



# BECKER & POLIAKOFF COMMUNITY UP-DATE

Legal and Business Strategists

CURRENT NEWS FOR COMMUNITY ASSOCIATIONS

Volume IX - X, 2006

Donna D. Berger, Esq. *Editor*  
David Muller, Esq. *Asst. Editor*

## FLORIDA CONDO & HOA PROPERTY OWNERS CALL ON ELECTED OFFICIALS, STATE GOVERNMENT TO TAKE ACTION ON INSURANCE CRISIS

*RESPONDENTS IN COMMUNITY ASSOCIATION MEMBER SURVEY OVERWHELMINGLY SUPPORT EXPANDED REGULATION OF PRIVATE INSURERS*

**ASSOCIATION LEADERSHIP WARNS COMMUNITIES NEAR BREAKING POINT, AS VOLUNTEER BOARDS STRUGGLE TO COPE WITH ASSESSMENTS, FINANCING & UNPRECEDENTED CASHFLOW**

FT. LAUDERDALE, FL (Wednesday, Oct. 11, 2006) – As Floridians prepare to go to the polls in November, nine out of every ten of the millions of property owners living in condos, homeowner and other community associations statewide say Florida’s elected officials are doing too little to stop the sharp rise in storm-related insurance costs in their communities.

A new poll of residential property owners in Florida community associations conducted online from Sept. 22 through Oct. 1 found that fully 87 percent of respondents said they will be liable for increases in storm-related insurance costs in their communities this year. In a striking departure from conventional wisdom about Floridians’ laissez faire attitude toward economic regulation, nearly two-thirds (64 percent) also said they want more government regulation of the private insurance industry and 61 percent want the State to operate as an alternative to private insurers.

A total of 702 community association property owners responded to the poll in a representative sampling of sentiment over the insurance crisis in Florida’s nearly 68,000 condo, co-op, mobile home, timeshare and homeowner associations statewide. The survey was conducted by the 4,000 association-strong Community Association Leadership Lobby (CALL), a not-for-profit advocacy group established in 2003 by the law firm Becker & Poliakoff to advance the shared interests of Florida’s common-interest ownership communities.

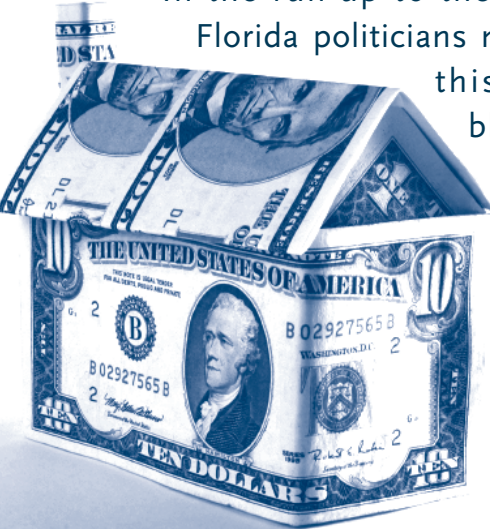
### INDEX

Insurance Crisis .....	1-4
Insurance Increase Survey: Introduction & Methodology .....	5
Survey Questions & Responses .....	6-7
H&H Painting v. Mechanical Masters .....	8

*cont. on page 2*

**INSURANCE CRISIS, cont.**

Nearly half of the survey's respondents (48.2 percent) said they cannot afford to pay the amounts being required of them to cover their share of their community's storm-related insurance costs, while more than two-thirds (68.3 percent) said the increases are leading them or their neighbors to consider selling their property and leaving the state altogether.



“In the run-up to the Nov. 7 elections, Florida politicians must take notice of this powerful voting block of millions of Floridians living in condos, co-ops, HOAs, mobile home and other associations,” said Donna D. Berger, CALL Executive Director and a community association attorney and shareholder with the Ft. Lauderdale law firm of Becker & Poliakoff. “These Floridians are understandably very upset and they are tired of listening to excuses from elected officials who say nothing can be done about this outrageous increase in storm-related insurance costs.”

Community association leaders and experts in the field note that the spiraling storm-related insurance costs are straining Florida's community associations and their volunteer Boards of Directors to the breaking point. Across the state, the insurance crisis has

association leadership struggling to deal with special assessments and outside financing to cover rate hikes and uninsured losses, not to mention the responsibility of managing previously unheard of amounts of cash-flow through association coffers.

“Governor Bush and other elected officials in Tallahassee should spend less time listening to the insurance industry and more time listening to Florida's citizens, who are demanding that public policy-makers act decisively to control rising insurance costs for homeowners statewide,” said Kenneth S. Direktor, community association attorney, shareholder and Chair of the Community Association Practice Group at Becker & Poliakoff, who testified Oct. 4 before the Governor's Insurance Reform Committee in Tallahassee. “Unfortunately, the Insurance Reform Committee appears to be in search of solutions that will accommodate the insurance industry and seems to accept the industry claim that insurance premiums are too low, a concept that is very difficult to explain to community associations and homeowners whose rates have skyrocketed.”

**Additional important findings of the insurance survey show that:**

**\$** 90 percent of respondents said “No” when asked if elected officials are “doing everything they can to keep insurance costs reasonable for homeowners in Florida”;

*cont. on page 3*

**INSURANCE CRISIS, *cont.***

\$ 56.2 percent of respondents said that increased insurance costs due to rising premiums are coming on top of previous monthly fee increases or special assessments levied to cover damages sustained during the 2005 Florida hurricane season;

\$ 50.4 percent of respondents said the increased insurance costs are being passed along to them directly through hikes in their regular monthly association fees, while 23 percent said they are being asked to cover the costs through special assessments; and,

\$ Of the 87 percent of respondents who said their associations faced increased insurance premiums this year, 24 percent also cited additional costs due to uninsured storm-related losses suffered by their community.

Community association leaders throughout the state are alarmed at the implications of the insurance crisis for associations and their elected volunteer Boards of Directors:

\$ In Hallandale Beach, FL, City Commissioner Joe Gibbons, a condo board President who sits on CALL's Members Council and is State Representative-elect for District 105, said: "Volunteer community association Boards and association members are in

crisis over how to cover skyrocketing insurance costs, while also safeguarding community finances against abuses that can occur when so much money is flowing through so few hands. Serious allegations of abuse over storm-related expenditures -- such as those under investigation at Hallandale Beach's Parker Plaza condominium -- send a clear signal that we must aggressively pursue a solution to this insurance crisis, even as we prosecute those who try to profit from insurance-related graft and corruption."

\$ In Naples, FL, Ewing Sutherland, President of Gulfside Condominium Association and board member of the Gulf Shore Association of Condominiums, who also sits on the



CALL Members Council, said: "Spiraling storm-related insurance premiums put a strain on our communities and compromise the ability of elected

*cont. on page 4*

**INSURANCE CRISIS, cont.**

volunteer community association leaders to manage them effectively. Such premiums prevent allocation of sums prudent boards should channel to protective measures to reduce the risk of future hurricane damage and tempt international insurers back to Florida. Skyrocketing insurance premiums, on top of financing, collection and management of huge sums to cover insured and uninsured storm related damages, threaten unnecessarily to fan the flames of contention and spur conflict in even well-governed communities across the state.”

**\$** In Boca Raton, FL, Bonnie Dearborn, a member of the elected Board of Directors at the Homeowners Association of Lands End, who also sits on the CALL Member’s Council, said: “Following last year’s hurricane season, many residents of Florida homeowners associations have been hammered by a combination of uninsured losses for storm-related damage and sky-high hikes in their association’s insurance premiums. This has got to stop and our elected officials must act now if Florida is going to continue to remain attractive for individuals and families seeking secure and affordable lifestyles in our beautiful State.”

More than 4,000 previously identified owners of property in condominiums, homeowners' associations, mobile home communities and cooperatives throughout Florida were invited by email to participate in the insurance survey. The margin of error for the total survey sample of 702 respondents was +/- 3% at the 95% confidence level. The survey results can be seen online at the website of the Community Association Leadership Lobby: [www.callbp.com](http://www.callbp.com)

### **About the Community Association Leadership Lobby (CALL)**



The Community Association Leadership Lobby is the leading organization working to enhance the quality of life and protect property values for Florida's community association residents. CALL advocates on behalf of more than 4,000 member communities, including condominiums, homeowners' associations, mobile home communities and cooperatives throughout the state. More information on the Community Association Leadership Lobby can be found at [www.callbp.com](http://www.callbp.com).

# Survey of Community Association Property Owners on Issues Related to Insurance Increases in Florida

CONDUCTED ONLINE FROM SEPT. 20 – OCT. 1, 2006  
SURVEY RESULTS BASED ON 702 RESPONSES

OCTOBER 11, 2006

## Introduction & Methodology

This survey of Florida Community Association property owners on issues related to insurance rate increases in their communities was conducted online in the state of Florida between September 20 and October 1, 2006, under the auspices of the Community Association Leadership Lobby (CALL).

More than 4,000 previously identified owners of property in Florida common-interest ownership communities -- including condominiums, homeowner associations, cooperatives, mobile homes, timeshare and condo hotels -- were invited by email to participate in the insurance survey.

Participants were directed to an Internet landing page, where their responses were filtered with an initial question asking if the respondent owned property in a condominium, homeowner association or other type of community association in Florida. Those who responded "No" to this question were not allowed to complete the survey.

The results contained in this report are based on the 702 responses from participants who identified themselves as owning property in Florida community associations. Not all respondents answered all questions. The margin of error for the total sample is +/- 3% at the 95% confidence level. The survey was not random.

This survey report has been shared with members of the news media and is available for viewing online at the website of the Community Association Leadership Lobby: [www.callbp.com](http://www.callbp.com)

## Survey Questions and Response Data

Listed below are the actual questions asked and responses collected in the Survey. The number of responses to each question is indicated by R = #.

1. The first question asked if a respondent owned property in a condominium, homeowner association or other type of community association in Florida. Those who responded "No" to this question were not allowed to complete the survey.

### 2. Have you received notification that storm-related insurance costs for your association will be increasing this year?

Percent	Response
87.4%	Yes
12.6%	No

(R = 562)

### 3. If you answered "yes" to #2 above, are those storm-related insurance costs related to:

Percent	Response
0.2%	Uninsured losses
63.6%	Increased insurance premiums
24%	Both uninsured losses and increased insurance premiums
12.2%	Don't know

(R = 500)

### 4. If storm-related insurance costs for your association will be increasing this year, does your association plan to pay for the insurance increase through:

Percent	Response
23.2%	Special assessment of unit owners

50.4%	Increase in monthly regular assessment fees charged to unit owners
-------	--

1.9%	Transfer of funds from association's reserves
------	---

1.5%	Outside financing
------	-------------------

12.6%	Don't know
-------	------------

10.4%	Other (please explain)
-------	------------------------

R = 538)

### 5. If your answer to #4 above was either "special assessment" or "increase in monthly regular assessment," can you afford to pay the amount being required of you?

Percent	Response
48.2%	Yes
22.3%	No
29.6%	Not sure

(R = 467)

### 6. If your answer to #4 above was "outside financing," has your association sought financing from:

Percent	Response
20.7%	Your regular lender

SURVEY, *cont.*

3.6%	U.S. Small Business Administration (SBA)
59.5%	Don't know
16.2%	Other (please explain)

(R = 111)

**7. Are insurance-related increases leading you or your neighbors to consider selling your units/home and moving to another state where insurance rates are lower?**

Percent	Response
68.3%	Yes
31.7%	No

(R = 537)

**8. Were you previously hit with a special assessment or increased monthly fees to pay for storm-related repairs from the 2005 hurricane season?**

Percent	Response
56.2%	Yes
43.8%	No

(R = 553)

**9. Which of the following do you think is most likely to increase the availability of affordable insurance for condos and other community associations in Florida:**

Percent	Response
64.7%	More state government regulation of the private insurance industry

24.8%	Less regulation of the insurance industry by the state – allow the free market to operate
10.4%	Maintain the same level of government oversight

(R = 536)

**10. Do you think the state should operate as an alternative to private insurers and become directly involved in providing affordable property insurance?**

Percent	Response
60.6%	Yes
39.4%	No

(R = 548)

**11. Are our elected officials doing everything they can to keep insurance costs reasonable for homeowners in Florida?**

Percent	Response
10%	Yes
90%	No

(R = 532)

- END -

# H & H Painting & Waterproofing Co. v. Mechanic Masters, Inc.

923 SO. 2D 1227 (FLA. 4TH DCA 2006)

By: Aaron J. Pruss, Esq.

The Court determined whether, in a lease for construction equipment, the lessee agreed to indemnify the lessor for the lessor's own negligence.

H & H Painting leased a 20-foot scissor lift from Mechanic Masters for \$350.00 per month. The lease agreement contained an indemnity provision which provided, in pertinent part:

Lessee shall indemnify and hold Lessor harmless from any claims of third parties for loss, injury and damage to their persons and property arising out of Lessee's possession, use, maintenance or return of Equipment, including legal costs incurred in defense of such claims.

An employee of H & H fell off the lift and was injured. That employee filed suit against Mechanic Masters claiming his employer's negligence caused his injuries. Mechanic Masters thereafter filed a Third Party Complaint against H & H seeking contractual indemnification. The Court analyzed several other cases involving similar circumstances and identified the general rule that language must be clear and unequivocal if the parties intend to provide indemnification for consequences arising from affirmative misconduct. In applying the general rule, the H&H Court held that the lease lacked the clear and unequivocal language necessary to require that the lessee indemnify the lessor. The Court reasoned that the language "lessee shall indemnify and hold lessor harmless from any claims of third parties" was too general and not the clear expression of intent required to obligate the lessor to indemnify for the lessee's negligence. The Court also noted that if a contractual indemnity provision requires reference to other parts of the contract to ascertain its meaning, it necessarily does not contain the clear and unequivocal terms required for indemnification.

