

## Be Aware of Charley Deadlines

FORT MYERS THE NEWS-PRESS, SEPTEMBER 9, 2004



By Joe Adams

[jadams@becker-poliakoff.com](mailto:jadams@becker-poliakoff.com)

TEL (239) 433-7707

FAX (239) 433-5933

Today is Day 20 on the post-Charley calendar. Life has gotten back to normal for most, but remains like a bad dream for many.

Power and communications have been restored to most areas. Barrier island residents have now had two weeks to assess and address their property, albeit under very difficult conditions through most of that time, including no electricity.

With perhaps exception for the most devastated communities, every condominium association should by now have accomplished the following:

**Dry-In:** The buildings should now be secured from further water intrusion. In many cases, this has been accomplished through temporary roofs and boarded windows and sliding glass doors, which will now need to be replaced.

**Dry-Out:** Every unit should have been inspected by the Association (preferably on several occasions) to insure that there is no moisture in the interior of the units. Moisture that has been detected, whether wet carpets or soggy drywall, should by now have been removed. Drying is typically accomplished through interior climate manipulation, including dehumidification, heating and/or air conditioning. An outside, neutral party should be involved in evaluating the more complex dry-out cases, and the association's insurance adjuster should be involved in all cases.

**Proper Claim Reporting:** Every association and every unit owner should by now have filed their insurance claims through their insurance agent. Be careful to make sure that every carrier with potential responsibility has been put on notice.

**Review by Adjusters:** At Day 20, if the adjuster for the association's master insurance policy has not yet visited the premises, there is a problem which should be discussed immediately with your insurance agent. Hopefully, the vast majority of individual unit owners' insurance adjusters will have inspected and documented conditions of the premises.

**Legal Reviews of the Condominium Documents:** This storm has rendered substantial numbers of units in many complexes uninhabitable, at least for the time being. Many condominium documents trigger automatic "termination" of the condominium if a vote is not taken within a set number of days to preserve the condominium form of ownership. This is an extremely important and consequential legal issue and should be reviewed immediately. There are also other issues you will need to have reviewed, including whether insurance proceeds must be paid to an Insurance Trustee (such as a bank) and how shortfalls in reconstruction costs (such as those due to deductibles) are to be allocated between the association and the unit owner.

**Retention of an Engineer or Architect:** For any association whose buildings have suffered moderate to significant damage, the board is well advised to retain a consultant who is beholden only to the

board, and who has no financial stake in the development of repair specifications. This will typically be an architect or structural engineer, and perhaps some other type of qualified consultant for particular items. In fact, many association governing documents require a reconstruction plan to be prepared by an engineer or architect.

According to recent information released by the insurance industry, Hurricane Charley is expected to be the fourth largest financial di-

saster in history, following only September 11, Hurricane Andrew, and the San Francisco area earthquakes. Due to the sheer magnitude of the catastrophe, there will certainly be many bumps in the road to reconstruction. While boards cannot afford to let grass grow under their feet, lessons from past catastrophes have taught us that hasty or ill-advised decisions in the chaotic post-hurricane environment often result in a disaster of greater magnitude than the storm itself. ☞



**Question:** I have enjoyed your column for many years but never thought I would write in for a problem of my own. The condominium, for which I serve as association treasurer, suffered a great deal of damage as a result of Hurricane Charley. I believe we need to make an insurance claim. Given the damage to the building where the association's records were kept, we have not looked at our policies. However, I remember something about providing notice to the insurance company for any loss. When do I need to provide notice: B.H. (via e-mail)

**A:** Most insurance contractors provide a laundry list of things that an insured must do so as to make a claim, among these is notice to the insurer. The language for notice ranges from policy to policy, but typically provides for "prompt notice," "timely notice," "reasonable notice," "immediate notice" or things along these

lines; although sometimes a specific number of days is set out. Given the situation you are in, the best thing to do is contact your insurance agent and notify them of the potential claim. Also ask your agent for where the notice of claim should be sent, whether to the agent or directly to the insurer. Make sure that you send the notice in writing, and as quickly as possible.

**Question:** I am an insurance adjuster and found your previous article called "Insurance Changes are Some Help" on the Internet. Now that Hurricane Charley has hit, I need to find a copy of the new statute involving condominium insurance. Can you point me in the right direction? P.C. (via e-mail)

**A:** The statute you are referring to is Florida Statute Section 718.111(11). The new law applies to all master condominium insurance policies issued on or after January 1, 2004. If a policy predates January 1, 2004, you may need to look at the old version of the law.

Since I have received numerous requests for the statute, I have reproduced it, in its full text below:

*INSURANCE.--In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, paragraphs (b) and (c) are deemed to apply to every condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this section. Therefore, the Legislature requires a report to be*

*prepared by the Office of Insurance Regulation of the Department of Financial Services for publication 18 months from the effective date of this act, evaluating premium increases or decreases for associations, unit owner premium increases or decreases, recommended changes to better define common areas, or any other information the Office of Insurance Regulation deems appropriate.*

*(a) A unit-owner controlled association shall use its best efforts to obtain and maintain adequate insurance to protect the association, the association property, the common elements, and the condominium property required to be insured by the association pursuant to paragraph (b). If the association is developer controlled, the association shall exercise due diligence to obtain and maintain such insurance. Failure to obtain and maintain adequate insurance during any period of developer control shall constitute a breach of fiduciary responsibility by the developer-appointed members of the board of directors of the association, unless said members can show that despite such failure, they have exercised due diligence. The declaration of condominium as originally recorded, or amended pursuant to procedures provided therein, may require that condominium property consisting of freestanding buildings where there is no more than one building in or on such unit need not be insured by the association if the declaration requires the unit owner to obtain adequate insurance for the condominium property. An association may also obtain and maintain liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance for common elements, association property, and units. Adequate insurance, regardless of any requirement in the declaration of condominium for coverage by the association for "full insurable value," "replacement cost," or the like, may include reasonable deductibles as determined by the board. An association or group of associations may self-insure against claims against the association, the association property, and the condominium property required to be insured by an association, upon compliance with ss. 624.460-624.488. A copy of each policy of insurance in effect shall be made available for inspection by unit owners at reasonable times.*

*(b) Every hazard insurance policy issued or renewed on or after January 1, 2004, to protect the condominium shall provide primary coverage for:*

- 1. All portions of the condominium property located outside the units;*
- 2. The condominium property located inside the units as such property was initially installed, or replacements thereof of like kind and quality and in accordance with the original plans and specifications or, if the original plans and specifications are not available, as they existed at the time the unit was initially conveyed; and*
- 3. All portions of the condominium property for which the declaration of condominium requires coverage by the association.*

*Anything to the contrary notwithstanding, the terms "condominium property," "building," "improvements," "insurable improvements," "common elements," "association property," or any other term found in the declaration of condominium which defines the scope of property or casualty insurance that a condominium association must obtain shall exclude all floor, wall, and ceiling coverings, electrical fixtures, appliances,*

*air conditioner or 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. The foregoing is intended to establish the property or casualty insuring responsibilities of the association and those of the individual unit owner and do not serve to broaden or extend the perils of coverage afforded by any insurance contract provided to the individual unit owner. Beginning January 1, 2004, the association shall have the authority to amend the declaration of condominium, without regard to any requirement for mortgagee approval of amendments affecting insurance requirements, to conform the declaration of condominium to the coverage requirements of this section.*

*(c) Every hazard insurance policy issued or renewed on or after January 1, 2004, to an individual unit owner shall provide that the coverage afforded by such policy is excess over the amount recoverable under any other policy covering the same property. Each insurance policy issued to an individual unit owner providing such coverage shall be without rights of subrogation against the condominium association that operates the condominium in which such unit owner's unit is located. All real or personal property located within the boundaries of the unit owner's unit which is excluded from the coverage to be provided by the association as set forth in paragraph (b) shall be insured by the individual unit owner.*

*(d) The association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. As used in this paragraph, the term "persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign checks and the president, secretary, and treasurer of the association. The association shall bear the cost of bonding.*

---

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

Send questions to Joe Adams by e-mail to [jadams@becker-poliakoff.com](mailto:jadams@becker-poliakoff.com) This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at [www.becker-poliakoff.com](http://www.becker-poliakoff.com)