



Condominium Law Q&A

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Question – I have a concern regarding the disbursement of funds from our insurance company for damages as a result of Hurricane Francis. First, let me state that there are no guidelines regarding disbursements in our HOA documents. Our community has 26 buildings where 25 buildings consist of two residences and the 26th is a clubhouse. The association has lumped the entire amount into one fund and is intending to disburse it all for roof replacement. They are doing this to avoid having to assess for deductibles and to keep every one happy. The problem with this is that the dollars that are stipulated with each check for repairs other than the roofs are gone. For instance, in my case, 31% of the \$17,000.00 is detailed for other expenditures (drywall, paint etc). Once recoverable depreciation and deductibles are taken out, the balance is roughly \$8,000.00. Thirty-one percent of this is \$2,481.00. This would be the amount allocated for repairs. The cost of each roof is approximately \$8,000.00, which would require a special assessment to make up the difference. Additionally, building losses in some cases fall either above or below the average needed to pay for the roofs, which means that buildings suffering higher losses are paying for buildings with lower losses. And, to make matters worse, the clubhouse, which is a common element, received a check not near enough to cover its roof. Again, they are dipping into mine and everyone else's building loss and paying for the roof rather than special assessing for it. Our insurance claim covers all damages from the outside and stops at the paint. Finally, without the proper disbursement of funds and the written notification of special assessments,

we also lose the ability to take advantage of the loss assessment clauses within our personal insurance policies. I would greatly appreciate your opinion.
K.S., Lake Worth

Answer – The aforesaid question would appear dated, except that many common interest ownership housing communities which sustained damage from the rash of hurricanes in 2004 and 2005 have yet to settle their insurance claims and receive full payment. And, with a new hurricane season always just a few short months away, I feel that how insurance proceeds should be disbursed remains a topic of current interest and concern. In the case of a condominium, the damage sustained will always be to either the unit, the common elements, and where applicable, association property. The Condominium Act is very specific as to what insurance an association must acquire [“adequate insurance to protect the association, the association property, the common elements, and all unit improvements other than certain specified exclusions, which exclusions shall be covered by the unit owners”]. And, while the board is granted the right to establish “reasonable deductibles” which, in accordance with the 2007 amendments to the Condominium Act, can consider available insurance reserves and the power of assessment, how the proceeds received are spent is left totally to the board's discretion unless specifically dictated by the condominium documents. Many declarations specify that the proceeds must first be used to restore the common elements and the association property, then, to the extent available, allocated to the units.

An ongoing dispute between the Division and legal experts is whether the short fall in proceeds caused by deductibles and/or lack of adequate insurance or uninsured losses, must be borne by the unit owner(s) sustaining a loss, or assessed as a common expense against all unit owners. To date, this difference of opinion remains unresolved. In the case of an HOA, the declaration of covenants, conditions and restrictions will generally provide how insurance

proceeds are applied. In this case, you advised that the documents are silent. First and foremost, the documents should be amended to avoid future problems. Insofar as past damages and allocation of the proceeds, the courts generally will not second guess the board's "business judgment" and will give the board broad discretion in the application of insurance proceeds, absent a showing of fraud or self-dealing.

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