offer, each side bears its own attorney's fees and costs;

    - If the claimant recovers at least 20% but less than 50% more than the disputed amount, attorney's fees are prorated based on the amount of the award; and

    - The carrier is only liable for all attorney's fees if the claimant recovers over 50% more than the disputed amount.[22]

Apparently these limitations weren't enough to satisfy the industry, so in 2023 Florida Statute Sections 627.428, 626.9373, and 627.70152 which govern suits brought against admitted and surplus carriers, respectively, were revised to plainly state that "there is no right to attorney fees under" those sections. [23]

Legislation in 2024 gave the Department of Financial Services (DFS) increased oversight of surplus lines carriers by requiring them to respond to consumer complaints and identify a responsible person to handle them, failing which administrative penalties (max $5k) may be imposed. Public adjuster advertising was addressed again and specified that unlicensed adjusters were prohibited from participating in the claims process.[24]

2024 changes require sellers to furnish purchasers with a disclosure at or before entering into a contract that says:

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[21] Hurricane Milton CFO Emergency Rule 69BER24-4
[22] Laws of Florida, Ch. 2022-268; Section 627.70152(8), Florida Statutes (2022)
[23] Laws of Florida, Ch. 2022-271; (Reinstated application of civil offer of judgment statute to actions arising under a residential or commercial property insurance policy)
[24] Laws of Florida, Ch. 2024-139l Section 626.8796(2), Florida Statutes

1. Homeowner's coverage does not include flood, encouraging the buyer to discuss coverage with their agent;

2. Whether the seller has ever filed a flood insurance claim on the property; and

3. Whether the seller received federal assistance for flood damage to the property.[25]

This is important, as a carrier may deny a claim under the standard NFIP policy if there is damage to the same property included in a previous claim, even if that loss occurred prior to the insured's ownership.[26]

**Other Legislative efforts:**

Hawaii acknowledges the difficulties associated with insurance coverage and premiums. Major revisions to regulating property insurance were introduced in 2024 in SB 3234, but did not pass the Legislature. This bill would have amended laws relating to the Hawaii Hurricane Relief Fund and the Hawaii Property Insurance Association by imposing a different transient accommodation tax rate for transient vacation rentals. The bill would have imposed a property insurance surcharge on conveyance tax and a temporary property insurance stabilization fee on real property transactions to capitalize the Hawaii Property Insurance Association and Hawaii Hurricane Relief Fund.[27] Another pending 2024 bill would require the Insurance Commissioner to conduct a study regarding property insurance stabilization and identify methods for capitalizing a new condo insurance fund (insurer of last resort), assess current hurricane insurance and propose enforcement techniques to ensure that condominiums properly maintain and repair the condominium property, but the report is not due until 2026.[28] Similarly, legislation passed in Colorado in 2024 also requires a study of the market for property and casualty insurance policies issued by insurers to common interest community associations, but like Hawaii, that report is also due in 2026.[29] It instructs the commissioner to come up with recommendations regarding potential measures and programs to ensure the long-term sustainability and availability of property and casualty insurance policies issued to associations and owners, and whether the formation of a captive insurance company would impact current market conditions. Hawaii's Governor took this concept further by issuing a Second Proclamation Relating to Condominium Insurance Stabilization which authorizes the Hawaii Hurricane Relief Fund and the Hawaii Property Insurance Association to issue master policies to condominium associations.[30] The Proclamation authorizes appropriations and loans to effectuate the issuance of insurance policies. As referenced above, the Minnesota legislature addressed the loss assessment issue in 2024 by clarifying that if the owner of the unit at the time of the physical loss to the property is also the owner at the time that the loss assessment is levied, then that owner's insurer must cover the assessment (assuming the owner has appropriate coverage), but if

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[25] Laws of Florida, Ch. 2024-125; Section 689.302, Florida Statutes

[26] Policyholders can request a copy of the claim history for a property they insure with through NFIP, but prospective property holders (buyers) cannot obtain a claims history from FEMA on a structure they do not own. Florida News, *Florida family blames loophole in National Flood Insurance policy for coverage denial*, August 30, 2024

[27] SB3234 SD1 HD2, Relating to the Stabilization of Property Insurance

[28] HB2686 HD1 SD2

[29] HB 24-1108 codified into law as Section 10-4-122, Colorado Revised Statutes

[30] Proclamation #24-10018, October 4, 2024

the owner at the time of the assessment is different than the owner at the time of the physical loss, the policy in place at the time the assessment is levied is the applicable policy.[31]

Minnesota also took on the insurance restoration contractors in 2024 by requiring them to provide the customer with a "good faith estimate of the itemized and detailed cost of services and materials undertaken pursuant to a property and casualty claim" prior to signing an insurance repair contract.[32] The contractor must also notify the customer of this requirement. Failure to comply can result in the contractor's later estimate being disregarded by the insurance adjuster. This change in the law was aimed at the so-called "storm chasers" who come in from out of state seeking to take advantage of homeowners after a large storm by forcing them to sign an insurance proceeds contract[33] before they even determine if the property has sustained damage and then disappear after the work is done and they collect their payment. This practice has increased the number of insurance claims that are filed by property owners that may not even have measurable damage to their properties and would otherwise not have filed a claim if they knew it would be denied or the amount of damage does not exceed their deductible. Even if a claim is denied, the insurance company incurs significant costs in processing and investigating each of these claims, so this measure is intended to save on these costs.

A cursory review of state-by-state legislative initiatives shows a focus on insurance carrier transparency and disclosures. For example, both Louisiana and California require carriers to disclose claim-related documents. In California, the Code defines "claim-related documents" as those that "relate to the evaluation of damages, including, but not limited to, repair and replacement estimates and bids, appraisals, scopes of loss, drawings, plans, reports, third-party findings on the amount of loss, covered damages, and costs".[34] Louisiana goes even further in revisions to the bad faith statutes by requiring the insurance company to furnish a claimant with the field adjuster's report within 15 days of receipt of a request therefor. Pending legislation in New York would direct the state to issue a consumer guide on insuring against catastrophic losses and a homeowners' bill of rights requiring the carrier to issue specific disclosures explaining, among other things:

- coverage or lack of coverage for specific losses;
- deductibles;
- exclusions from coverage and circumstances that would invalidate coverage;
- instructions and timelines for pursuing claims;
- rights to challenge denial or amount of carrier's offer;
- notice of how a state of emergency impacts a claim; and

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[31] Minn.Stat. 65A.3025.

[32] See Minn. Stat. § 325E.66, Subd. 1

[33] This refers to a contract whereby the contractor agrees to perform the repairs based on the scope and price to be determined and approved at a later date by the homeowner's insurance company after the claim is adjusted.

[34] California Code, Insurance Code - INS §10082.3

· how to obtain coverage for excluded claims.[35]

There seems to be another trend emerging in state legislation that concerns discrimination based on the affordability of residential buildings. New York amended its law in 2024 to prohibit carriers from requiring information about subsidies or income limitations in connection with the application for insurance coverage.[36] The Pennsylvania bill introduced in 2024 would prohibit discrimination in connection with renewal, cancellation and refusal to issue homeowners' policies based on typical discriminatory classifications including disability status, but also includes the specific geographic area of the housing or on the basis of 2 or fewer claims within a 36 month period.[37]

**M. Suggested solutions**

As states continue to contemplate various legislative solutions to the insurance crisis, community associations have to navigate the existing laws and their governing documents to find ways to obtain and pay for appropriate insurance coverage and to manage expectations of the homeowners on whom the cost is falling. Community association lawyers and insurance agents have to be creative and think outside the box to guide their clients through some of these tricky issues. Below are some work-arounds that the authors have used to deal with some tough insurance situations. Suggested language for some of these solutions can be found in the attached appendix.

- Amend the governing documents to define when a master insurance policy is "reasonably available" to clarify that the community association is not required to obtain coverage if it is unavailable ***or if it is cost-prohibitive*** and require the unit owners to obtain full property coverage for their unit upon notice by the association that such coverage under a master policy is not reasonably available. This works best in properties not using a condominium-style plat, since unit owners typically cannot insure the common elements.
- If limits on increasing assessments are in the governing documents but not required by statute, amend the governing documents to eliminate the cap altogether, increase the amount by which assessments can be raised without a vote of the owners and/or exempt assessments to address insurance premiums from the limit. If the policy year does not align with the association's fiscal year, include language allowing the association to levy the insurance premiums separately from the annual assessment at the time that the policy renews.
- Amend Insurance Section language to give the board discretion over the coverage the board is required to purchase as it relates to interior fixtures of a unit. This is intended to avoid situations of associations being over-insured for items or elements over which they have no maintenance or other responsibility.[38]

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[35] The Department of Financial Services recently issued guidance promoting the development of discounts to encourage homeowners to invest in loss mitigation. City & State New York, *New York cracks down on insurance discrimination*, December 17, 2024.
[36] N.Y. Insurance Law § 3462
[37] HB 2379 PA,
[38] Note that many insurance agents are taught to write the master policy in accordance with whatever is required by the governing documents and don't know what to do when they see language in the governing documents that

- Ensure that the governing documents contain authority for the association to require changes or upgrades to electrical or other components within the owner's unit that may be necessary in order for the association to get insurance coverage.
- If allowed under state law, include language in the governing documents authorizing the association to assess the insurance costs based on coverage or risk and/or to assess to a unit owner the difference in premiums resulting from the owner's actions or omissions.

allows the board to choose the level of coverage, so this may require some education of those agents in order to ensure proper coverage.

## APPENDIX

1. The following is proposed language to include in the declaration regarding required coverage, including a definition of "reasonably available" and language requiring owners to insure their own units if a master policy is not reasonably available:

"Required Coverage. The Association shall obtain and maintain, to the extent reasonably available, a master policy or policies of insurance in accordance with the insurance requirements set forth in the Act and the additional requirements set forth herein, issued by a reputable insurance company or companies authorized to do business in the State of ___________, as follows:

a. Property insurance in broad form covering all risks of physical loss in an amount equal to one hundred percent (100%) of the insurable "replacement cost" of the Property (including Units and Common Elements), less deductibles, exclusive of land, footings, excavation and other items normally excluded from coverage (but including all building service equipment and machinery). The insurance *may, but need not*, cover the following items within the Units: (i) ceiling or wall finishing materials, (ii) finished flooring, (iii) cabinetry, (iv) finished millwork, (v) electrical, heating, ventilating, and air conditioning equipment, and plumbing fixtures serving a single Unit, (vi) built-in appliances, or (vii) other improvements and betterments, regardless of when installed. If permitted by the insurer providing the master policy, such improvements and betterments as to any given Unit may, at the direction and expense of the Owner of such Unit, be insured under a rider to the master policy. The policy or policies shall cover personal property owned by the Association. The policy or policies shall also contain "Inflation Guard" and "Agreed Amount" endorsements, if reasonably available. Such policy or policies shall include such additional endorsements, coverages and limits with respect to the foregoing and other hazards as may be required from time to time by the regulations of the Federal Housing Administration ("FHA"), Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC") as a precondition to their insuring, purchasing or financing a mortgage on a Unit. The Board may also, on behalf of the Association, enter into binding written agreements with a mortgagee, insurer or servicer, including without limitation the FHA, FNMA or FHLMC, obligating the Association to keep certain specified coverages or endorsements in effect.

If the insurance described in this subsection is not reasonably available to the Association due to it being unavailable or unreasonably expensive, the association shall promptly cause notice of that fact to be sent to all Unit Owners and instruct each Unit Owner to obtain broad form property coverage for their individual Unit in an amount equal to 100% of the insurable replacement cost of the Unit, less deductibles and exclusive of land, footings, excavation and other items normally excluded from coverage."

2. The following is suggested language for "insurable interest" for use with "townhome" style condominiums with issues securing insurance coverage.[39] The language is intended to

[39] This language is an example from California.

assist with explaining what the owner's interest is, to fill gaps where the association is not able to insure:

"Insurable Interest" is defined in section 281 of the Insurance Code as "Every interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured, is an insurable interest." Simply phrased, an Insurable Interest exists when the insured has a direct monetary interest in the preservation of the property and will suffer a monetary loss as an immediate and proximate result of this destruction.

3. The following is proposed language to include in the declaration qualifying the Board's responsibilities related to required coverage[40]:

"The Board of Directors must attempt to procure the insurance coverage as specified in this Article, but when any such insurance coverage is not available or affordable, in the sole discretion of the Board of Directors, the Board must seek to obtain the best available insurance the Board in its discretion believes the Association can reasonably afford."

4. The following language addresses the ability of the association to levy insurance premiums separately from the annual assessments:

"Premiums; Improvements; Deductibles. All insurance premiums shall be assessed and paid as a Common Expense, provided, however, that premiums may be assessed annually, separate from the annual assessments. As provided in Section  of this Declaration, the insurance need not cover improvements and betterments to the Units installed by Owners, but if improvements and betterments are covered, any increased cost may be assessed against the Units affected. The Association may, in the case of a claim for damage to a Unit, (i) pay the deductible amount as a Common Expense, (ii) assess the deductible amount against the Units affected in any reasonable manner, or (iii) require the Owners of the Units affected to pay the deductible amount directly."

5. In conjunction with the first example above, the following language requires unit owners to maintain an HO6 policy unless a master policy is not reasonably available, in which case the owners are required to obtain full property coverage for their unit:

"Owner's Personal Insurance. Each Owner shall obtain additional personal insurance coverage at his or her own expense covering fire and other casualty to the Unit, personal property or personal liability, as well as those items set forth in Section  hereof which are not covered by the Association's policy or policies. In addition, such coverage shall include loss assessment coverage in an amount at least equal to the applicable deductible under the Association's policy or policies. Each Owner shall be responsible for any deductible or related expenses to said personal property or personal liability insurance coverage. All insurance policies maintained by Owners shall provide that they are without contribution as against the insurance purchased by the Association. In the event that the Association notifies the Owners that insurance required to be maintained by the Association under  is not reasonably available, each Owner shall obtain at

[40] This is sample language from California.

his/her own expense full property coverage for that Owner's Unit as set forth therein and shall continue said coverage in full force and effect until such time as the Association notifies the Owners that said coverage by the Association is available and in effect. Additionally, Owners should obtain such other insurance coverage as they deem appropriate including, but not limited to, utility service line coverage and water/sewer backup coverage."

6. In conjunction with the second example above, the following language requires unit owners to maintain supplemental insurance to cover their "insurable interest" when the association is unable to procure insurance:

"Supplemental Member Insurance. Rising costs and unprecedented difficulties in obtaining insurance throughout the State of California became an issue in the early 2020's.

Given the Insurable Interest that Members have in their Units, the Board recommends additional property insurance to be carried by Members to supplement the Association's insurance. This supplemental insurance would cover the portions of Common Area Buildings containing Units from loss or damage by fire or other perils covered by the Association's insurance standard "Special Form" policy (or its equivalent). Whether or not supplemental insurance is generally available, the portions of the Common Area Buildings containing Units are an Insurable Interest to each Member, to the degree that each Member has a 1/____ ownership interest in the Common Area. Should the Association's property insurance be inadequate to cover the reconstruction costs of the portions of the Common Area Buildings containing Units, a Member's supplemental insurance will be the property of the Member and is not allocated to other Units."

7. The following is sample language exempting the cost of insurance premiums from the limitation on increasing assessments without an owner vote and again clarifying that the insurance premiums may be assessed separately from the annual assessment:

"Annual Assessments. Annual assessments shall be established and levied by the Board, subject only to the limitations set forth in Sections . Notwithstanding the foregoing, the increase in the annual assessment for any year (exclusive of increases resulting from increases in insurance premiums, which may be assessed separate from annual assessments) shall not exceed twenty percent (20%) of the total annual assessment for the Association's previous fiscal year unless such increase is approved by the vote of a majority of those Owners voting by mail/electronic ballot or in person or by proxy, at a meeting called for that purpose. Written notice of any such meeting shall be sent to all Owners not less than 21 days nor more than 30 days in advance of the meeting. Each annual assessment shall cover all of the anticipated Common Expenses of the Association for the year. Annual assessments shall provide, among other things, for contributions to a separate replacement reserve fund sufficient to cover the periodic cost of replacement of those parts of the CIC which the Association is obligated to replace by reason of wear and tear or obsolescence and may include contributions to one or more operating reserve account(s)."

8. Here is sample language that should authorize an association to require owners to repair or replace electric panels or other components within the owner's unit that are a safety hazard and/or causing an increase in insurance premiums or loss of insurance coverage:

“No use shall be made of the Property which would violate any then existing municipal codes or ordinances, or state or federal laws, nor shall any act or use be permitted which could cause waste to the Property, cause a material increase in insurance rates on the Property, or otherwise cause any unusual liability, health or safety risk, or expense, for the Association or any Owner or Occupant.”

“Nothing shall be done or kept in any Unit or the Common Elements which will increase the rate of insurance on the property, or the contents thereof, or result in increased water, sewer or other utility charges being incurred by or on behalf of the Association, without the prior written consent of the Board of Directors of the Association. No Unit Owner or Occupant of a Unit shall permit anything to be done or kept in any Unit or the Common Elements which will result in the cancellation of insurance on the property, or contents thereof, or which will be in violation of applicable law or ordinance. No waste shall be committed in the Common Elements. No Unit Owner shall make any improvement or alterations to his or her Unit that impair the structural integrity or mechanical systems or lessen the support of any portion of the property.”