

Claims are Still Not Resolved, the Lessons of Hurricane "Andrew"

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As we approach the 2-year anniversary of Hurricane "Andrew," August 24, 1992, thousands of South Florida condominium residents' claims are still not resolved with their insurance companies. In fact, in many of these cases there is no solution in the immediate future for a final settlement of the loss and damages that have occurred to their complexes in Florida. At issue are millions of dollars in damages to structures, roofs, and associated property on condominium grounds.

The fact that these problems continue to exist are documented in the following two examples:

In the Kendall area of South Miami, one of the first condominium conversions, a complex on 40 acres with over 3,500 residents, has filed a \$6.9 million claim with their insurance carrier for, among other things, a documented need for total replacement of 18 roofs on the buildings. To date, their insurance company has paid a total of \$270,000 and the claim process remains deadlocked. As the matter is now at a virtual standstill due to difference of opinion on loss and damages and technical insurance policy language provisions, these residents continue to suffer from the effects of Hurricane Andrew. The Association President now freely admits that for the first 13 months following the loss, the Board simply did not know what to do, having never experienced this type of event with any precedent in place to review for guidance.

Another example is a 750-unit complex a few miles away, again, deadlocked in disagreements with their insurance company, not only on issues of loss and damage, but underwriting questions such as value of the property before the loss. Here, their insurance company has proposed co-insurance penalties against the settlement, alleging that the Association did not adequately insure the property to value to meet the co-insurance provision in the policy. While many insurance policies on associations are written on an agreed value form, others have co-insurance provisions which, if underinsured, can create penalty situations requiring assessments from the owners to make them whole from the loss and damages sustained.

It is noteworthy that most of the claims from Hurricane "Andrew" on residential losses and business are settled. Why is it that condominium associations are unique -- "With this backdrop and, particularly, recognizing the fact that it is difficult to get a consensus of opinion on a good day in a condominium Board Room or Committee Meeting, you can expect that once a disaster strikes the Association will most likely become adversarial with their insurance company adjuster if, for no other reason, there is a lack of knowledge and understanding on both parties sides as to how the process is to be undertaken." - in that these claims can continue to drag on and are a continual nightmare both for the associations and their insurance company?

Within the insurance adjusting profession, it has been recognized that the most difficult insurance adjusting assignment is attempting to settle a condominium loss due to fire, windstorm, or other perils. Some of the more vocal reasons expressed from the perspective of the adjusting profession is:

1. Access problems from the many units involved;
2. Divergence of opinion on what the loss is and the dollar amount of the damages;
3. Absentee owners;
4. Lack of input and conversely too much input from representatives from the various committees, boards, and general ownership;
5. Overlapping insurance policy coverage issues on the allocation of loss and damages between the individual unit owners policy and the master condominium association policy.

I think it is safe to say from a professional adjuster's perspective there is no greater challenge in property insurance than trying to satisfy all interests that are involved in the condominium loss adjustment process.

Obviously, with the many benefits and enjoyment of condominium living there comes this dark side of dealing with a disaster to real property belonging to multiple owners who have multiple insurance companies and policy forms and provisions.

Insurance, be it any type, especially when it comes to filing a claim, has often been vocalized by the general public as being a red tape process. This is no less so in a property insurance claim process in that a significant amount of documentation, verification, expert reports, policy interpretation, and negotiations are required before insurance companies will release funds pursuant to their policy provisions and the applicable law in the jurisdiction where the loss occurred.

Property insurance is not analogous to life insurance where the policy limit is paid out upon demand. Here, each item damaged, be it as small as a 2 x 4 piece of lumber or as large as an entire roof, must be identified as repairable or not, measured, and cost applied. This process requires line by line documentation down to lineal and square feet with appropriate unit costs. After the assessment process has been completed, all of this must be agreed to by both parties, the insurance company and the condominium association's representative. Most lay people simply do not understand the adjustment process and become upset with what are seemingly endless delays, perceived ridiculous demands, and other burdens they feel are placed on them by the adjusting process. Added to this is the continual changing of laws governing condominium insurable interest, policy forms, endorsements, all of which impact how the adjustment process is to be done at any given time.

The confusion that reigns in the condominium property insurance adjustment, was clearly demonstrated after Hurricane "Andrew" when one of the state's leading property insurance law firms representing insurance companies issued a memorandum to their clients entitled: "Condominium Coverage Alert"

Clearly, even the insurance industry needed help on how to adjust a loss to a condominium association based on the current legal environment at the time of Hurricane "Andrew." Even this memorandum which, prepared by the attorneys, provided in-depth historical information, and a quick "One Page

Summary For Easy Reference In The Field" was subject to debate and confusion on the part of insurance adjusters.

With this backdrop and, particularly, recognizing the fact that it is difficult to get a consensus of opinion on a good day in a condominium Board Room or Committee Meeting, you can expect that once a disaster strikes, the Association will most likely become adversarial with their insurance company adjuster if, for no other reason, there is a lack of knowledge and understanding on both parties' sides as to how the process is to be undertaken.

After many years of adjusting losses, both for insurance companies and serving as public adjusters representing Condominium boards, we have seen recurring mistakes made by the condominium community which only adds to the already difficult process.

The first and foremost mistake most commonly observed universally is lack of proper preparation and planning before a loss occurs. This planning and a preparation is an absolute minimum requirement if an Association has any hopes to recover payment for loss and damages and avoid huge assessments to cover deficiencies.

The first step necessary to avoid these problems and pitfalls is to consult with an expert before a loss occurs in an effort to identify and specify those coverages needed by the Association to protect against loss exposure. This expert should be familiar with adjusting terms and practices and procedures, forms, and endorsements available in the industry, including all insurance policies available for a particular condominium situation, court cases, and positions taken by the Insurance Commissioner so that clear, defined coverages are identified and can be put into place. For example, a 600-unit high-rise on Miami Beach had an insurance consultant that their agent/broker had to report to. This gentleman had the final authority concerning preparation of the policy and acceptance of the terms. While this type of relationship creates an additional expense beyond the commission paid to an agent/broker, the Association is getting an additional level of expertise and their insurance consultant clearly represented them and not the insurance company.

A good example of improper planning before a loss is the lack of coverage and understanding for a common exclusion, the effects of which can be devastating to a condominium association. This exclusion, known in the industry as "The Law and Ordinance" exclusion, is best explained by the following example:

If a high-rise condominium's balcony railings are damaged to 50% of their value and should they not meet the current Building Code as to horizontal separation (the distance between the rail pickets-- typically 4" allowed), the Building Department will not let the railings be repaired but will require that the whole system be brought to Code compliance by replacement of the rails in their entirety. The insurance company, based on their exclusion (Law and Ordinance) will only pay for the dollar repair amount for the direct damage to the rails. In other words, the Association will be required to fund out of their pocket the difference between the repair cost and the complete replacement of the rail system. In one case, our firm was involved in a 30-story high-rise. This issue alone amounted to over \$500,000.

Another example involves the elevation of air conditioning units on a roof that needed to be replaced because of damage. With the changes in the Code, air conditioning units are in many areas now required to be elevated up off the roof. While the insurance company will pay for the replacement of the roof, they will cite the Law and Ordinance Exclusion and will not pay for the additional cost required to elevate the air conditioning units. Depending on the size of the roof and the air conditioning units involved, the cost can easily exceed \$25,000 per building.

While most condominium forms have a built-in limit of \$25,000 for law and ordinance coverage, this is inadequate given the devastation that occurs to a property in a storm such as "Andrew," or for that matter which can be expected for a lesser-intensity storm. This \$25,000 is the total amount available and does not apply to each building or each issue raised in Code problems. In other words, it is a one-time payment for Code problems even if they cost 5 times as much.

Preparation for dealing with the disaster before the storm is of critical importance in order to have adequate insurance coverage in place when the loss occurs. No less important is being prepared after the storm to deal with the many problems that will arise and decisions that are required.

It is our recommendation that a competent, knowledgeable person, one who has the Association's best interest at heart, should be in place before the storm with a charge of responsibility to deal with the many responsibilities and decisions that will result. This person or perhaps a small committee, are going to be faced with issues requiring decisions of tremendous financial responsibility involving thousands, if not millions of dollars, concerning issues of debris removal, temporary repairs, hiring of experts and other professionals and acting as a liaison between the insurance company and the Board of Directors. Obviously, under the circumstances of a major disaster with homeowners displaced, a person or committee must be prepared to give their time and complete energy to the responsibility at hand.

Further, this person must be competent enough to understand the insurance adjuster's position, know what needs to be temporarily repaired, and orchestrate the settlement process and negotiations. Further, once a settlement is finally agreed upon, decisions will be required in selecting contractors, securing a complete and comprehensive proposal from the contractors as to what work needs to be done within the boundaries of the settlement, and finally consulting with the Association's attorney to make sure that a proper contract is in place that will protect the Association and insure the completion of the work with the funds available.

Losses that we have been engaged in after problems developed, the two most common reasons for these problems were:

1. The Association did not know how to proceed, and thus did nothing. In some instances, while decisions were made, what they did was improper or inadequate to satisfy the requirements under the insurance policy ("Your Duties After A Loss"): -- "It must be emphasized that a condominium association cannot be passive in this process. Their insurance policy requires both parties, the insurance company and the insured, to fulfill certain duties and responsibilities in order for the process to work. The adjustment process is just that. It requires an adjustment and both parties must work equally hard to conclude the claim adjustment."

2. The condominium association relied on people who had a separate and distinct interest and were not qualified in the insurance adjusting process. As a result, the individuals could not properly represent the Association in dealing with the many issues that arise with the insurance company and, later, contractors.

Of the former, the Association, through their Board, simply did not understand how their claim should be filed, and that a loss requires affirmative, direct action on their part. They were unaware of requirements on their part to document, verify, and present the loss and damages to their insurance company. Of the latter, the Association often immediately hired contractors thinking the contractor would be able to document, present, and negotiate the loss with their insurance adjuster.

It must be emphasized that a condominium association cannot be passive in this process. Their insurance policy requires both parties, the insurance company and the insured, to fulfill certain duties and responsibilities in order for the process to work. The adjustment process is just that. It requires an adjustment and both parties must work equally hard to conclude the claim adjustment. As defined in Black's Law Dictionary, 6th Edition, Adjustment: An agreement, a settlement. In the law of insurance, an adjustment of a loss is the ascertainment of its amount and the ratable distribution among those liable to pay it. The settling and ascertaining of the amount of the indemnity which the insured after all balances and decisions made, is entitled to receive under the policy and fixing the proportion which each underwriter is liable to pay.

Summarizing the claims adjusting problems that we have witnessed as a result of Hurricane "Andrew," and the "No-Name" storm of March 1993, many, if not all, could have been avoided had proper planning and attention to detail been in place prior to the storms.

Further, while for most people, condominium living means a less hassled life and delegated responsibilities, very few put in their thought-conscious process what would happen to their Association should it be seriously damaged by a peril such as fire, water, or windstorm. Because the adjustment process requires extensive work and planning, we would recommend that a competent liaison person be appointed to act on behalf of the Association and Board of Directors with regards to claims handling.

In conclusion, be prepared to be an activist in the event of a loss and understand the responsibilities and duties of the Association before and after the disaster. While no one likes to dwell on "what if" questions, failing to have a plan in place is a guaranteed plan to fail.

As Oscar Welt once stated, *"The idea of insurance works fine if events conform to what statistics have laid down."* Unfortunately, as we have seen, statistics are skewed dramatically when a major disaster strikes.