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### **GENERAL EXPLANATION OF CONDOMINIUM INSURANCE REQUIREMENTS UNDER NEW INSURANCE STATUTE 718.111 (11) EFFECTIVE JANUARY 1, 2004©**

As of January 1, 2004 the amendments to Section 718.111 (11) Florida Statutes, became law. This law replaces all pre-existing insurance responsibility provisions found in the governing documents of all Condominiums. The new law was intended to more clearly define the insurance responsibility between the Association and the Unit Owner. Any contrary language found in the governing documents of the Association is irrelevant. This law controls. This subject is very complex and is too much to explain in this short space but I will give you the highlights.

First, and this is critical to understand, who has to maintain, repair and replace something is different and distinct from who has to insure it. It is apples and oranges. For example who has to maintain, repair and replace the interior partition dry wall in a Unit (the unit owner or the Association) IS controlled by your Declaration of Condominium. However, who has to insure the interior partition drywall in the Unit (the unit owner or the Association) IS NOT controlled by your Declaration of Condominium. The responsibility to insure is completely controlled by Section 718.111(11) of the Condominium Act.

As for who has to insure the interior drywall in the Unit I do not even need to look at your documents. The Condominium Act controls. Sections 718.111(11) (b) (1), (2) and (3) provide that the Association insures all "condominium property" including everything in the unit except for "floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner and heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a unit and serve only one unit and all air conditioning compressors that service only an individual unit, whether or not located within the unit boundaries." "Condominium property" is defined in 718.103(13) as "lands, leaseholds and personal property that are subjected to the condominium form of ownership . . . and all improvements thereon . . ." Interior partition drywall, windows and doors are considered "condominium property." Personal property of the

owner within a unit (e.g. TV's, beds, couches, clothes, stamp collections etc.) are not "subjected to the condominium form of ownership" and thus are also not covered by the Association's insurance.

This Section 718.111(11) completely replaces your Declaration on this subject. However, again remember who has to insure is different than who has to maintain, repair or replace. Your documents likely require the owner to maintain, repair and replace the partition drywall within the Unit. Thus, it is common to find that while the Association insures the interior drywall the unit owner is responsible to maintain, repair and replace it. This can lead to a scenario where the Association receives the insurance proceeds for the covered loss but must pay the proceeds to the owner for the repairs he or she makes. However, before this is done you must check the documents to determine how "repairs made after casualty" are handled. This provision can change the "who has to do the work" burden usually shifting it to the Association. Keep in mind a repair made as a result of a casualty as opposed to the drywall being intentionally damaged is not the same thing.

Although the Condominium Act now requires the Association to insure interior partition drywall, sometimes while the damage may be a covered loss under the Association's insurance policy the cost of the damage is below the insurance deductible. In such cases the general consensus among attorneys is that the party who is required under the documents to maintain the item will have to pay for the cost of repair because effectively there is no insurance. Typically, this means that the unit owner will have to pay for casualty damage to interior drywall that falls below the deductible. There is some debate on this point and it has not been tested in Court but that is the general majority opinion.

In cases where the perimeter drywall which is usually a common element is damaged the Association insures it and performs all maintenance and repairs. If the damage is below the deductible then the Association pays for and performs the work.

In cases where the perimeter and interior partition drywall are both damaged the division of responsibilities described above still legally apply. However if the damage is covered by the Association's insurance most Association's simply perform all the work with a single contractor despite the language in the documents. It is recommended however, that the documents be amended to comply with the new insurance law and address the issue of repair after casualty and deductibles more clearly.

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*The foregoing information is general in nature and is not intended as specific legal advice applicable to your Association. Further, the principles of law cited herein are subject to change from time to time. Each case is fact and Condominium document specific.*