



Condominium Law Q&A

August 29, 2008

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Today's column is the fifth installment of our annual review of new laws affecting community associations. Today, we will continue reviewing House Bill 995, which primarily impacts condominium associations, and which has an effective date of October 1, 2008.

Today's column emphasizes the sections of HB 995 which address "emergency powers" of condominium association boards of directors in the aftermath of catastrophes, such as hurricanes.

As a result of Florida's hurricane experiences in 2004 and 2005, the Florida Advisory Council on Condominiums recommended that the Legislature consider granting extraordinary powers to boards of directors in the aftermath of hurricanes. As a result of those recommendations, the Legislature drafted a new section of the Florida Condominium Act, Section 718.1265, which is entitled "Association Emergency Powers".

The new law permits a condominium association board of directors, unless prohibited by the condominium documents, to take the following actions in response to damage caused by an event for which a state of emergency has been declared by the Governor:

- **Meeting Notices:** The new law permits the conduct of board and membership meetings without following the customary notice

requirements of the Condominium Act. Notice may be given "as is practicable." Public service announcements and radio broadcasts are mentioned among the types of notices that may be used.

- **Cancelling Meetings:** The association can cancel and reschedule any association meeting that had previously been scheduled, and which may not be practicable to hold due to the emergency.
- **Special Assistant Officers:** The association may name assistant officers who are not directors, who shall have the same authority as the Association's executive officers, as may be helpful during a state of emergency to accommodate the incapacity or unavailability of any association officer.
- **Office Location:** The association may relocate its principal office or designate an alternative principal office.
- **Government Cleanup:** The association is authorized to enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.
- **Disaster Plans:** The association is empowered to implement a disaster plan

before or immediately following the event for which a state of emergency is declared. The Association's emergency plan may include shutting down or shutting off elevators, electricity, water, sewer, security systems, or air conditioners.

- **Declare Condominium Property Off-Limits:** Based upon the advice of emergency management officials or a licensed professional (such as an engineer), the Board may determine any portion of the condominium property unavailable for entry or occupancy by unit owners and other persons.
- **Evacuation:** The new law permits the association to require the evacuation of the condominium property in the event of a mandatory evacuation order in the locale in which the condominium is located. The law goes on to provide that if any unit owner or other occupant fails or refuses to evacuate the condominium property where the board has so ordered, the association is immune from liability arising from injuries to such persons.
- **Re-Opening Condominium Property:** The board of directors, based upon advice of emergency management officials or a licensed professional, may determine when the condominium can be safely inhabited or occupied after a disaster.
- **Mitigation of Damage:** In one of the more significant clauses of the new law, the association is empowered to mitigate further damage, including contracting for the removal of debris, and the prevention or mitigation of the spread of mold. The

- association is empowered to remove and dispose of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the condominium property, even if the unit owner is obligated by the declaration or law to insure or replace those items. The association is also empowered to remove personal property from a unit.
- **Dry-Out:** The new law empowers the association to contract, on behalf of any unit owner or unit owners, for services necessary to prevent further damage. Such services include the drying of units, the boarding of broken windows or doors, and the replacement of damaged air conditioning systems so as to provide climate control. Unit owners are responsible to reimburse the association.
- **Special Assessments:** The board is empowered to levy special assessments in response to catastrophes, without regard to any provision in the condominium documents which may require unit owner approval of special assessments.
- **Borrow Money:** The association is empowered, without unit owner approval, to borrow money and pledge association assets as collateral.

The new law states that the special powers authorized under the law are limited to that time reasonably necessary to protect the health, safety, and welfare of the association and condominium occupants. Further, these powers are limited to those cases where the board's action is reasonably necessary to mitigate further damage and make emergency repairs.

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