

Association Should Act Deliberately

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The sense of urgency that follows a calamity like Hurricane Charley is basic human instinct. Buried deep in our primeval subconscious, the innate tendency to protect our physical well being, our families, and our possessions are strong influences indeed.

Unfortunately, these instincts occasionally cause us to make hasty decisions, and we all know the old cliché that haste makes waste. Although we all suffer for our own mistakes, mistakes made by community associations affect others as well.

Panic about the potential shortage of building materials and contractors has caused some associations, while still reeling from Charley's knock-out punch, to make decisions that they may come to regret.

Clearly, associations suffering damage from Charley need to engage in appropriate relationships to ensure that the buildings are shored, protected from looting, and that further damage (such as water intrusion) is mitigated. Unfortunately, some associations have signed "simple contracts", which, when read carefully, authorize the contractor to do all of the reconstruction work.

Authorizing total reconstruction of substantially damaged buildings at this point is definitely putting the cart before the horse. The Association needs to do several things before that happens:

Have legal counsel review the Condominium Documents. Many documents require insurance

proceeds to be paid to an insurance trustee, such as a bank. Further, many documents require a vote of the owners to be taken within a certain time-frame after a significant casualty to avoid "termination" of the condominium.

Understand what insurance coverage exists. Condominium insurance is complicated, and interpreted differently by different people. Theoretically, the Association's master policy should be insuring the basic building structure. The individual unit owners' "HO-6" policy should insure things like carpeting and cabinetry. Both policies (the Association's master policy and the individual owners' HO-6 policy) have to be considered to understand what level of insurance proceeds will be available. Further, it is likely that there will be shortfalls in every case of major damage to due to deductibles. The association needs to understand whether these costs will be expected to be met from assessments against all owners, or borne only the affected unit owners. The individual homeowners may also have "loss assessment coverage" under their HO-6 policy which may pay some level of special assessments made by the association for shortfalls.

Specifications need to be developed. It is risky at best to authorize a contractor to "fix a building" without having detailed construction specifications, preferably prepared by an independent architect or engineer. Again, review of the Condominium Documents is necessary since many will require review by an architect after substantial casualty damage.

Proper contracts need to be in place. Hurricane Charley, as devastating as it was, does not suspend the laws of Florida. In my view, it is more important than ever to make sure that any contract entered into contains adequate legal protection for the association, that the association is protected against liens on the property, that payment and performance bonding be considered, that licensure and references of contractors be checked, and that other “due diligence” affiliated with construction contracts be followed.

Florida Chief Financial Officer Issues Emergency Order Regarding Public Adjusters.

On August 17, 2004, the Florida Division of Financial Services enacted an “Emergency Rule” as relates to Public Adjusters involved in insur-

ance claims. The rule is in effect for ninety days, but is limited solely to losses resulting from Hurricane Charley and Tropical Storm Bonnie. The rule limits public adjuster commissions to ten percent of any insurance settlement or proceeds, prohibits adjusters from accepting any compensation prior to the settlement of a claim, and also allows an insured to cancel any public adjuster contract within fourteen business days after the contract is entered into, with no penalty or obligation.

While public adjusters will certainly play a role in the post-Charley landscape, I believe some associations have moved too quickly in hiring public adjusters, without even knowing what their insurance company intends to offer in settlement.



Question: During hurricane Charley, one of the windows in my unit broke and as a result, my unit was extensively damaged. Will the Association’s insurance company pay for the damage to my unit, or will my insurance cover it? J.A. (via e-mail)

Answer: In general, the Association’s casualty insurance policy will cover damage to certain parts of your unit damaged as a result of the Hurricane. The Association’s insurance policy will cover the condominium property located inside the units as originally installed by the developer. That includes things like the drywall, doors, and windows. However, the Association’s policy will possibly not cover floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, built-in cabinets or countertops, windows treatments, and the like. You should notify the Association of any damage to your unit and also make a claim to your own insurance company for those items not covered by the Association’s policy.

Question: I am a board member of a condominium on Ft. Myers Beach. Because of Hurricane Charley, we had a number of windows broken and some roof damage. Are we required to obtain competitive bids? Also, can the Board hold an emergency meeting and adopt a special assessment to pay for the costs of the repairs? H.B. (via e-mail)

Answer: The Condominium Act requires competitive bids for contracts for the purchase of materials or equipment or for the provision of services that exceed 5 percent of the total annual budget, including reserves. In addition, the Condominium Act normally requires 48 hours notice for all board meetings and fourteen (14) days notice to the owners by mail for a board meeting at which special assessments will be adopted.

However, the Condominium Act provides exceptions in the case of an emergency. The term “emergency” is not defined by the Condominium Act. The Florida Corporations Not-For-Profit Act considers an emergency to exist when a quorum of the board of directors cannot be readily assembled because of some catastrophic event. In addition, I believe that an emergency exists

when an unanticipated set of circumstances exist which, if not acted upon with immediacy, are likely to cause imminent and significant financial harm to the Association, the unit owners, or the Condominium Property.

For example, I believe that if an association needed to levy an emergency assessment in the critical days following Charley shore up the property and prevent further water intrusion, that would be entirely appropriate. Conversely, if an association is looking at an assessment for the repair of Charley-related damage that may not be repaired for a matter of several months, then it would be much more difficult to argue “emergency” circumstances even though the event giving rise to the need for repair was certainly an emergency in and of itself.

Question: My condominium association has multiple condominium buildings. There has been significant damage to some of the buildings but not all of them, and no damage to mine. If there is a special assessment to pay for damage to the other condominium buildings, will I be required to pay for the special assessment? J.M (via e-mail)

Answer: That depends. If all of the units are within the same condominium, you will likely be required to pay for any special assessment levied which is for the purpose of repairing the common elements of damaged condominium buildings even though your unit or building did not sustain damage. If, however, not all of the condominium units are part of a single condominium, you may or may not be required to pay for a special assessment depending upon whether the buildings to be repaired are part of your particular condominium.

Question: Our condominium buildings have been devastated. Most of our unit owners are seasonal residents and none of the members of the board were here during the hurricane. We have been unable to get in touch with any members of the board since the hurricane, how are we to conduct the necessary business of the association? S.K. (via e-mail)

Answer: Pursuant to Section 718.117, Florida Statutes, if after a natural disaster, the whereabouts of the members of the board cannot be ascertained or if they are unable to act, or if they fail or refuse to act, any interested person may petition the circuit court to determine the identity of the board of directors, or if determined to be in the best interest of the unit owners, appoint a receiver to wind up the affairs of the association after hearing upon such notice to such persons as the court may direct. The receiver shall be given the powers of the as given by the board of directors pursuant to the declaration and the bylaws.

As a practical matter, it is unlikely that the radical step of appointing a receiver should be necessary. Although the days following Charley were certainly chaotic in terms of communications, the various providers of utilities and communications have done a remarkable job of normalizing things. Power has been restored in all but the hardest-hit areas, and it seems that internet and telephone service has been restored in most areas as well.

I would recommend calling the Board members and asking them to convene an emergency special meeting of the Board to discuss their plans for addressing any issues arising out of Charley. ⚖️

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.

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