

Condominium associations, insurance coverage

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The Honorable Ronald A. Silver
Senator, District 38
115 Northwest 167th Street, 2nd Floor
North Miami Beach, Florida 33169

Dear Senator Silver:

You ask for my comments on whether a condominium association whose bylaws require that it place its insurance coverage with "good and responsible companies, authorized to do business in the State of Florida" may purchase surplus lines insurance.

You state that some condominium associations have clauses in their documents that provide:

"The company or companies with which the association shall place its insurance coverage, as provided in this declaration must be good and responsible companies, authorized to do business in the State of Florida."

There is a question whether such language would preclude the condominium association from purchasing insurance from a surplus lines company since the statutes characterize surplus lines insurers as "unauthorized insurers."

Sections 626.913-626.937, Florida Statutes, the "Surplus Lines Law," has as its stated purpose to

"provide orderly access for the insuring public of this state to insurers not authorized to transact insurance in this state, through only qualified, licensed, and supervised surplus lines agents resident in this state, for insurance coverages and to the extent thereof not procurable from authorized insurers; to protect such authorized insurers, who under the laws of this state must meet certain standards as to policy forms and rates, from unwarranted competition by unauthorized insurers who, in the absence of this law, would not be subject to similar requirements; and for other purposes as set forth in the Surplus Lines Law."^[1]

For purposes of the act, an "[e]ligible surplus lines insurer" is defined as "an unauthorized insurer which has been made eligible by the [D]epartment [of Insurance] to issue insurance coverage under this Surplus Lines Law."^[2]

Section 626.915, Florida Statutes, provides that if insurance coverage for Florida residents or Florida property cannot be procured from authorized insurers, such coverage, commonly known as "surplus lines," may be purchased from unauthorized insurers. The statute imposes four conditions that must be met by a surplus lines insurer to do business in this state:

- "(1) The insurance must be eligible for export[3] under s. 626.916 or s. 626.917;
- (2) The insurer must be an eligible surplus lines insurer under s. 626.917 or s. 626.918;
- (3) The insurance must be so placed through a licensed Florida surplus lines agent; and
- (4) The other applicable provisions of this Surplus Lines Law must be met."

Further, section 626.925, Florida Statutes, specifically recognizes:

"Insurance contracts procured as surplus lines coverages from unauthorized insurers in accordance with this law shall be fully valid and enforceable as to all parties and shall be given acceptance and recognition in all matters and respects to the same effect and extent as like contracts issued by authorized insurers."

Thus, the statute contemplates that surplus lines insurers may transact business in this state under the conditions set forth therein and that such insurance is fully recognized as valid and enforceable to the same extent as insurance contracts issued by authorized insurers.

Accordingly, I am of the view that to the extent that the above conditions are met, surplus lines insurers are "authorized" to provide insurance in this state.[4] Whether, however, an individual condominium association may purchase insurance from surplus lines insurers will depend upon that association's declaration of condominium, articles of incorporation, or bylaws.[5] The lawyers representing the condominium association who are familiar with the association's governing documents may be the best resource for such a determination.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] Section 626.913(2), Fla. Stat.

[2] Section 626.914(2), Fla. Stat.

[3] See s. 626.914(3), Fla. Stat., defining "[t]o export" as "to place, in an unauthorized insurer under this Surplus Lines Law, insurance covering a subject of insurance resident, located, or to be performed in this state."

[4] *But see* 626.924, Fla. Stat., requiring certain information be included on a surplus lines insurance policy to the effect that persons insured by surplus lines carriers do not have the protection of the Florida Insurance Guaranty Act to recover against an insolvent unlicensed insurer.

[5] If the governing documents allow the purchase of surplus lines insurance, the board of directors must exercise reasonable business judgement in deciding whether to purchase surplus

lines coverage rather than conventional insurance that may be available. See *P.S. Farrington v. Casa Solana Condominium Association, Inc.*, 517 So. 2d 70 (Fla. 3d DCA 1987) (board of incorporated condominium association protected by "business judgment rule" so long as board acts in reasonable manner).