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Hurricane Irma: Tips for Navigating Your Way Through the Insurance Claim Process

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Hurricane Irma has made a significant impact on many properties and people throughout Florida. The insurance claim process for condominium and homeowner associations can be complicated and frustrating. As soon as possible, associations should coordinate the claim process with their property management and legal counsel. These five issues are critical to that process:

Review and Document the Damage

You (the association and its management team) must promptly survey the properties for potential and/or actual damages that need to be reported and addressed. Document all actual and potential damage with photographs and video. This documentation should be accompanied by confirmation of the time, specific locations, and the person taking the photographs and video. Additionally, this documentation should be compared against the pre-storm documentation in order to prove that the damage did not exist prior to the storm. The “before” and “after” documentation is critical to fighting against insurers’ potential defenses. Associations should also gather any applicable maintenance records, vendor and repair records, and related documentation in order to establish the condition of the property pre-hurricane and the association’s regular maintenance practices and procedures. This helps prove that the damage caused by a hurricane (or similar insurable event) was not a “pre-existing condition” and/or a result of “lack of maintenance” at the property.

Associations should work with their legal counsel to review the Declaration and property boundaries in order to distinguish any reported unit owner property damage from the association’s property and common elements/limited common elements. These distinctions are important for both the insurance claim process and identifying the party responsible to repair.

Duties Under Your Insurance Policies

Make sure the association has updated copies of all applicable policies (part of the official records). Consult with your legal counsel in order to evaluate if the damage might apply under the flood policy, wind policy, and/or property policy. Depending on the type of damage, your claims may apply to multiple separate insurance policies. **For each policy, create a checklist of the requirements for making a claim and the insurer’s deadlines that must be strictly complied with.** Locate the section(s) in your policies titled “Duties of the Insured” a/k/a “Duties in the Event of Loss.” Add these items

to your claim checklist and make sure to calendar all time deadlines.

After the storm event, associations must provide written notice to their insurance companies as soon as possible. Notice merely to your insurance agent is not notice to the insurance company. No association wants an otherwise legitimate claim to ultimately be denied because it failed to timely notify the insurance companies in writing. Your claim checklist for each policy should include the name, address information, and policy specific requirements for providing written notice of the claim.

Additionally, notify the owners/residents to promptly document and file their own individual insurance claims for their own insured property (finishes, property, and other items within the unit boundaries).

Communications with Adjusters and Insurance Companies

All too often, an association's property management and/or directors erroneously believe the adjuster from the insurance company is on the association's team in this process. Wrong! The adjuster sent by the insurance company does not work for you and is not a neutral party. The adjuster is paid by the insurance company and is often a third party contractor. Keep in mind the adjuster is primarily attempting to assist the insurance company to limit the loss/exposure of the company.

All-important communications with the adjuster and insurance companies should be timely documented in writing. Internal emails and other communications between the board of directors, property management, and the association's legal counsel should not be inadvertently shared with the adjuster and/or insurance company. Consult with your legal counsel before responding to information requests and have your legal counsel instruct the adjuster and insurance companies to direct all communications about the claim to legal counsel.

Interim Repairs

You may need to make some interim repairs at the property before your claims are fully resolved. After the damage to the property has been evaluated and documented, it is important for associations to take the necessary steps to mitigate further damages and losses – – without prejudicing your rights under the applicable insurance policies. Make sure to provide written notice to your insurers regarding: (i) your proposed interim repairs and mitigation steps; (ii) the estimated costs; and (iii) confirmation that the insurer consents to you proceeding with the interim repairs even though your claim is still under review. Document the interim repairs with photographs, videos, estimates/bids, purchase order, invoices, as well as proof of payments. Emergency mitigation should always be performed as soon as possible (i.e., covering open windows and/or roof openings).

For non-emergency repairs/remediation, you should solicit at least three bids/estimates for each scope of work (unless you cannot find three bidders or in an emergency). The Board is not required to select the lowest bid – – and should be wary of bids that are unusually low compared to the others. For larger repair projects, it is important to coordinate the bid and contract requirements with your legal counsel before sending it to prospective bidders. Including the association's contract requirements and standard clauses in the request for bids will help reduce contract negotiation and preparation time.

Additional Factors

There are related issues that are also very important to consider, such as: (i) does your association have a loan with a lender and thus have borrower specific duties under the

loan documents? Associations should carefully review their loan documents with legal counsel in order to ensure compliance with the lender specific issues; and (ii) many management companies include a provision in their standard management contract that the association is required to pay the management company additional compensation in the event of significant repair projects after insurable events (a/k/a Hurricane Irma). This is an important factor for the Board to consider when preparing repair budget(s).



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