



Hurricane Costs Law Tricky to Navigate

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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.

The following is the conclusion of Attorney John Justice's opinion letter to Green Flash Condominium Association, the first part of which was printed in last week's column:

"Based upon my experience in representing condominium associations after Florida's 2004 and 2005 hurricanes, it appears that this "new law" has created as much confusion as it was intended to cure, and is certainly not applied consistently.

One of the largest sources of dispute is the responsibility for insuring dry-wall inside of the apartments, which is also sometimes referred to as "sheet-rock" or "gypsum-board." Although certain dry-wall installations may actually be within the unit owner's general ownership and maintenance spheres (for example, interior non-load bearing partitions almost always fall in this category), these walls are nonetheless part of the "condominium property" as originally constructed. Likewise, the dry-wall constitutes part of the "improvements" required to be insured by your declaration. Further, dry-wall is not found on the "excluded list" of items in the Condominium Act.

Therefore, the association is responsible for insuring all dry-wall in the building, including dry-wall contained solely within the unit. The association

must also insure other original installations such as all exterior and interior doors (including hardware), windows, sliding glass doors, and screening, so long as these installations were originally installed by the developer, or are replacements of like kind and quality. The Association's insuring responsibility is without regard to the ownership of these items (whether they are part of the unit or common element), nor whether the declaration of condominium delegates their day-to-day responsibility for maintenance, repair, and replacement to the association, or to the individual unit owner.

Conversely, any damage to kitchen or bathroom cabinetry, appliances, carpeting, paint, lights, ceiling fans, and similar items (as detailed in the portion of the statute I quoted earlier in this letter) are to be insured by the individual unit owner. That is the case even if such items (for example, the air conditioner compressors) are located outside of the building, and are designated a common element. The Association is precluded by law from providing insurance coverage for these items, and the law mandates their insurance be carried by the individual unit owners.

It is my understanding that you have been in contact with your insurance agent, who has gotten a claim number open with Citizens. I would recommend that you take a pro-active approach in ensuring that an adjuster is appointed for your claim, that a prompt initial inspection by the adjuster takes place, and that you establish personal contact information with the adjuster.

I also recommend that you save detailed invoices for any work which has been done to this date, along with any information which would justify why the work was necessary to be performed on an emergency basis. In general, emergency mitigation work does not require prior approval of the insurer, so long as the work was reasonably necessary to mitigate damage and preserve the property, and the expenses were reasonable. However, in moving forward, I would recommend that you have the adjuster sign off on any significant charges the association intends to incur, at least if you are going to submit them as part of your insurance claim.

I would also recommend that you submit the complete dry-out invoice from Walt's Water Extraction, which I understand was one hundred thousand dollars, to the insurer. Based upon my previous experience, it may well be that the association's insurer will only agree to cover a

fraction of that expense, and we will need to address, at the appropriate time whether those shortfalls are shared by all unit owners, or just those whose apartments were dried out.

Please keep in touch as your repair efforts progress. I will issue a separate opinion letter regarding cost allocations, as future information is developed.

Very truly yours,

John Justice, Attorney at Law"

Next week, we will fast forward our case study a few months, with a look at some contract challenges frequently faced by associations in post-disaster remediation, and working toward determining who will have to pay the piper. ■

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.

Bylaws do Not Allow for Funds to be Spent on Gifts

Question: My condominium association board recently presented a new golf putter to our outgoing president in recognition of ten years of service to the board. Is a gift like this permitted? A.P. (via e-mail)

Answer: Generally, an association may only expend funds to pay for common expenses. Florida law provides that common expenses include costs for the operation, maintenance, repair, replacement, or protection of the common elements and association property, costs of carrying out the powers and duties of the association, and any other expense designated as such in the declaration of condominium or bylaws. The law goes on to say that common expenses also include reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house communications, and security services, which are reasonably related to the general benefit of the owners even if such expenses do not attach to the common elements or property of the condominium. The declaration of condominium or bylaws of the association may also specify additional items as proper community expenses.

The cost of gifts for officers and directors is not a common expense as defined by statute, and it is doubtful that your declaration or bylaws include this as a common expense. You should also note that the Florida Condominium Act provides that directors and officers serve without compensation, unless otherwise provided in the bylaws.

Although it may seem harsh, unless the declaration or bylaws provide that the association may purchase gifts for directors or officers as a common expense, or the bylaws allow compensating directors and officers, then the gift is probably improper. That being said, it is certainly nice to offer a token reward to someone who has provided exceptional service to the association. Often, a voluntary collection is taken

up, with contributions being made by other directors and often other owners in the condominium too.

Question: I live in a condominium community. The developer sold off the units over six months ago. Does the law require the developer to turn over the reigns? If the developer does not comply with this requirement, are there any sanctions? J.F. (via e-mail)

Answer: The Florida Condominium Act provides that when owners other than the developer own fifteen percent or more of the units, those owners are entitled to elect no less than one third of the members of the board. In addition, the owners are entitled to elect not less than a majority of the board when any of five criteria set forth in the law are met. The five “triggering events” are: (1) three years after fifty percent of the units have been conveyed to purchasers; (2) three months after ninety percent of the units have been conveyed to purchasers; (3) when all units have been completed, and some have been conveyed to purchasers, and none of the other units are being offered for sale by the developer in the ordinary course of business; (4) when some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business, or; (5) seven years after the recordation of the initial declaration of condominium.

Once any of these benchmarks are met, the developer has seventy-five days to call an election for the board of directors, and must give no less than sixty days’ notice of the election. The election is to be held in the same manner as generally required under the Florida Condominium Act for the election of directors. Notice of the election meeting may be given by any unit owner of the association if the developer fails to do so in a timely manner. Therefore, unit owners are

not at the mercy of a developer who fails to timely schedule the election of unit owner board members, and the owners may call the election meeting themselves.

Also, the Florida Division of Land Sales, Condominiums and Mobile Homes will accept a complaint, investigate, and take appropriate action against any developer who fails to meet the requirements of the statute. The Division can levy fines against a developer, and pursue legal action to compel a developer's compliance.

However, since the law offers a handy "self-help" remedy (any unit owner having the right to call the transition meeting), just calling the meeting is usually the most expedient process.

Question: When you put in a request for changes to your home, how long should it take for the association to approve or disapprove a request? I live in a subdivision, not a condominium. P.S. (via e-mail)

Answer: In a deed restricted community, the Declaration of Covenants, sometimes called the Deed of Restrictions, will often require that changes to the exterior of the home, or any new structure, be approved by the board of directors or an architectural review committee (sometimes called the architectural control committee).

Chapter 720 of the Florida Statutes, the statute governing homeowners' associations, states that anybody vested with the power to approve or disapprove architectural decisions with respect to a specific parcel must hold its meetings in the same manner as board of directors' meetings, which includes the posting of notice.

However, the statute does not provide any other guidance with respect to decisions by an architectural review committee. Therefore, you will need to look at the governing documents for your community. Some documents will include a defined period of time (for example, thirty days is common) for the architectural review committee to make its decision. Usually, this time frame will not begin to run until the owner has provided all materials necessary for the committee to make its decision. Some governing documents, but not all, will provide that if the committee does not render its decision within the time-frame set by the documents, the request will be deemed approved.

If your governing documents are silent, then the committee will need to act within a reasonable period of time, but there is no specific time limit. A "reasonable" time depends on a variety of factors that will vary from case to case, but the thirty day period is probably a good yardstick to use for most routine requests. ■

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