

Florida Association Attorneys' Community Association Preparedness Guide

1. Associations should consider obtaining a line of credit to ensure the availability of funds for debris removal and other construction activities in anticipation of insurance proceeds becoming available after the work must be performed, and in view of the deductible.
2. Associations should also consider entering into debris removal and other construction contracts ahead of time so that the association is assured that the association will not be faced with price gouging and unavailability of competent vendors after the storm danger has passed. Such contracts should be reviewed by your community association lawyer to be certain they spring into existence, if and when, a storm hits.
3. It is very important that associations contact legal counsel before contracts are signed, as many contractors offer contracts which are unreasonable, incomplete or even unenforceable.
4. Associations should consider establishing a website which will be the point of communication prior to, during and after the storm.
5. Associations should have an emergency contact list for the members of the community association as well as for each of the directors who may evacuate to other locations. Keep a list of vendor telephone numbers and contacts including its community association attorney.
6. The association should store and back up computer records and official records in a secure location outside of the storm danger area.
7. Associations should safeguard originals (or scanned copies) of important documents such as insurance policies (including specific information on how to file a claim), security contracts, management contracts, construction contracts (active projects) and any other contract requiring the association to secure something for the benefit of another or to receive a benefit in the event of a casualty (inclusive of maintenance related contracts). Copies (if no originals are available) of governing documents and rules and regulations should also be secured especially to the extent not available on-line. Community associations should also back up computerized association records off-site.
8. Originals of bank documents, including checkbooks, should be on-hand and secured.
9. Landscaping should be trimmed, particularly away from the buildings.
10. Lock and secure clubhouses, pool area, common area bathrooms and any other similar areas.
11. Turn off all unnecessary utilities, such as electronics and computers. The reason for this is if the community loses power and the power comes back on there could be a surge in the system that could damage the property.
12. Shut off any gas sources at the main valves (call the applicable utility provider to have done, if necessary).

13. The association should assemble a disaster relief team upfront, ready to go into action when the hurricane passes – consisting of the manager, contractors, legal counsel, and an engineer or architect.
14. As the danger of a storm approaches, outdoor furniture and other personal property should be secured indoors. Pool levels should be lowered.
15. As a storm approaches, the association should take pictures of the conditions of the buildings to better establish that the need for repair was storm related and not improper maintenance - a problem defense when pursuing a claim against an insurance company.
16. Take pictures again and contact the insurance company immediately after the storm danger has passed.
17. The board should consider adopting a resolution authorizing that a number of checks be pre-signed ahead of the emergency to ensure that services could be paid for when needed.
18. Some community associations in high-rise buildings choose to close hurricane shutters for their owners. Florida Association Attorneys recommends caution in this area because of the potential liability if the closure is not done correctly or hurricane shutters are damaged during the course of closure.

Community Association Membership Preparedness:

1. Secure your identification and any information important to your well-being in a safe place (i.e., such as an index card identifying allergies, necessary medication, and any potentially life-threatening ailments).
2. Purchase/have handy a corded telephone. A corded telephone can be plugged into a telephone jack even when the power is out and, in most instances, works on the land line (at least for emergency telephone calls).
3. Purchase/have handy a battery operated radio in order to listen for reports and other pertinent information.
4. Maintain a list of your neighbors' names and telephone numbers as well as telephone numbers of important contacts, including community association manager, employer, physician, veterinarian, pharmacist and insurance agent. Create a telephone tree for the sharing of information including whereabouts in the event of an evacuation.
5. If you are on a maintenance medication consider the possibility of having a physician phone in to your pharmacist (before a storm) a prescription in order to be certain that you have a sufficient amount of medication in the event that medical supplies become unavailable or delayed.
6. Plan ahead by buying batteries, water, canned food (preferably not requiring a microwave to warm up), disposable utensils, plates and cups, garbage bags, first aid kit, rain gear, small tools and tarps. Keep blankets handy.
7. Make a list and a map of the location of shut-off valves, water lines, electrical main circuits and emergency equipment. Know how to operate them.

8. Keep vital records in a sealed plastic bag. Place the sealed plastic bag in the dishwasher until the emergency is over. The dishwasher is the safest, most water tight area in the home. If you evacuate, take the sealed plastic bag with you.
9. Purchase a manual can opener.
10. Keep cash on hand. ATMs may not be operational post-storm.
11. Do not operate generators unless you are trained and have a clear understanding of how they work and never ever use them close to your home.
12. If possible, maintain a full tank of gas in your car.
13. Bring in all furniture, toys, and tools from the outside. This would include anything that may be outside that could be picked up and moved about in strong winds.
14. While you still have power, turn your power in your refrigerator and freezer up to the highest possible setting, and refrain from opening the refrigerator door unless necessary.
15. Fill bath tubs and sinks with water in order to use for toilet flushing and washing up in the event water is unavailable during or post-storm.
16. Do not use candles unless closely supervised and never when sleeping.
17. Contact family members, if applicable, outside of the zone of danger advising them where you are and if possible providing them with a copy of your homeowners' insurance policy or other pertinent information in the event such material becomes lost or damaged.
18. Know where your local shelter is located in the event of an evacuation. If you have a pet, you will want to confirm pre-storm that the pet is acceptable at the shelter. If not, seek an alternative accommodation for your pet.

This list is not exhaustive. We suggest that you contact your Board and/or the official websites for FEMA and the American Red Cross for information on what to do before, during and after a storm.

Condominium Association Insuring Obligations

What are the insurance coverage obligations of the condominium association?

For years the condominium statute contained express insuring coverage obligations of the condominium, but set forth enumerated exceptions which the condominium does not insure. In 2008, a prior exclusion was removed, namely the entire air conditioning and heating system from the compressor all the way up to and including the thermostat - so the condominium association had to insure for this component for the first time. The 2010 statute continued this arrangement as the condominium association insuring obligation.

The 2010 legislature made it clear that the excluded items must be located within the boundaries of the unit and serve only that unit.

Since 2008, the condominium statute has required that the amount of insurance be determined every thirty-six (36) months. The 2010 statute clarified that the determination must be based on full replacement value.

The condominium statute was amended (effective July 1, 2010) to provide that the notice of the meeting of the Board to approve of the insurance policy including the deductible, no longer had to detail the proposed deductible and the authority upon which the board relies to determine the deductible amount, nor an estimate as the potential assessment against each unit. However, a notice of Board meeting is still required; discuss minimum meeting notice and posting timeframes with your community association attorney.

The hot button issue is whether the Association must insure for owners' added improvements to the exterior of these units, such as balcony enclosures. Read literally, the Condominium Statute requires that the Association insure for these items, but much of the insurance industry disagrees. Unfortunately, those in the insurance industry that disagree are ignoring the plain language of the Statute.

Condominium Unit Owner Insurance Coverage Obligations

What are the condominium unit owners' insurance coverage obligation?

The 2010 legislature adopted numerous amendments to the insurance provisions in the condominium statute addressing condominium unit owner insurance obligations, which were effective July 1, 2010.

The 2004 legislature required each unit owner to maintain property insurance coverage for the building components which were excluded from the condominium association coverage obligations. The 2008 legislature deleted this requirement, suggesting that the owner was no longer obligated to carry insurance for those excluded items. The insurance industry also took this position. The 2010 legislature further addressed this question and provided that if the owner wishes to carry such coverage, it will be the responsibility of the owner to place and pay for the insurance - such is the law today. However, such coverage is not mandatory. The Association could amend its Declaration to provide for such.

The insurance code was amended to clarify that the coverage obligation of the condominium owner is limited to not less than \$2,000.00 in property loss assessment coverage and dictates the maximum deductibles for such coverage. Owners are not required to provide proof of insurance to the condominium association.

Condominium associations are no longer required to be additional named insureds and loss payees on property insurance policies issued to unit owners.

Condominium Association Reconstruction Obligations

Condominium associations frequently inquire as to their reconstruction and repair obligations after a casualty event. What is this obligation?

This is a very misunderstood subject. The 2008 legislature amended the condominium statute to provide that the association must repair and reconstruct casualty damage to building components which the association must insure under the condominium statute. Examples here would be windows, doors, sliding glass doors, drywall, baseboards and the entire air conditioning and heating system up to and including the thermostat. The statute requires the association to pay for the repair and reconstruction, including any deductible loss, all as a common expense. This is the law even if the documents provide otherwise. There are some exceptions to be discussed with legal counsel.

The 2008 legislature provided (which remains the law today) that associations may choose to opt-out of making any of these items a common expense and instead allocate the cost of any of these items directly to the owners whose unit was damaged. The statute dictates the procedures and required unit owner vote for the opt-out procedure, which relates only to the sharing of common expenses, and does not change the fact that the association must still contract for and perform the repair and reconstruction of the damaged property.

The Condominium Act makes it clear that if damage is unrelated to a casualty event, such as wear and tear maintenance, then the Declaration and By-Laws govern the subject of the reconstruction and repair of that particular damage.

Homeowners' Associations and Unit Owners' Insurance and Reconstruction Obligations

Homeowners' associations often hear about the condominium statute and wonder how this subject is addressed for homeowners' associations. What governs this subject?

Unfortunately, homeowners' associations are not subject to the condominium statute, and there is no provision in the homeowners' association law (Chapter 720, Florida Statutes) which addresses the insuring obligation of the homeowners' association and its members nor reconstruction and repair obligations of the homeowners' association and membership.

These subjects are addressed and are governed solely by provisions in the governing documents for the homeowners' association. Our firm has found that most governing documents for homeowners' associations inadequately address insuring obligations of the homeowners'

association, which typically differ from what condominium associations face under the condominium statute.

Homeowners' associations and their insurance agents should interface with legal counsel to provide an interpretation of the insuring obligations of the association to assist the insurance agent to place the proper coverage.

Homeowners' associations should obtain an opinion from its legal counsel as to the responsibility of the homeowners' association to make repairs and reconstruction of casualty damage as well as the association's insuring obligations. Our firm recommends that legal counsel review the governing documents and recommend amendments on the subject of insurance coverage and reconstruction and repair after casualty.

Directors and Officers Liability

What is the liability of any association - condominium, homeowners' and cooperative - and its directors and officers when the board chooses not to carry the proper insurance on the property, perhaps because the association has limited funds due to delinquent assessments?

It is our opinion that an association which does not carry the required insurance coverage for property damage - in essence decides to go bare or provide reduced coverage - will result in an under covered loss after a storm which all members will have to pay because of the unavailability of insurance. Members have a claim against the association for the amount of the loss which should have been insured but was not.

Furthermore, it is our opinion that directors and officers who decide not to carry required property insurance may face personal liability for which there may not be directors and officers liability insurance coverage - or D & O insurance - to protect them - since such D & O insurance policies typically exclude insurance decisions of the Board.

Directors and officers who are sued personally will then seek indemnification from the association to pay for the defense of litigation and any ultimate judgment - all potentially resulting in a monetary loss to the association membership.

The information contained in this Publication is intended to provide general information and is not regarded as rendering specific advice to your particular Community Association. While we make every attempt to ensure that the information contained herein is accurate and complete, the Florida Association Attorneys are not responsible for any omissions, or for the results obtained from the use of this information. Furthermore, we are not responsible for the applicability of any such information to your particular situation. The information in this Publication does not constitute legal advice and is not intended to be a substitute for legal counsel. You are urged to contact your Association's attorney should you have questions on the applicability of this Publication to your Association. Please be aware that the legal principles as referred to in this Publication are subject to change from time to time.

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