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**NEWSLETTER**

SPECIAL ALERT – SEPTEMBER 19, 2017

## DEALING WITH THE AFTERMATH OF HURRICANE IRMA

*What You Need to Know about Emergency Powers for Condominiums and HOA's, respectively*

**By: Christopher J. Shields, Esq.**

Florida Statute Section 718.1265 and Florida Statute Section 720.316 each provide to the extent allowed by law and unless specifically prohibited by the community's governing documents, the Board of Directors, in response to damage caused by an event for which a state of emergency has been declared by the Governor pursuant to Florida Statute Section 252.36 in the locale in which the community is located, may, but is not required to, exercise the following emergency powers:

- a) Conduct board meetings and membership meetings with notice given as is practicable. Such notice may be given in any practicable manner, including publication, radio, United States mail, the Internet, public service announcements, and conspicuous posting on the association property or any other means the board deems reasonable under the circumstances.
- b) Cancel and reschedule any association meeting.
- c) Name as assistant officers persons who are not directors, which assistant officers shall have the same authority as the executive officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any officer of the association.
- d) Relocate the association's principal office or designate alternative principal offices.
- e) Enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.
- f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared which may include, but is not limited to, shutting down or off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.
- g) For condominiums only, require the evacuation of the condominium property in the event of a mandatory evacuation order in the locale in which the condominium is located.

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- h) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine any portion of the association property unsafe for entry or occupancy.
- i) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including, but limited to, mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the association property and for condominiums, this right extends within the condominium property, even if the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.
- j) For condominiums only, contract, on behalf of any unit owner or owners, for items or services for which the owners are otherwise individually responsible, but which are necessary to prevent further damage to the condominium property. In such event, the unit owner or owners on whose behalf the board has contracted are responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority provided by s. 718.116 to enforce collection of the charges. Without limitation, such items or services may include the drying of units, the boarding of broken windows or doors, and the replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property.
- k) Regardless of any provision to the contrary and even if such authority does not specifically appear in the declaration of condominium, articles, or bylaws of the association, levy special assessments without a vote of the owners.
- l) Without unit owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association when operating funds are insufficient.

Note: These emergency powers may only be exercised during the period the Governor has declared a state of emergency and only for those locales where a state of emergency has been declared and will terminate when the Governor declares the state of emergency no longer exists.

By Executive Order 17-235, Governor Scott declared a state of emergency in all counties of Florida beginning on September 4, 2017. As of today, September 19, 2017, all counties in Florida remain under a state of emergency. Pursuant to section 252.36(2), a state of emergency

“shall continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist and she or he terminates the state of emergency by executive order or proclamation, but no state of emergency may continue for longer than 60 days unless renewed by the Governor. The Legislature by concurrent resolution may terminate a state of emergency at any time. Thereupon, the Governor shall issue an executive order or proclamation ending the state of emergency.”

As of this morning, Governor Scott has yet to issue any executive order or proclamation ending the state of emergency in any county of Florida. Without executive or legislative action, the state of emergency shall continue until November 2, 2017.

***Emergency Order: Contractors Not Required to Subcontract with Roofing Contractors for Roof Repairs in FEMA Declared Disaster Area***

**By: Christopher L. Pope, Esq. and Christopher J. Shields, Esq.**

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Hurricane Irma caused significant damage to roofs across the State of Florida, especially here in Charlotte, Lee, and Collier Counties. As a result, many homes and buildings are in need of roof repairs and remain vulnerable to leaks and further water damage. Roofing contractors were in high demand prior to Hurricane Irma, but in light of the widespread damage the need for roofing contractors has skyrocketed making it near impossible for homeowners and business owners to schedule desperately needed roof repairs.

The State of Florida recognizes the gravity of the problem and has decided to suspend certain statutes regulating contractors' ability to perform roof repairs. On September 15, 2017, Jonathan Zachem, Secretary of Florida's Department of Business and Professional Regulation (DBPR), issued an Emergency Order suspending provisions in the following statutes for counties identified in the Federal Emergency Management Agency disaster declaration DR-4337 (which includes Charlotte, Lee and Collier Counties):

1. The provisions of Section 489.113(3), Florida Statutes, are suspended to the following extent: A certified or registered, general, building, or residential contractor is not required to subcontract roofing work for the repair and installation of any flat roofs and roofs made of wood shakes, asphalt or fiberglass shingles, tiles, and metal.
2. The provisions of Section 489.117, Florida Statutes, are suspended to the extent that local jurisdictions are authorized to issue local specialty licenses, without additional local ordinances, for the repair and installation of flat roofs and roofs made of wood shakes, asphalt or fiberglass shingles, tiles, and metal, conditioned upon the requirement that all applicants for the specialty roofing licenses shall provide an affidavit of competency from their original jurisdiction, within Florida, proof of compliance with applicable workers' compensation as required by Chapter 440, Florida Statutes, and public liability and property damage insurance as required by Section 489.115(5)(a), Florida Statutes.
3. Departmental fees associated with relocating or reopening businesses regulated under Chapter 455, Florida Statutes, that were closed from damage caused by Hurricane Irma and its effects are hereby waived. Only fees assessed by the Department, or by a board within the Department, are waived.

In sum, this Emergency Order means that Florida licensed contractors are not required to subcontract with roofing contractors as is typically required by Florida Statutes for as long as Governor Scott's Executive Order No 17-235, as amended, remains in effect. This means that all Florida licensed contractors can proceed directly with roofing repairs, and all jobs issued permits during the effective period will be allowed to be completed.

However, keep in mind that even though this Order authorizes more contractors to make roof repairs, it does not mean that the contractors and their labor are necessarily experienced or qualified in this area of construction.

All owners must be diligent and use extreme caution when contracting for roof repairs because fraud will be prevalent. Prior to hiring a contractor be sure to verify the contractor's license is in good standing on the DPBR's website and avoid contracts that require large deposits. If a contractor tells you he or she needs a large deposit to pay for materials, offer to pay the material supplier directly. Do not hesitate to contact the Association's legal counsel to seek advice on these matters, including, but not limited to, enlisting our office to review, revise or draft any construction or repair contracts.

This newsletter is provided as a courtesy and is intended for the general information of the matters discussed herein above and should not be relied upon as legal advice. Christopher J. Shields ([christophershields@paveselaw.com](mailto:christophershields@paveselaw.com)) is a Florida Bar Certified Real Estate Lawyer and Partner in the Pavese Law Firm and heads the Community Law Section for the Firm. Christina Harris Schwinn ([christinaschwinn@paveselaw.com](mailto:christinaschwinn@paveselaw.com)) is a Partner in the Pavese Law Firm and also practices in Labor/Employment Law. Susan M. McLaughlin ([susanmclaughlin@paveselaw.com](mailto:susanmclaughlin@paveselaw.com)) is a Partner in the Pavese Law Firm. Keith Hagman ([keithhagman@paveselaw.com](mailto:keithhagman@paveselaw.com)) is a Partner in the Pavese Law Firm. Brooke N. Martinez ([brookemartinez@paveselaw.com](mailto:brookemartinez@paveselaw.com)) is a Partner in the Pavese Law Firm. Charles B. Capps ([charlescapps@paveselaw.com](mailto:charlescapps@paveselaw.com)) is a Florida Bar Certified Real Estate Lawyer and Partner in the Pavese Law Firm. Chené Thompson ([chenethompson@paveselaw.com](mailto:chenethompson@paveselaw.com)) is a Partner in the Pavese Law Firm. Christopher Pope ([christopherpope@paveselaw.com](mailto:christopherpope@paveselaw.com)) is an Associate in the Pavese Law Firm. Matthew B. Roepstorff ([matthewroepstorff@paveselaw.com](mailto:matthewroepstorff@paveselaw.com)) is an Associate in the Pavese Law Firm. Matthew G. Petra ([matthewpetra@paveselaw.com](mailto:matthewpetra@paveselaw.com)) is an Associate in the Pavese Law Firm. Matthew P. Gordon ([matthewgordon@paveselaw.com](mailto:matthewgordon@paveselaw.com)) is an Associate in the Pavese Law Firm. Every attorney listed above is a member of the Firm's Community Association Law Section and is experienced and capable of handling all aspects of community association law, including the following:

- Planning, Drafting, and Creating the Community Projects
- Developer Representation and Regulatory Approvals, Vendor Contract Review and Preparation
- Turnover from the Developer
- Construction Defect Litigation
- Covenant Interpretation and Enforcement
- Amendments of Governing Documents
- Collection of Assessments, Liens, and Foreclosures
- Insurance and Maintenance/Repairs/Replacement and Reconstruction Issues
- HOA Pre-Suit Mediation, Arbitration, and Litigation

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Visit us on the web at [www.PaveseLaw.com](http://www.PaveseLaw.com).

Fort Myers  
1833 Hendry Street  
Fort Myers, FL 33901  
Phone: (239) 334-2195

Cape Coral  
4632 Vincennes Blvd.  
Suite 101  
Cape Coral, FL 33904  
Phone: (239) 542-3148

West Palm Beach  
4524 Gun Club Rd.  
Suite 203  
West Palm Beach, FL 33415  
Phone: (561) 471-1366

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