



Post-Storm Damage Assessment Conducted

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Today's column continues our case study of hypothetical Hurricane Christi, with the goal of trying to sort out how condominium associations allocate post-hurricane costs.

Christi blew in from the west, and most of the damage was to the west side of the building. Part of the roof lifted up, and was saturated by wind-driven rain. Christi's winds blew out about ten window-walls, the two new impact glass window-walls held up wonderfully. No water entered through sliding glass doors where hurricane shutters were in place, nor where the window-walls held up, although every lanai with exposed screen had all of the screens blown out. About six sliding glass doors that were not protected by hurricane shutters or window-walls (or where window-walls failed) blew in. Two of the bedroom windows failed. Water leaked around some windows which did not fail.

Fortunately, Town leaders were able to quickly ensure that streets were safe for passage and that no other public safety threats existed (overflowing sewers, collapsed roads, etc.) and the Town was open immediately after the hurricane passed. Green Flash Condominium Association was fortunate to have an experienced manager in Godfrey Goodfellow, who had extensive training in disaster preparedness and response.

Following the mantra he had learned to "shore-up", dry-in" and "dry-out", Goodfellow first assured that there were no safety hazards on the property, such as broken glass, jagged metal, or exposed electrical lines.

Having completed the shore-up stage, which fortunately required little work (clearing some landscaping debris), Goodfellow proceeded to the dry-in stage. Being a prepared sort, Goodfellow had the Association's roof registered with a local roofing company, Randy's Roofing, which inspected the Green Flash roof at least once per year, recommended required maintenance, and assisted in planning for the roof's ultimate replacement. Being an existing client of Randy's, Green Flash got first-priority treatment from the roofing contractor. As soon as the torrential rains had stopped, the contractor placed temporary patches on all of the areas where the roof had lifted.

Randy also referred the association to another contractor, Storm Chasers, who were quickly able to temporarily board up the areas where the windows and sliders had blown out, preventing further water intrusion during Southwest Florida's daily rains.

Having shored up, and dried in, it was time for Goodfellow to arrange for the dry-out of the building. Fortunately, Goodfellow had a key to each of the apartments (which was a requirement contained in the original Green Flash condominium documents) and he was able to inspect each apartment after the storm had passed. Goodfellow determined that 22 of the 40 units had some form of water intrusion, some severe, some minor. Because of the volume of rain that came with Christi, a few apartments that had no direct water entry showed signs of water intrusion, from "wicking" from the apartments above.

Although it would be a week before power was restored, Goodfellow also had a pre-existing relationship with a dry-out contractor, Walt's Water Extraction. Walt brought generators, fans, de-humidifiers, and a large crew of workers to dry-out Green Flash. The dry-out contractor ran the fans and de-humidifiers for five days, and declared the building to be moisture-free.

Green Flash, at Goodfellow's insistence, also had a pre-existing arrangement with an independent consultant, Tom Techno, a professional engineer. Techno agreed after the five day period that it was okay to remove the water extraction equipment, and opined that there was a low probability of significant mold infestation.

To this point, the association has spent \$200,000.00 in post-hurricane remediation. Walt, the dry-out contractor, charged \$100,000.00. The cost to Randy's Roofing amounted to about \$50,000.00, but just for the immediate, temporary patch-work. The contractor who cleaned up the property and boarded the windows, Storm Chasers, charged \$25,000.00. The engineering consultant fees for Tom Techno, along with miscellaneous other expenses, ran another \$25,000.00. Remember, Green Flash has an \$800,000.00 deductible.

So far, so good. But, now, it is time to put things back together again. Questions abound about who is authorized (or obligated) to contract for the necessary repair work, and who is going to have to pay for it.

Of course, the association also immediately contacted its insurance agent, Risk, Reward and Associates, who filed

a claim and got a file number from Citizens. There was a promise to send an adjuster out to assess the situation, but the association is warned that the more significantly damaged areas to the south would get first attention.

Always wanting to do things the right way, Green Flash also calls its attorney, John Justice, a local lawyer well respected in the community association law field. The association's first question to Justice is whose insurance is supposed to cover what.

Justice looks at the Declaration of Condominium for Green Flash, and notes, with some chagrin, that the association has not amended its documents since 1974. Apparently, while Green Flash was well-prepared on many fronts, good legal documentation was not one of them. Justice notes that Article 14 of the Declaration of Condominium provides: "The association shall obtain one hundred percent replacement cost coverage for all insurable improvements within the condominium."

Don Dooright, the Green Flash President, asks Justice whether the association's insurance policy will cover the damage which has occurred. Damaged items include the carpeting (some is completely ruined), dry-wall and kitchen cabinets. Of course, the various windows, window-walls and sliding glass doors will also have to be addressed.

Next week, we will continue this study with Justice's legal opinion to Green Flash about the association's insurance obligations under the "new law" which everyone has been talking about. Stay tuned. ■

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 This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.

Using Reserves for Pool Furniture May Not Be Proper

Question: My condominium board is generally prudent with association funds. However, I just learned that they plan on voting next week to spend \$20,000.00 from our reserve fund to purchase pool furniture. Spending all that money without consulting the residents just does not seem right. Is this okay? T.D. (via e-mail)

Answer: In addition to the annual operating expenses, your association has likely included in the association's annual budget an allowance for reserve funds. Florida law allows an association to waive or reduce the funding of reserves (on a year to year basis) by a majority of the owners. If your association has not voted to waive the reserves, then the budget must include reserve accounts for certain capital expenditures and deferred maintenance, including roof replacement, building painting, pavement resurfacing, or any other item where the deferred maintenance expense or replacement cost exceeds \$10,000.00.

All reserve funds, and any interest accruing on them, must remain in the reserve account for authorized reserve expenditures unless their use for non-authorized purposes is approved in advance by a majority vote at a membership meeting. There are some exceptions, but in most cases, your association membership, and not the board, must approve the use of reserve funds to spend on non-authorized purposes. The purchase or replacement of pool furniture from a "statutory" reserve fund would not be proper unless either there is a specific reserve fund for the furniture, or a membership vote has been obtained.

Question: What is the most that a homeowners' association can raise assessments per year? P.S. (via e-mail)

Answer: There is nothing in the law governing homeowners' associations limiting the amount that assessments can be raised per year. However, some

governing documents may impose a limit on the board, so you should check yours to see if this is addressed.

If the governing documents are silent, and if the expenses are legitimate association expenses, the association can raise the assessments as much as is needed to pay for those expenses. In fact, the association is likely legally obligated to do so.

In a condominium association, if the assessments increase more than 115% from the previous year (excluding reasonable reserves, anticipated expenses which the board does not expect to be incurred on a regular or annual basis, or assessments for betterments to the condominium property), the Florida Condominium Act provides that unit owners may petition the board for a special meeting of the unit owners to consider a substitute budget. Such meeting must only be called if the board receives a written request for a special meeting from at least 10 percent of all voting interests, and the written request is received within 21 days after adoption of the annual budget. Contrary to popular belief, this is not a legal "spending cap" for condominiums, but a point which triggers membership review rights.

There is no similar law in the Homeowners' Association Act.

Question: I sent a letter by certified mail to my condominium association's board requesting that certain restrictions be enforced against an owner. I have yet to receive a written response to the issues I raised, even though I requested a timely answer. What options do I have to obtain a response to my certified letter. R.F. (via e-mail)

Answer: The Florida Condominium Act requires a response to a written "inquiry" that is sent to the board by certified mail. However, the mere fact that

a letter is sent by certified mail does not automatically trigger the statute. Sometimes, owners send certified letters containing opinions, viewpoints, etc., but the letters do not contain any question or inquiry. Such letters are not required by statute to be responded to, although the association is obviously free to respond.

Letters that do amount to a “certified inquiry” require a response within thirty days of receipt. The board’s response can either provide a “substantive answer”, can notify the owner that the board is seeking a legal opinion from its attorney, or can notify the owner that advice has been requested from the Division of Florida Land Sales, Condominiums and Mobile Homes. Where a legal opinion is sought, a substantive answer must be provided within sixty days after the board receives the certified inquiry. Where advice is requested from the Division, a substantive answer

must be provided within ten days after the board receives the advice.

If the board does not respond as required by the law, there are two potential penalties. First, the failure to respond is a violation of the statute, and the association can be cited by the agency in Florida which regulates condominiums, the Division of Florida Land Sales, Condominiums and Mobile Homes. Ultimately, the association could receive a fine of up to \$5,000.00 per violation, for failure to comply with the statute. Secondly, the Florida Condominium Act provides that if an association fails to properly respond to an “inquiry”, if litigation ensues between the parties, the association is not entitled to recover its attorney’s fees, even if it wins the case. Otherwise, the prevailing party is entitled to recover attorney’s fees in most types of condominium litigation. ■

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