

Flood Insurance Sound Idea

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Hurricane Charley was compared to a 44 year old storm named Donna. Frances' initial path and strength drew comparisons from an unnamed 1928 blow that killed 1,600 people.

In the span of 3 weeks, Floridians were reminded that history does repeat itself. Will it be another 44 years before another Charley? Another 74 years for a Frances? Maybe it will be next year, maybe next week. Lightning can strike twice in the same place.

There are many lessons that have been learned from these experiences, and many that were driven home by what could have happened had the fickle forces of nature bounced a bit differently. Without minimizing the sheer devastation of life and property caused by Charley, it could have been, and nearly was much, much worse.

Of greatest relief is the fact that because Charley was such a fast moving storm, the predicted "storm surge" of up to 15 feet did not materialize. This is one case where we were all glad that the weatherman (or weatherwoman) was wrong. What would have happened with a 15-foot storm surge? Tens of thousands of people would have their homes submerged, particularly those with older structures located on the barrier islands, the Caloosahatchee River area (Iona-McGregor, Cape Coral, North Fort Myers, etc.), Estero, Bonita, etc. In other words, just about everywhere.

Over the years, many condominium associations have asked me about flood insurance. Many feel it is a "waste of money" and say, "what are the chances?" I'm no odds-maker, but I will say that if your association is uninsured or underinsured for flood coverage, you have dodged two bullets in a short time and it is time to reevaluate your thinking. Although the Florida condominium statute does not specifically mandate flood insurance, it does require "adequate" insurance. In my opinion, any community located in a designated flood hazard area is violating the requirement for adequate insurance if it does not carry flood coverage. Indeed, Charley's predicted storm surge would have likely affected many in what are considered the lower risk zones.

People in high-rise condo buildings argue: "I'm on the 5th floor, a flood can't hit me". Remember, you also own a share of the lower floors, and all of the items that could be wiped out by a flood. In addition to the structure, think about the building's electrical system, plumbing, and other utilities that might have to be replaced in their entirety. Also remember that your windstorm insurance does not cover flood damage and vice-versa. Had Charley landed a one-two punch of both wind and flood, any association underinsured on either front could be in for a miserable time.

While most boards do their best to keep assessments down, this is one place where it is simply not worth skimping. The stakes are too high, and the decision affects others. Board members are not paid, and

the risk does not justify the reward. Also, keep in mind that many officers and directors' liability insurance policies will not cover claims made against the board for not procuring adequate insurance.

I am not an alarmist by nature, and believe strongly in the concept of giving association boards wide latitude in exercising reasonable

business judgment in conducting the day-to-day affairs of the association. However, although I have always felt fairly strongly about the issue of flood insurance anyway, Charley's visit has converted me from a mere believer to a fanatic. So don't be surprised if you see me at the local airport, dressed in a robe, carrying a sign saying: "BUY FLOOD INSURANCE." ☪



Question: The board of our condominium association said that it will be adopting an assessment against all of our members to pay for the costs of removing landscape debris caused by Hurricane Charley, and also replacing the landscaping that was destroyed. Shouldn't the board have had insurance for this? B.H. (via e-mail)

Answer: The Florida statute requires your board to obtain "adequate" insurance. The law does not define what is adequate, although the statute does specifically say that any insurance policy purchased by the association may contain a reasonable deductible, as determined by the board.

Based on my experiences from Hurricane Charley, it appears that the vast majority of associations do not have insurance for landscaping, although there are a few exceptions. In my opinion, the self insurance of landscape losses, given the apparent market conditions, is an appropriate decision for your board.

As to landscape debris removal, most of the adjusters I have been dealing with take the position that debris removal is also not covered by most insurance policies, except items like the removal of a tree that may have landed on your building's roof. Of course, every insurance policy is a bit different. Your association's insurance policy is

an official record of the association and you are entitled by law to review it and get a copy of it, as long as you request it in advance, in writing.

I have found that most condo associations with Hurricane Charley damage have hurricane deductibles of 2% or 3% of the insured value of each building. Frankly, if your community's loss is below the deductible of the master policy, you should count yourself extremely fortunate.

Finally, assuming that you have insurance for your individual condo (and you certainly should), you may wish to discuss with your agent if you have "loss assessment coverage", which might reimburse you for the association's special assessment.

Question: Although our condominium documents require that every owner give the association a key to their apartment, we found that we did not have keys to several of the units when the manager tried to inspect all of the interior areas after Hurricane Charley. We made the decision to hire a locksmith and had new keys made. Can we charge this expense back to the owner? E.A. (via e-mail)

Answer: This catastrophe shows exactly why it is important for the association to have the ability to immediately obtain access to all units in the condominium. The Florida condominium statute, at Section 718.111(5) gives the association an irrevocable right of access to protect and maintain the common elements and those portions of the unit to be main-

tained by the association. The law does not specifically give the association a right to a key, but the state bureau which regulates condos has consistently ruled that the association may require the posting of a key, if so provided in the recorded condominium documents, or a properly enacted rule of the board. These holdings have also imposed an obligation on the association to take reasonable steps to preserve the security of the keys it keeps.

I think your board can seek recovery of the locksmith charges, although there may be some cost-benefit review of legal action. Hopefully, your board will take this as a wake up call to enforce the key requirement in the future.

Question: Whose insurance company is supposed to pay the costs of the dehumidifiers and fans that were brought in to dry out our apartments after Hurricane Charley. Who pays the deductible? S.C. (via e-mail)

Answer: That question has no easy answer and is certain to be slugged out in the next several months. The association insures the dry-wall, and to the extent it was being dried, it should be covered under the association's policy. However, the carpet is owned and insured by the unit owner, and therefore drying the carpet out would be the owner's responsibility. So, who should pay when both the dry-wall and carpets are being dried by the same machine? Hopefully, adjusters for associations and individual owners will work these matters out with some sensitivity for the unique issues presented by a calamity of this magnitude.

As to the deductible, your declaration of condominium will typically provide guidance on who pays for what when insurance proceeds are insufficient to cover the costs of casualty repair. ⚖️

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.