



## Lessons Learned: Storm-Proofing Community Associations

*September 25, 2017*

*By Donna DiMaggio Berger*



*Donna DiMaggio Berger*

As former heavyweight champion Mike Tyson famously said, "Everybody's got a plan until they get hit." Indeed, the very active 2017 hurricane season has underscored the need for community associations to have the right plans, to continually refine those plans and to learn from their mistakes.

In the aftermath of all the recent hurricane destruction, most volunteer community association boards and their professional managers already know that they should be date-stamping videos of their properties to memorialize pre- and post-storm conditions and making arrangements to have money on hand (either in the form of fully funded reserves or lines of credit) to use for storm repairs. Some highly prepared boards also have prenegotiated debris removal pricing from their landscapers, have adopted and tested emergency plans and have recently reviewed their insurance policies with their insurance agents and their association attorneys to confirm and clarify their understanding of coverage limits and deductible responsibilities.

Some boards are still grappling with how and when to make Irma repairs

given that their damages fell below coverage limits thanks to incredibly high deductibles. Now the prospect of having to make additional repairs due to new storms are a real possibility as September and October are traditionally the busiest months in a six-month hurricane season in Florida.

The surest way to make mistakes after a storm is to have failed to make adequate preparations before the storm. Experience has taught that prepared communities will fare better in even a direct strike from a Category 3 or higher storm than unprepared communities will in less fearsome storms. However, when a storm is bearing down on a community which might not have taken all the recommended advance steps, all hope is not lost. Boards should focus on taking the right steps in order to protect their members' best interests. Specifically, boards should:

1. Separate the urgent from the important. Boards can and should undertake the urgent steps needed to secure their buildings from further water intrusion, to clear debris and to dry out units. Condominium, cooperative and homeowners' associations in states like Florida have the benefit of emergency powers whenever the governor declares a state of emergency. These powers include the right to enter units, remove water-soaked items, dry out those units and lien the owners for the costs associated with this process if the owners fail to reimburse the associations for these costs.

Important items such as selecting contractors and other professionals to help repair long-term storm damages require the same amount of due diligence as regular renovations or repair projects. There is no reason for boards to abandon sensible steps such as compiling bids, vetting contractors, having their attorneys review contracts before signing and hiring the right professionals to oversee construction projects, simply because the repairs are related to storm damages. A common mistake association boards must avoid is signing full repair contracts and assigning insurance benefits to contractors under pressure and without taking the steps that would ordinarily and prudently be taken when hiring contractors to perform work.

2. Not rely solely on their insurance companies' adjusters to evaluate their claims. Without a doubt, the insurance companies' adjusters are not there to

protect the boards and their associations' claims. Boards should consult with their association counsel to help them retain their own adjusters and/or engineers or architects to fully evaluate and compile their claims. All of the foregoing professionals can help ensure that the insurance companies maximize rather than minimize the anticipated recovery.

3. Not allow themselves to be controlled by circumstances. The most sought-after, high-quality contractors and consultants are generally in short supply in the aftermath of disasters. It is always preferable to hold out for the quality of contractors who would normally be hired for non-emergency projects than to settle for unlicensed and/or out-of-state contractors.

4. Be prepared to confront an avalanche of scare tactics and misinformation in the aftermath of storms from a variety of different actors — including their own insurance companies. For example, some insurance companies are advising policyholders that retaining independent adjusters and/or attorneys for their claims will delay their claims. Clearly, this is not true.

5. Keep in mind that communication with their members is vitally important. Hopefully, boards have up-to-date emergency contact information for most of their members. Websites, emails, texts, phone calls and regular mail are all important channels to keep members and residents informed about the condition of the properties. Those communications will help inform residents when they can safely return to their homes, when to expect repair work to commence, etc. It should come as no surprise that the boards who are the poorest communicators in the aftermath of disasters don't tend to fare well at the next annual election. Even more importantly, proof of consistent and informative communications can defuse potential negligence claims levied against boards after any storms.

6. Continue addressing the ordinary daily business of operating the communities. For communities that had units in the collections process prior to Hurricane Irma's arrival, it may be tempting to forget about those collections efforts post-storm. After all, there are much more pressing matters to handle at present. However, it is important to continue with those collections efforts, as the ability of boards to undertake necessary storm

repairs depends on their ability to collect assessments. Abating or delaying any ongoing collection efforts sends the worst-possible message when boards need to assemble resources to pay for repairs.

7. Learn from their mistakes. Failure to do so is one of the biggest and most common mistakes that boards make. As Hurricane Maria's stealthy approach confirms, there will always be another hurricane. Whatever problems or deficiencies were discovered in dealing with this year's hurricane should result in an evolution of the hurricane plans for the following year. Boards that found themselves in a bind due to a lack of money on hand to deal with either the urgent or the important matters that required attention should make sure to have adequate reserves or lines of credit in place before the storm season begins on June 1. Those who found that their landscapers came late and charged astronomical prices to remove storm-related debris should ensure they prenegotiate these services and the pricing begins prior to the start of hurricane season. Those whose residents expressed confusion, frustration or anger for months after the storm should ensure they establish and utilize more channels of communication and have better contact information to ensure their residents are properly informed and involved in the rebuilding process.

While we cannot control Mother Nature, the right pre- and post-storm planning and preparation can help boards ensure their communities recover as quickly and efficiently as possible from disasters.

---

*Donna DiMaggio Berger is a shareholder at Becker & Poliakoff PA and has represented all types of shared ownership communities throughout Florida. She is a member of the College of Community Association Lawyers.*