



GOVERNMENT OF PUERTO RICO
Office of the Commissioner of Insurance

August 21, 2020

RULING LETTER NO. CN-2020-285-D

TO ALL INSURERS AUTHORIZED TO WRITE PROPERTY AND CASUALTY INSURANCE IN PUERTO RICO, THEIR GENERAL AGENTS, AUTHORIZED REPRESENTATIVES, PRODUCERS, RATING ORGANIZATIONS, AND GENERAL PUBLIC.

RE: AMENDMENT TO RULING LETTER NO. N-AP-8-75-2006; PROPERTY POLICIES FOR CONDOMINIUMS AND APARTMENTS IN CONDOMINIUMS.

Dear Sirs and Madams:

On June 25, 2020, our Office issued Ruling Letter No. CN-2020-281-D, for the purpose of clarifying some of the provisions of Ruling Letter No.: N-AP-8-75-2006, with regard to condominium insurance and the individual rights of owners to insure their own apartments on their own behalf and for their own benefit in light of the provisions of Section 43 of Act No. 104, enacted on June 25, 1958, as amended, the Condominium Act. Ruling Letter No. CN-2020-281-D entered into effect on August 1, 2020, as subsequently established in Ruling Letter CN-2020-284-D. Effective August 1, 2020, and thereafter, strict compliance was required with the guidelines set forth in Ruling Letter No. CN-2020-281-D for placing all insurance policies for condominiums and apartments, whether new policies or renewals.

After Ruling Letter No. CN-2020-281-D went into effect, Act No. 129-2020 was approved on August 16, 2020 to establish the new Condominium Act of Puerto Rico. The new Condominium Act of Puerto Rico, Act No. 129-2020, went into effect upon approval and repealed the previous Condominium Act, Act No. 104, enacted on June 25, 1958, as amended. Upon the approval of the new Condominium Act of Puerto Rico, among other matters, the provisions regarding the acquisition of insurance for condominium risk and the individual rights of owners were now included in the new Section 62 of Act No. 129-2020, in lieu of the previous Section 43 of Act No. 104, enacted on June 25, 1958, as amended and now repealed.

In view of the approval of the new Condominium Act of Puerto Rico, Act No. 129-2020, we are hereby updating the guidelines that were previously established in Ruling Letter No. CN-2020-281-D, in consideration of the new legislation regarding insurance for condominiums and the individual rights of owners. To that end, Ruling Letter No. CN-2020-281-D is hereby repealed, and the guidelines set forth herein are adopted, subject to the following provisions:



I. Condominium Master Policy

1. Condominium insurance and individual rights: With regard to condominium insurance and individual rights of the owners to insure their apartments on their own behalf and for their own benefit, Section 62 of Act No. 129-2020, the Condominium Act of Puerto Rico, reads as follows:

“Section 62. Risk Insurance for Buildings; Individual Rights of Owners

With a majority vote, the **Condominium Association may obtain property insurance for risks covering the general common areas, semi-common areas, and limited areas of the condominium as well as other risk not associated to the private property of the owners, for the common benefit of the owners.** When required by federal and/or state regulation, the Condominium Association must acquire policies to insure the general common areas, semi-common areas, and limited areas of the condominium, including the original private elements that are attached to the structure. **The owners may insure their respective apartments on their own account and for their own benefit.** Owners who have their own insurance for their apartments or who have paid off their mortgages are not exempted from paying the proportional share of any community insurance adopted by the Condominium Association. **The portion of the insurance for the benefit of each owner may be managed individually.**

Any owner may request that the Board of Directors allow an examination of the documents related to community insurance.

The Board of Directors may substitute the insurance representative or producer only if the coverage and conditions of the new insurance have the same or greater scope and benefits and a lower cost than that of the insurance at the time of the change, with prior approval by the Condominium Association. The Association must approve the new insurance policy or renewal by a majority vote.

The Board will be responsible for requesting that the insurance broker provide at least three (3) quotations for each annual renewal and retain evidence of such for at least three (3) years, as well as retaining evidence of any refusal by an insurer to provide a quotation, if any insurer has so refused. This evidence shall be available for review by any owner who so requests.” **(Our emphasis).**

It can be concluded from Section 62 of Act No. 129-2020 that this new legislation reaffirms the authority of the Condominium Association, with the votes of the majority of the owners, to acquire insurance policies to cover the general common areas, the semi-common areas, and the limited areas of the condominium, but such authority does not include determining, imposing, and/or covering under the master policy of the condominium the elements that are the private and individual property of each apartment owner. The language of the act cited here clearly shows the right that owners have to insure the private elements of their apartments on their own

behalf and for their own benefit. In other words, the Condominium Association may not impose on an owner an insurance policy to cover the private elements of the owner's apartment. By the same token, owners are not exempted from the obligation to proportionally contribute to the property insurance that covers the common, semi-common, and limited elements of the condominium, as well as other insurance acquired by the Condominium Association to cover risk such as general liability and liability insurance for directors and officers, among others. We therefore emphasize that the authority of Condominium Associations, according to this legislation, is expressly limited to the acquisition of insurance for the general common areas, the semi-common areas, and the limited areas of the condominium, as well as other risk **not related to the private property of the owners**.

According to the clear text of the first paragraph of Section 62 of the Condominium Act of Puerto Rico, the private elements of the apartments may not be grouped with the common elements and included in the master policy of the condominium. Therefore, the law itself excludes the possibility that the Condominium Association could acquire a policy to cover the common elements along with the private elements of the apartments in a single policy. Thus, **each apartment owner may insure the owner's private property under a policy on his or her own behalf and independently of what the Condominium Association acquires to cover the common elements**. The kind of master policy that is designed to cover the common, semi-common, and limited elements of the condominium is called a "Bare-Wall" policy.

Under Section 62 of Act No. 129-2020, the Condominium Association has the authority to acquire policies and insurance coverage to insure the original private elements that are attached to the structure, **only** when "required by federal and/or state regulations." At this time, we have not found in the federal regulations of the Federal Housing Administration, (FHA) any requirement for the Condominium Association to provide coverage for the private elements of each apartment, within a community policy in the name of the Condominium Association, nor did we find at the state level any regulation by any agency of the Government of Puerto Rico imposing such an obligation on the Condominium Association.¹

Therefore, it is clarified that insofar as there is no federal and/or state regulation that requires the Condominium Association to include in the community policy the original private elements that are attached to the structure, the right of the owners to insure on their own behalf and for their own benefit their respective apartments will prevail. In other words, in the absence of a federal and/or state regulation that provides for such, the Condominium Association has no legal authority to contract for a policy or coverage for the purpose of covering the original private elements that are attached to the structure of the apartments.

2. Coverage limits: With regard to the limit of the insurance to be acquired, it shall be based on the replacement value of all common, semi-common, and limited elements to be insured under

¹ As a reference see *Encarnacion Rosario v. Junta de Directores*, KLRA201400278 in which it is established that Section 43 of the Condominium Act provides that the Condominium Association may insure the common areas but not the private areas. Therefore, if the bank requires an owner to have insurance on private elements, the Condominium Association is not liable for the payment of premiums for such insurance.

the master policy as may be determined by the Condominium Association. The appraisal of the common, semi-common, and limited elements shall be set forth in a detailed report on the elements of the condominium considered in the appraisal along with their respective values, so that an authorized insurance representative or producer that is duly appointed by the Condominium Association may properly advise the client. The Condominium Association of each condominium will be the custodian of the appraisal report and the report shall be available to all owners or any person who is interested in acquiring an apartment in the condominium.

If there is no appraisal showing the replacement value of the condominium, the appointed insurance producer or authorized representative will make arrangements for the appraisal on behalf of the insurer that issues the master policy, thereby duly performing the duties set forth in Section 9.022 of the Puerto Rico Insurance Code, to wit, “to provide clear and complete orientation to consumers on the insurance coverage and limits and to identify and measure the possible loss exposure.” Unless there are extraordinary circumstances that destabilize the market, the OCI will consider that the appraisal of the condominium is valid for a term of two (2) years.

II. Policies available for apartment owners

- 1. Original private elements attached to the structure, and alterations and improvements.** The original private elements that are attached to the structure and their alterations and improvements may be insured by the owners of each apartment, in a policy in their name, to cover such property with the producer or authorized representative appointed by the owner and with the insurer of the owner’s choosing. Thus, the **HO-06** type of homeowners’ policies are designed to cover the original private elements attached to the structure and their alterations and improvements in condominiums and multifamily walk-ups. Insurers that have a Personal Package registered with the OCI to insure such private elements in condominiums and multifamily walk-ups may also be eligible. The DP policies, with or without the DP 17 66 07 88 endorsement, are only eligible for condominiums and walk-ups with 4 units or fewer attached apartments, according to the ISO manuals.

To determine the appropriate limit of this coverage, the owner of each apartment may have an appraisal done of the original private elements, improvements, and alterations for which insurance is being sought, but the owner will not have the obligation to do so. This appraisal may be contained in an itemized report of the elements that were considered in the appraisal along with their respective value. This will allow the insurance producer or the authorized representative of the owner to provide proper orientation for his or her client with regard to the kind of insurance to be acquired, based on the replacement value of all of the private elements to be insured under the apartment policy, as may be determined. If the apartment is financed, the mortgage institution will agree with the mortgagee with regard to the replacement value of the private elements, alterations, and improvements to be insured.

The appraisal report may be drafted by a recognized professional, whether a natural or legal person, who is engaged in such work. The authorized insurance representative or producer selected by the owner may assist the owner in making the arrangements for the appraisal.

2. Policy in excess of the master policy of the condominium when such has been acquired for a limit that is less than the replacement value of the condominium

It must be noted that the endorsements included in Ruling Letter No.: N-AP-8-75-2006, DP Excess 08 06 PRS and HO Excess 08 06 PRS, are only for cases in which the limit of the common, semi-common, and limited condominium elements are not insured for 100% of the replacement cost. **These endorsements must not be used to cover the original private elements attached to the structure or their alterations.** The policies to cover private elements of the owner are primary policies.

It is provided that Ruling Letter No.: CN-2020-281-D, as amended, is hereby repealed and the provisions of Ruling Letter No.: N-AP-8-75-2006 that are not in contravention of the provisions herein will remain in effect.

The provisions of this Ruling Letter will enter into effect immediately upon approval. Strict compliance with the guidelines established herein is required for all community and apartment policies, whether new policies or renewals. Failure to comply with these guidelines may entail the imposition of severe sanctions.

Very truly yours,

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Chief Deputy Commissioner