

After the Storm



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In the aftermath of Hurricanes Charley and Frances, I continue to receive dozens of letters and e-mails regarding whether the unit owners or the condominium association (“association”) is responsible for repairing the units, and/or rebuilding the condominium’s common elements. Given the importance of these questions, I will devote the entirety of today’s column to these issues.

Preliminarily, it is important to note that in the immediate aftermath of the storms, the condominium association has the authority and responsibility to take all actions it believes are necessary and proper to protect the condominium’s property and the unit owners. After accounting for the unit owners and attending to the injured, the association must complete the following four tasks: (1) “Dry-in”; (2) “Dry out”; (3) Clean-up, and (4) secure the premises.

“Dry-in” involves placing tarps over openings in the roof and boarding up blown-out doors and windows. “Drying out” is the process of removing wet carpet and wall boards in order to retard the growth of mold. Individual unit owners may attempt to complicate or prevent the “Drying out” process by refusing to allow the association access to their units. However, the association’s authority to enter a unit, including its right to remove wet carpeting, cabinets, fixtures and appliances is clearly authorized by the Condominium Act (Chapter 718 of the Florida Statutes) and also in arbitration decisions issued by The Division of Florida Land Sales, Condominiums and Mobile Homes.

Within hours of a hurricane’s landfall, unit owners and/or board members will probably be besieged by individuals or companies offering disaster recovery services. This group will consist of qualified professionals ranging from public adjusters to companies specializing in disaster recovery. However, interspersed among the new arrivals will be the con men and profiteers who prey upon the misfortunes of others.

Often people believe that the task of reconstruction is insurmountable so they are tempted to sign the first contract presented to them. Experience has demonstrated that signing a contract in the immediate aftermath of a storm can lead to a disaster of great magnitude. The old adage “haste makes waste” rings ever so true in post disaster recovery.

The following advice merits special emphasis. **DO NOT UNDER ANY CIRCUMSTANCES** sign an agreement that bases the price of cleanup on the amount that your insurance company ultimately pays for the damage. In other words, agreements to dry-in, dry out, and clean up should contain definite price terms. Additionally, agreements calling for substantial reconstruction of the condominium should be signed only after an independent, Florida licensed professional has been engaged to analyze the nature and extent of the damages and prepare plans and specifications for the potential rebuilding process. If the damage is significant, Florida Law requires a condominium association to engage in a bidding process unless an emergency arises.

Often, a significant part of the cost of reconstruction is not covered by insurance. For example, insurance often will not cover lost landscaping or pools. Similarly, a large windstorm or casualty deductible will likely result in unit owners shouldering a significant part of the rebuilding expense, if the units are to be repaired and the condominium rebuilt. Recovery is also often impacted by the reality that unit owners and associations may carry inadequate coverage.

Whether or not to rebuild or terminate the condominium is usually influenced by the nature and extent of damage combined with the availability of funds from insurers and/or unit owners. It is important to note that the provisions of the condominium's governing documents or local law may speak directly to this issue. Some condominium documents provide for automatic termination if there is damage to 50% or more of the structure, unless the unit owners vote to rebuild within 60 days of the casualty; a process which is made difficult by the absence of the unit owners who may have fled in anticipation of or after the storm. Local law may require a home to be torn down and rebuilt in compliance with updated building codes if 50% or more of the structure is damaged.

I will now return to the core question, as between the unit owners and the association, who is (or whose insurance carrier is) responsible for covering the cost of reconstruction? The answer to the question requires a person to understand that a condominium is divided into two legal subsets "units" and "common elements." Often, confusion abounds because unit owners are responsible for maintaining the entirety of their units

under normal circumstances. However, state law mandates that the association maintain adequate hurricane insurance for full "insurable value" or "replacement costs."

The association's insurance must cover all of the improvements that were part of the original structure, although certain parts of the unit are exceptions and need not be included in the association's coverage. The association's coverage need not include (so the unit owner will ultimately be responsible for) upgrades, floors, walls and ceiling coverings, electrical fixtures, appliances, air conditioners or heaters, water heaters, water filters, built-in cabinets and countertops, window treatments, (including curtains, drapes, blinds, hardware and similar window treatment components, located within the unit), and any air conditioning compressor that services only the unit, whether or not located within the unit boundary.

It is critical that board members and/or the rest of the unit owners not compound their problems in the aftermath of hurricanes by acting hastily, or imprudently. After drying-in, drying out, cleaning up and securing the property, everyone should take a deep breath and the board members should think prior to initiating the rebuilding process. Every rebuilding process should include (although is not necessarily limited to) 1) project planning; 2) construction bidding; 3) contract negotiations; and 4) construction/rehabilitation and project completion. Finally, make sure each step of the process is directed by a Florida licensed professional and if possible, an attorney should also be contacted to guide you through the process. Best of luck in your recovery efforts.

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