State Needs to Address Mold Issue

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A natural occurrence since the dawn of time, it is known by many names. Once considered best attacked with a bottle of bleach, its mere mention strikes fear in the heart.

Mold.

According to the Center for Disease Control, there are more than one thousand types of mold which have been found in homes in the United States. Mold is said to thrive in warm, damp, and humid conditions, making Florida one of the most obvious states for mold issues.

After a Texas jury awarded $32 million dollars to a homeowner who had developed illnesses allegedly caused by household mold, a cottage industry was born. From lawyers who advertise for plaintiffs to mold detectives wearing suits that look more appropriate for a mission to the moon, mold has become a multi-billion dollar business.

Of course, insurance companies do not need to get hit on the head too many times with the same stick before they catch on. For the past several years, many insurance companies have been drastically limiting coverage for mold claims in insurance policies, including commercial policies that are written to protect condominium associations which insure most structural aspects of condominium buildings.

At this point in time, it remains to be seen how the insurance industry will treat claims with a mold component when the claims arise from the 2004 hurricanes. In areas like Sanibel Island, for example, roof damage permitted water intrusion. The island was quarantined for a week and most parts were without power for two weeks or more. It rained almost every day after Hurricane Charley. The end result was that virtually every building which sustained damage had some element of mold damage.

Since few (if any) condominium associations have settled their post-Charley insurance claims, the jury is still out on how benevolent or draconian the State's insurers will be when addressing mold issues in post-hurricane reconstruction.

In many cases I have seen, associations tore out wet wallboard in the aftermath of the storm to prevent the spread of mold. In most cases, the insurance companies seem willing to provide coverage. Many insurers seem to agree that a piece of damaged drywall that also happens to have some mold on it, is still damaged, and is therefore covered by insurance.

However, I have also seen a few adjusters who seem poised to wield the "mold exclusion" as a sword, which could have a significant impact on rebuilding costs in some associations.

As was recently reported in the media, Governor Jeb Bush has empanelled a blue ribbon task force to examine the challenges facing Floridians after the 2004 hurricanes. A special session of the Legislature is also a frequent topic of discussion. Undoubtedly, the 2005 Regular Session of the Legislature will be dominated by disaster recovery issues.

In my view, one of the most critical needs for legislative assistance is to provide relief from the mold epidemic. Condominium associations are particularly vulnerable to claims, as they are often seen as well-insured deep pockets. A good place to start would be to make sure that associations can readily and affordably purchase insurance coverage to manage liability exposure. ⚖

Q&A

Question: Our homeowners' association recently held a board meeting to appoint our nominating committee. Unfortunately, the meeting was held during the day when many of our members work. We feel that the board hand-picked the nominating committee, and had the decision made in advance. There are current board members on the committee. We do not feel that our community is being represented. Do we have any recourse in changing the committee? **J.W. (via e-mail)**

Answer: There is nothing in the law about when board meetings need to be held. The board should try to accommodate as many members as it can. There may be some who would not like to go to evening meetings. Ask your board if it can hold at least a certain percentage of its meetings during non-work hours.

If your HOA's bylaws permit the board to appoint a nominating committee, there is probably nothing you can do to change its composition. Remember, any HOA member may nominate himself for election from the floor at the annual meeting. Although more difficult in many cases, floor nominees can solicit proxies and get elected.

I think that nominating committees are susceptible to abuse by a board that wishes to perpetuate its power, and prevent those they see as "trouble makers" from getting elected to the board.

For that reason, when I served on the Governor's HOA Task Force in 2004, I recommended that HOA elections be similar to condominiums, where everyone wishing to run for the board would automatically be entitled to have their name placed on the ballot. To my surprise, that reform to the law was not supported by a majority of the Task Force, including the self-described "consumer advocates."

Question: I am a community association manager. What is your opinion on posting minutes of association board meetings on the community's bulletin board. **T.R. (via e-mail)**

Answer: Although it is not uncommon, I think it is better to make minutes available either by request, or mailed to all owners, or in a secure setting such as a community website.

Although most association minutes are innocuous, there are occasions where there may be "dirty laundry" aired at a board meeting, or where statements are made that someone claims are defamatory.

Minutes posted for outsiders (guests, vendors, etc.) to see would probably enjoy less organizational privilege than those published only to members.

Question: Hurricane Frances caused enormous damage to many of the units our condominium. We have now discovered that Florida law changed regarding insurance coverage and that the association no longer insures many of the items that our documents say the association is supposed to insure. Is the association responsible to inform owners of the changes in our insurance policy? Many owners have no coverage, or in our case, what was originally sufficient no longer is. Did the State of Florida intend to punish condo owners like this? Our board cannot or will not answer our questions. **S.K. (via e-mail)**

Answer: In my opinion, the association is under no affirmative obligation to inform owners of changes in the law, or the association's contracts, including insurance. If you carry personal insurance coverage, your policy is probably called an "HO-6" policy, and is supposed to pick up all damage not covered by the association's policy. If anyone has an affirmative duty to make sure your insurance is up to date, it is most likely you, as the owner of the unit.

I do not think that the changes to Florida's insurance laws for condominiums, which became effective January 1, 2004, were intended to "punish" anyone. The changes were intended to bring consistency in adjusting claims between different condominiums, regardless of the wording in their documents (or interpretations thereof), when the documents were written, and the like. I do think there are some glitches in the recent changes, which will probably be accentuated after adjusting this year's hurricane losses.

You state that many of your owners are uninsured. In my view, that is a huge mistake, and also a disservice to the entire community. While some can afford to "self-insure", many cannot. What then happens is that after a majority calamity, many cannot afford to rebuild the uninsured segments of the property or pay association assessments for rebuilding common property. ⚖

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.

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