

Associations Disaster Recovery Plan

The hurricanes of 2004 and 2005 were devastating in Florida, particularly in our local area. In trying to pick up the pieces, we have decided that there must be a better way. When we look at disasters, we must remember not all are related to weather; a large fire would produce similar consequences.

First, a complete disaster plan should be developed to allow for possible total construction loss. The impact of a disaster such as Hurricane Katrina makes us very much aware of the need for individual preparedness on the part of each Association. With such turmoil, the importance of preparing and adhering to a disaster plan has become vital.

Step One: Inventory all documents and records that are critical to the initiation of emergency response and action. All Associations must keep a record of essential information at a secure location away from the community. The inventory should include:

1. The location of and account numbers of all bank accounts including CDs and other savings accounts.
2. A list of all vendors with complete copies of all contracts.
3. A list of accountants, attorneys, managers, insurance agents and any other person or firm that the community counts on for professional guidance.
4. Complete copies of ALL insurance policies.
5. A current list of names and addresses of unit owners including an emergency phone number and emergency contact person for each of the units.
6. A video or photographic record of the community and its equipment. A copy to be kept off premises.
7. Each community should designate a Disaster Coordinator. An officer, director or owner who is trained in disaster response should be authorized to implement the disaster response.
8. Each community should appoint an Information Facilitator. Many times the residents, including the directors and officers, scatter in all directions rarely leaving any way to be contacted. Following the storm (loss), there may be total communications blackout and the destruction of community facilities, leaving nowhere for owners or Boards to meet. The Information Facilitator's name, address and phone number should be provided to every owner so they can coordinate communications among residents of the community.
9. Designate a location to establish an emergency operations center... a place to operate from in the event of a disaster.
10. Designate a Restoration Committee. This committee should be made up of a chairman and two members. Their duties are to collect a damage (claim) form describing the specific damage to their unit or building. Keep these forms so that when the insurance adjuster comes to adjust the losses, the forms can be given to him/her to expedite adjustment of the claim. Also, this committee will answer questions regarding insurance policy numbers and deductibles when necessary and help with FEMA claims, if any. They will also be the committee that will work with the insurance agency when they cannot answer all the questions a unit owner may need answered.

Step Two: Prior to any loss, the Association needs to review their documents designating the Association as a Condominium, a Homeowners Association, a Property Owners Association or a Cooperative. Many times Florida laws and document restrictions designed to allow the owner access to information and input in the decision making process impede disaster recovery. For example, the use of reserve funds in an emergency is hampered by laws requiring prior approval of a majority of the total voting interests. The documents need to be reviewed and where necessary, amended to remove barriers to recovery and provide boards with emergency powers. Certain areas of concern are:

- “Insurance Trustee” provisions. Most of the time this is found within the insurance section of the documents. These provisions require the proceeds of insurance settlements be paid to a third party for disbursement at the instruction of the Association’s engineer. If such a provision exists, insurers will not pay proceeds to the association until a trustee is designated. This can delay the receipt of funds necessary for disaster response. It would be preferable for the Board to act as a “trustee” with disbursements being authorized only when approved in advance by an independent accountant or construction manager employed by the Association.
- Access to Units. Most Condominium and Cooperative Statutes grant the Association an irrevocable right to access when necessary for the maintenance repair or replacement of the common elements, or of any portion of a unit to be maintained by the Association, or as necessary to prevent damage to the common elements or to a unit or units. An unclear area exists in relation to the repair or reconstruction of portions of the units maintained by the unit owners. In the case the Association is a Homeowners Association or Property Owners Association, this is not covered under the Statutes. To avoid conflicts, the documents should provide:

Right of Access to the units to repair or replace any portion of the condominium or unit owner’s property insured by the Association.

- Association as Agent. The association should be irrevocably appointed agent for each unit owner of a mortgage or other lien upon a unit and each owner of any other interest in the Property, in order to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.
- Powers of Board or Disaster Coordinator & Restoration Committee. Members of the Board (though less than a quorum) and/or a designated Disaster Coordinator/Restoration Committee, who act in good faith without pecuniary gain, should be indemnified from actions by members of the Association and should have emergency powers including but not limited to the power to contract for:
 1. Emergency services
 2. Security from vandalism
 3. Removal of debris
 4. Engineering and other professional services to assist in disaster recovery

Step Three: Maintain Adequate Insurance. Maintaining adequate insurance is easier said than done! The documents must be examined in concert with the law to ensure that the scope of coverage satisfies both. The fact that the Condominium or Cooperative Statures may exclude from coverage various unit components and finishes (floor coverings, wall coverings, ceiling coverings, a/c units, and built-in cabinets), a provision in the documents requiring that the association provide coverage for "all improvements" installed by the developer may impose liability on the association for failure to maintain such coverage. And, of course, if the Association is a HOA or POA, statutes do not limit coverage for the components mentioned above, and these may need to be covered under the Association policy.

Ordinance or Law: This exclusion states that the insurer will not pay for loss or damages caused directly or indirectly by the enforcement of any ordinance or law:

1. regulating the construction, use or repair of the property; or
2. requiring the tearing down of any property, including the cost of removing it debris.

The exclusion is meant to apply to building codes which may require more expensive reconstruction material, installation, design or methods than those used in the existing building. Further, it excludes coverage for undamaged portion of the building that must be torn down if the code requires because 50% or more of the building was damaged. The current form for Condominiums as well as HOAs and POAs contain a provision to pay a small amount (\$10,000 per building) for "increased cost of construction" due to change in codes, but nothing for tear down and debris removal. This is a very important coverage to be considered, however, it does increase the cost of property insurance dramatically.

Many unit owners fail to maintain coverage for their personal effects (contents) and building upgrades with their units. It is recommended that unit owners residing in mandatory membership communities maintain homeowners (HO-6) coverage, at least the following endorsements:

- **Loss Assessment Coverage:** This coverage protects for "Special Assessments" levied by Boards to cover losses from insured perils when the coverage is not adequate, such as high deductibles or removal of trees or other plants debris, which is not covered under the policy. Most policies contain \$1,000 limit of coverage, but can be increased for a very small amount.
- **Water Seepage Coverage:** This covers water damage from wind-driven rain or water entering from a source other than a damaged roof or wall (through stucco or around window frames)
- **Additions and Alterations, Improvements and Betterments Coverage:** This covers any upgrades as well as real property added by the unit owner. This endorsement is available with all risk coverage, but often without water seepage exclusion.

It is most important that reserve funds be maintained for contingencies and to cover deductibles.

Also, assuming that one maintains adequate coverage, in a major catastrophe, there is a risk that not all insurers will survive. Hurricane Andrew, for example, brought many insurance companies to bankruptcy. Check the company's re-insurance contracts. And, keep in mind, the lowest quote is not always the most secure coverage.

Step Four: After the Disaster. Responding quickly in accordance with the Disaster Plan will minimize damage and promote a speedy recovery. The Association should:

1. Account for residents. Knowing where all residents are greatly helps emergency response time following a major loss such as a hurricane. Generally in a hurricane loss, there will be advance warning. A committee should determine which residents are remaining in the community and which ones are evacuating. Obtain temporary addresses and phone numbers from those who are evacuating. Once the disaster strikes, the board's first action should be to get emergency medical assistance to any residents in need.
2. Survey the property and identify areas in need of priority attention. Depending on the nature and extent of damage, it may be necessary to evacuate or shore up a structure and obtain security to protect against criminal acts and/or prevent further damage. All contracts with contractors should be made in advance as part of the disaster plan.
3. Establish lines of communication. It is very important to identify, in advance, a source outside the community to coordinate communications among community leaders following a disaster. The designee may be a board member's relative located in another city or a professional engaged by the community for that purpose. Regardless, every officer and director should be instructed to contact the Communications Coordinator with a fixed time period after the disaster and provide him with an address and phone number. The Communications Coordinator can also be a vital link between the board and the residents. Efforts should be made to locate all unit owners.
4. Dispel rumors by disseminating necessary information. After establishing a means of communication, every effort should be made to meet with owners to discuss the situation and inform them of the actions in progress to protect their property and respond to their needs.
5. Following a disaster, it would be desirable to have unit owners call a pre-recorded daily update to a given phone number.
6. It may be necessary to suspend or cancel on-going contracts, like pool and lawn services following a disaster. Contracts should be reviewed to insure that in the event of a disaster, services can be suspended without obligation to pay on the part of the Association.
7. It might be necessary to ensure protection of persons and property. It may be necessary to contract for private security when police are unavailable.

Step Five: Shortly after any disaster, companies and individuals looking for work and/or offering disaster recovery services could besiege the community. They will usually consist of qualified professionals, ranging from public adjusters to companies specializing in disaster recovery. Beware of the con men and profiteers who prey upon the misfortune of others. Be careful! The best thing to do is stick to your disaster plan which should include a plan that anticipates the five phases of reconstruction:

1. Planning and scheduling
2. Bidding
3. Contract negotiating
4. Rehabilitation
5. Completion/close out

And remember, there are other steps you should take which may involve contracts of short terms and specific purposes. The most urgent needs will be:

1. Securing the community from acts of vandalism or looting
2. Removal of debris from a storm or other loss
3. Shoring up buildings and closing openings in order to mitigate against further damage

Once conditions get stable, the disaster recovery team will be in a position to meet with professionals trained to help such as:

Architect/Engineers or Consultants: who will help you assess the damage, prepare plans and specifications in accordance with new building codes, and define other reconstruction requirements.

Construction Managers: can oversee selection of a general contractor, competitive bidding and administrators; directs and coordinates pay requisitions, change orders and all other activities of the parties; and resolves disputes.

Attorney: to review construction contracts to insure adequate assurance of job performance and warranties, and compliance with applicable lien laws.

Public Adjuster: in some cases, the assistance of an independent public adjuster may be beneficial when dealing with the nuisances of an ambiguous insurance policy. While most adjusters will work for a fee based upon a percentage of the insurance proceeds...usually 10% of the total claim amount, the fee should be adjusted accordingly when assistance required is limited to certain items.

In order to respond to an emergency, the association may need to obtain a short-term loan. Absent a restriction within the documents, a not-for-profit community association can borrow, however, they, generally cannot pledge the condominium property as security. Most banks with which the Association does business will approve a commercial line of credit of credit secured by the Association's accounts and/or assessment and lien rights. The association also may obtain a small business administration loan that is available to victims of disaster, usually, at lower interest rates. Of course, reserve funds can also be utilized, if approved by a majority of the total voting interest.

Settling the claims. In a major disaster, it is really rare, if not impossible, to fully assess the damages within a short time frame. In fact, the association should not seriously entertain a settlement until the full scope of work is known and costs determined.

Step Six: Immediately following the disaster it will be necessary for the association to secure the property to mitigate against further damage and clean-up debris. Most insurers will offer advances for this purpose. As long as the association signs no releases or settlements, there is nothing wrong with accepting such advances.

Insurance policies should be checked to ensure that "proof of loss" forms are filed within the time frame under the policies. As a general rule, policies require that proof of loss be filed within sixty days of the loss, but adjustment of the loss may take much longer, and most companies ask for the proof of loss to be signed at the time they have adjusted the claim. Further, should other damage be ascertained after the proof of loss is signed, the claim can be reopened.

Just remember, disasters are no respecter of geographic location or economic status, and can occur at any time. The effects can last for years, but if your association is well prepared with a Disaster Plan, it will help along the road to recovery.