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SPECIAL ALERT

DO'S AND DON'TS FOR CONDOMINIUM ASSOCIATIONS AFTER HURRICANE IAN

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The Board has a duty to take reasonable steps to perform repairs and restore the condominium, assuming the governing documents do not require automatic termination based upon the level of damage. Given the magnitude of the storm and the level of damage to some of the condominiums in Southwest Florida, there is not a clear marker for what is reasonable and there may be no clear timeframe to completely restore the condominiums that have suffered severe damage.

Among the first steps, the Board of Directors should familiarize itself with its rights under the state of emergency. The Board now has emergency powers which are likely to remain in effect for a considerable amount of time as it relates to Hurricane Ian. The association's governing documents may place some limits on these powers, but as long as the documents do not expressly prohibit powers provided for by statute, the association may proceed under Section 718.1265, Florida Statutes. Please refer to our law firm's Special Alert dated September 26, 2022, for more information on statutory emergency powers for condominiums, homeowners' associations, and cooperatives.

At this point, if the condominium association has suffered any damage, or the building is without power, water, or other utilities, any membership meetings and regularly scheduled meetings of the association should have been canceled with as much notice as is practicable. Annual meetings that were slated for the month of October may need to be rescheduled, especially for condominium associations located on any of the barrier islands or major waterways which were impacted by Hurricane Ian. The membership will likely have a lot of questions, and the Board needs to get on the same page about the message to the association's members to prevent any miscommunication.

In addition to familiarizing itself with the Board's rights, the Board must take reasonably prudent steps to assess the damage to the condominium building, each individual unit, all limited common element and common element areas. The Board of Directors should notify the association's insurance company that the condominium has sustained damage and work closely with the insurance company's adjuster. At this time the association should not be working with a public adjuster or signing away any rights through an assignment of benefits. Be wary of contracts that allow any one contractor complete rights to restore the damaged areas without reference to a scope of work or the cost of the work. The association should have all contracts reviewed by legal counsel, especially those for repairs and reconstruction.

After assessment and evaluation, the Board should mitigate the damage to the condominium. Mitigation does not equal restoration. Remember, many materials are still in short supply and there will be a significant delay in restoration efforts based upon the level of damage in the community. A tarp today is worth one hundred times more than shingles six months from now. Mitigation will take the form of tarping damaged roofs to prevent water intrusion, boarding up broken windows and sliders, removing debris and dangerous tree limbs, and drying out the condominium units and common elements. Any wet drywall or carpeting will need to be removed. Remember the insurance company's adjuster should be involved in the dry-out process.

The Board should document everything. This includes pictures, video footage, maintaining receipts, keeping copies of contracts and communications with contractors, etc. Anything that is presented to the association under the guise that a contractor or vendor will pursue the insurance claim on the association's behalf must be avoided. If the Board is interested in working with a public adjuster, please contact the association's legal counsel prior to doing so. Additionally, if the association is considering applying for FEMA assistance, it should be discussed with the association's legal counsel as this kind of assistance may be limited in scope.

It is understandable that as a result of Hurricane Ian, associations will have little leverage with contractors and may have to enter less than favorable agreements in order to have emergency repairs and debris removal performed. Use local, reputable contractors who are licensed and insured for the type of work they perform, even if you have to pay a bit more to have the work completed. Avoid out of town and uncaptialized contractors, for example small companies that will have to subcontract the work in order to perform it. Keep your insurance company's adjuster and the association's legal counsel in the loop to the fullest extent possible, especially if your condominium has sustained catastrophic damage.

Below is a list of general Do's and Don'ts for condominium Boards to keep in mind during the coming week:

- Do consider canceling any membership and regularly scheduled association meetings while designated members of the association work to assess the damage to the premises.
- Do take photos, videos, and keep documentation of all damage to the condominium property, including the individual units, limited common elements, and common elements.
- Do notify the association's insurance company of the known damage to the premises.
- Do get in touch with the insurance adjuster who will be working with the association during the insurance claim process.
- Do begin the debris removal process and eliminate any dangerous limbs or other safety hazards.

- Do contact licensed and insured professionals concerning the damage to the premises and any mitigation that may need to be performed to prevent further damage to the property.
- Do get in touch with the association's legal counsel to review any bids or contracts for mitigation work to be performed.
- Don't sign any contracts for mitigation or restoration without having them reviewed by the association's legal counsel.
- Don't sign anything that allows a contractor or public adjuster to pursue an insurance claim on the association's behalf. Be very wary of language that creates an "assignment of benefits" in anything the association is asked to sign.
- Don't wait to mitigate existing damage to the condominium.
- Don't delay notifying the insurance company about the damage to the property.
- Don't do any restoration work at this point if there are more pressing life safety concerns, debris removal concerns, mitigation efforts to be taken, and contract reviews to be performed.

We understand that many associations will want to get back to normal as quickly as possible. Don't sacrifice taking the right steps, at the right time, with the right outcome, for a speedy resolution that ultimately hurts the association. The process to rebuild severely damaged condominiums will take time. This information is not to be mistaken for specific legal advice, please consult with your association's legal counsel before making any major restoration decisions. Be on the lookout for more information from our office later this week.

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.

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