FLORIDA CONDOMINIUMS - CATASTROPHIC ADJUSTING
AN ADJUSTMENT PROCESS MADE COMPLICATED
BY THE EVER-CHANGING RULES

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Given the popularity of condominium ownership, one would assume the lure and seductive attraction is the promise (or illusion) of hassle-free ownership of this type of real estate. This may in part be validated by the unit owner paying their monthly maintenance fee and the occasional special assessment for repair and upkeep, thus avoiding the hands on involvement of owning single-family detached housing.

For the most part, this ease of ownership seems to be the case except when the unexpected happens, such as a large loss from fire, flood, or the occasional hurricane (not so occasional in 2004). When these perils cause damage to both the unit owners and master associations properties, confusion and controversy carry the day. In seemingly the blink of an eye, the condominium association fabric changes and the condo commanders step to the forefront. As claim professionals with large loss condo adjusting experience, we all know where it goes from there. Condominium loss adjusting, from this writer's experience, is unparalleled in its controversy, complexity, and confusion. For over three decades, legislators, underwriters, and claim professionals have struggled with various and sundry issues relating to condominium claims. As an example, it has been reported that since the 1978 enactment of Florida Statute 718.111(11), there have been no less than 21 amendments to this statute attempting to correct problems encountered in the real world environment.

Although a great deal of hope has been placed on the most recent legislative tweaking, as will be discussed in this workshop, we likely will continue to see new issues arise with further attempts, either through policy endorsement or legislative changes, to achieve a more seamless process.

I am, however, doubtful that a utopian process will be forthcoming given the dynamics of condominium living and the complexity of insurance contracts and the intervention of the legislative

process. That said, we can all try to work together in an attempt to facilitate the process. I offer the following practical steps and suggestions for the successful adjustment of a large condominium loss.

THE PROCESS

Communication, Scope, Price, Documentation, Coverage, Presentation, Negotiation, and Accounting.

A. COMMUNICATION

Communication with the condominium association is absolutely critical. The association should appoint one or more persons who have 1) authority, 2) leadership ability, and 3) stamina to see the process through. The insurance carrier must ensure that their representative(s) have effective communication skills, are sufficiently trained, and are given the proper decision making authority. Utilizing inexperienced field representatives who lack sufficient authority is a prescription for failure.

Both sides need to set expectations early. The insurer must provide clear instructions regarding mitigation and emergency service procedures. Further, an explanation of the coverage and procedures that will be followed regarding the adjustment of the claim need to be set early in a precise and clear manner.

The insured needs to make the carrier representatives aware of special concerns that are unique to its condominium community. These include, but are not limited to, such issues as security, access to units, and a plan for inspection times. Both parties need to be keenly aware of the individual unit owners' interest and participation in the process. The unit owners need to be provided information on a regular basis to inform them on the status of the loss, the claim, and the reconstruction process timetable.

Recent effective examples of communication with unit owners, many of whom may be displaced or geographically distant from the loss, include websites set up specifically for this purpose to include

email ability so that unit owners can make inquiries and receive answers electronically. Also, a telephone call-in number with a recording can provide updates on activities going on at the property.

In summary, it is not only critical but good business policy to include the unit owners as well as the master association board of directors in the communication and adjustment process. In my experience, the failure of effective communication by both sides in the number one cause of major misunderstandings that ultimately result in a failure to achieve settlement of a large condominium loss.

B. SCOPE

Developing and agreeing on the scope of the loss should be the primary objective of the insured and the insurer. Agreement on the scope of loss is so critical that there are some in the industry who follow the mantra of "Give me my scope and I will take your price," with the perception that having won the scope they will have prevailed in the claim settlement. This of course assumes that fair market pricing will be applied to the scope.

In order to establish a scope of the loss, conditions prior to the loss must be established. In order to do this, key people must be identified. In fact, we often look for the key person such as the building engineer, maintenance person or manager, who can often be recognized by the large key ring hanging from his or her belt. This is the person who knows the building and its history and can usually establish a base line of pre-loss conditions. It may be necessary to review maintenance records or minutes and conduct interviews of members of the condominium community to accurately establish pre-loss building conditions. Once a base line has been established, an accurate scope of the loss can then begin to be developed. In this writer's opinion, it is often necessary to consult design professionals as facts warrant. Structural engineers and architects can provide input on repairs and replacement required due to the impact of the peril, as well as provides drawings and project manuals in order to apply for building permits. This becomes critical as buildings age, as building code requirements will have changed requiring detail specificity as to new law and

ordinance requirements. In addition, these code items will have to be segregated for the application of specific law and ordinance coverage that hopefully has been added to the insurance contract prior to the loss.

Design professionals can be utilized in the process of segregating damages between the unit owners' property and that of the master association. Their involvement may aid politically to prevent the discourse that often occurs when the unit owners feel the board of directors or reconstruction committee is being heavy handed in their determination as to what work does or does not need to be done in the unit owners' residences.

Finally, input from unit owners should be encouraged but in a managed way. They need to be consulted about their knowledge and opinion of what occurred to their unit and the surrounding area. An effective tool is to develop a form letter that is sent to the unit owners requesting information on the type of and location of damage they see that did not exist prior to the loss. These survey letters are invaluable, not only as a guide to gathering information about the damages, but because they make the unit owners feel involved.

C. PRICE

The dynamics of pricing a scope is driven by factual situations such as supply and demand for building products and labor given the market conditions. Controversial at times, software pricing is a tool but not a panacea as it may not reflect the market conditions. The media reporting of this problem following Hurricane Isabel (and starting to surface in the 2004 storm adjustments) provided an unfortunate real-world example of the inadequacies of utilizing software pricing. Following Hurricane Isabel, adjusters made offers based on software pricing that turned out to be woefully low in the affected areas. This controversy came to a boil when contractors who wanted the reconstruction work refused the jobs as the estimates prices and proposed settlement amounts were completely inadequate given the market conditions.

Prices will change and until market conditions settle down, it is difficult for both the insured and insurer to resolve these issues. From this writer's perspective, real bids and proposals are more reliable than software prices. In fact, the price you pay may be the most accurate basis of your loss, assuming an agreement on scope and absent fraud, price gouging, and overreaching.

Finally, a comment regarding emergency services and mitigation pricing/cost: As we go forward in the adjusting process of the 2004 storms, billing for emergency services and mitigation continues to be a lightning rod for controversy. With the benefit of hindsight and given the more typical single hurricane, one large loss environment, it is my opinion that an agreement should be reached with the service provided, the insured, and the insurer as to the scope of work to be performed and the cost, or at least a "not to exceed" figure prior to the commencement of the work. An agreement on the terms at the beginning alleviates the disagreements, lien filings, and inevitable litigation. Recognizing the unprecedented 2004 storm season, the demand far exceeded the supply and, correspondingly, prices were adjusted for market conditions. I suspect there will be a lot of give and take on these service bills, many of which I understand are in the six and seven-figure range. In the end, a reasonable pricing compromise given the conditions will ultimately have to be agreed upon.

D. DOCUMENTATION

Documentation in the loss adjusting process is not only necessary, it is a requirement for both sides. Field adjusters for insurance carriers rarely have absolute authority and therefore must document their findings and recommendation to their superiors to request authority for payment or substantiate a basis for denial of all or part of a claim.

Equally important is a requirement that the insured or their representatives document their claim as the insurance property policy requires the insured to make their claim. In the condominium community it s necessary that the unit owner damages be segregated from those damages covered under the master association policy.

What is an acceptable method of documentation? I would suggest that this process, like adjusting, is in fact an art. Most adjusters are familiar with the line-by-line estimate format contained in the various software packages sold by vendors catering to the insurance industry. For the most part, these software programs are a tool for detailing areas of damages and costs. There are, of course, other forms of documentation such as engineers' reports that can include detailed spreadsheets of estimated damages and a myriad of other consultant reports of documents that may be utilized depending on the fact of a particular loss.

It is not unusual in large loss adjusting to see both sides retain experts with conclusions that are diametrically opposite from each other. Although many will argue that experts rely on complex and accurate calculations and science, this form of documentation is often by its nature subjective. That is not to say that experts should not be retained as part of the documentation process and, in fact, as a policyholder advocate I feel that in most large loss situations it is necessary to retain experts.

A word of caution is in order as many of you may recall the controversy that followed in the wake of the Northridge earthquakes in California. There were allegations of "result oriented reports" being prepared at the request of one particular insurance company. This practice is clearly unacceptable as the professional needs to formulate his professional opinion. I do feel that the representatives have an obligation to meet at the site and provide input as to the facts and the pre-loss conditions so the design professional is supplied with background information in order to complete their professional analysis.

E. COVERAGE - READ THE POLICY, KNOW THE LAW

Failing to understand the policy and its terms and endorsements is analogous to beginning a cross country trip or sea voyage without a map or chart. The result will be the same - you end up lost. In addition to reading the policy you must know how that policy provision has been interpreted in the jurisdiction where the loss occurred. Florida has a specific statute that requires insurance

adjustments to comply with insurance contract and the law.

Many adjusters with years of claim handling experience feel they know the practice and procedures of adjusting losses only to discover the insurance forms they have been using in the jurisdiction where the loss occurred have been interpreted in ways that will have major differences on the outcome of the claim. Following are examples of policy-specific language and legal interpretation of policy terms that illustrate this point. Some hurricane deductible forms state that the deductible will be calculated based on the total insured value of all the insured property on this policy. As you can well imagine, this type of form will have a major impact on the payment of a loss if only one building sustains damage. Another example, to our client's pleasant surprise, was that contrary to typical policy provisions that wind driven rain that caused int5eerior damage without an opening was not covered, was at this loss covered because this Bermuda manuscript form had no such restrictive language. This high rise commercial building with a multimillion dollar loss all from wind driven rain (no discernible openings in the interior) was covered for building damage, personal property, and business interruption.

Lastly, two dramatic examples of the application of the laws that can affect the policy are the court=s interpretation of collapse coverage in Florida that allowed for collapse claims to be made under a lower threshold than a total collapse and for causes that were otherwise excluded. Subsequent endorsements have for the most part circumvented this liberal interpretation of collapse coverage.

Another example that has caused a major shiver in the timbers of the insurance industry in Florida is the Mierzwa decision. This case and its effect will be more thoroughly discussed in other workshops but I mention it here because it has had a profound effect on the windstorm coverage, more specifically when two perils cause damage to a property to the extent that it becomes a total loss.

Finally, I suggest that you pay particular attention to the legal ownership of the damaged property. Many communities may look and act like a condominium association but may in fact be a

homeowner's association (HOA) with attached units owned in fee simple. These units are often individually insured, typically with HO3 policies, and by definition may not be governed by the condominium act. I can assure you from personal experience these communities present some very unique and challenging adjusting problems.

F. PRESENTATION

If you believe the old adage that a picture says a thousand words, then clearly a well documented presentation of all aspects of a loss is a precursor to an expedited and equitable settlement. As claim professionals, we have all seen the one or two-page estimate with a multimillion dollar bottom line. Sometimes this is accompanies by a proof of loss. From my experience it is given the same time and consideration that was put into its creation.

In this writer's opinion, a well organized claim presentation, indexed and detailed as to its contents, not only makes a good impression, but it is a document that can be referred to over the course of the investigation and settlement negotiations. Although the contents of this claim document will vary as to the specific loss, it should be clearly discernible and understandable to anyone who reads it. It should contain at a minimum a statement detailing exactly what item is being claimed, its value, and the amount of its loss. It should contain a proof of loss as well as the insurance policy that applies along with the current declaration page.

Subsections of this presentation should include supporting documentation such as professional reports from engineers, architects, and other consultants. Repair/replacement estimates and bids should be detailed as to the scope, item, and cost. I also suggest including any pre-loss reports such as value appraisals or other documentation to substantiate the condition of the property to distinguish it from the damages being claimed.

We have found that when dealing with multiple buildings on a policy, it helps subsequent reviewers to have each building identified on a plot map with the documentation regarding its loss attached so

it is clear, particularly in a large estimate, exactly which building is being claimed, and for what type and amount of damage.

For condominium associations we have made it a practice to include five to seven years of board minutes. They typically will be requested and providing them with the claim documentation and presentation expedites the carriers review, for settlement authority.

Finally, photos showing the conditions following the casualty are extremely important. From our experience most large condominium losses are settled in offices and conference rooms many months after the loss has occurred and in many cases when the site conditions have changed. Pictures not only say a thousand words but in negotiations many months following the loss they become invaluable as the memorialize conditions at the time of the event.

G. NEGOTIATIONS

Show me the money! This is where the rubber hits the road. Yes, insurance property claims are negotiable. Negotiations commonly take place on scope, price, depreciation, and terms of a settlement. Most people with real-life experience in the market place often consider themselves skilled negotiators. In fact, few are trained or skilled in the techniques of this art. Although this is not the place or time for an in-depth discussion or analysis of negotiating strategies and techniques, I do suggest careful planning and preparation to ensure your success. In addition, there are many excellent books and articles available that will help to educate you. One that comes to mind that is an easy read is Getting to Yes: Negotiating Agreement Without Giving In by Roger Fisher and William L. Ury. From watching and participating with many professionals over the years, the pros have a detailed strategy in place that includes setting their goal in the beginning so as not to lose sight of their bottom-line objective. For condominium associations, this requires detailed discussions with authorized representatives of the association. Both insured and insurers should establish that the person(s) they are negotiating with has the absolute authority to settle the claim. As a practical matter, the insured should negotiate from the claim they have submitted and this

negotiation should take place on a line-by-line or item basis with any differences set aside for future consideration. Identifying differences will enable others such as an appraisal panel to understand what has been agreed to and what remains to be resolved.

Negotiations do not have to be adversarial. Professionalism, respect for your counterpart, diplomacy, and civility are as important to the process as trying to outwit your opponent. The worst mistake I have observed in the negotiation process is the shouting and screaming that often takes place. In my view, if you lose your cool, you lose. Skills in negotiation are a life-learning process. You can never learn too much about this art form.

H. AN ACCOUNTING

Condominium loss adjusting is somewhat unique in that two entities have a keen interest in the outcome of the master association claim. The first is the master association represented by the Board or others and the second is the unit owner whose interests are affected by the loss and the negotiated settlement. Although many condominium claims may be settled in a global fashion-some where neither side is happy (the sign of a good settlement)-I recommend that some specificity of the settlement be documented. Rest assured, some months into the reconstruction process, often after the settlement has been reached, unit owners will be making inquiries as to the accounting for damages and settlement to their unit. If some reconciliation is not preserved, the board and the insurance carrier will be inundated with inquiries from the unit owners.

CONCLUSION-the triumph of hope over experience

Although many in the condominium community are optimistic about the most recent legislative change, I feel that we will always be working to perfect this adjustment process.

The intended result of the 2004 change to Florida Statute 718.111(11) was to more clearly distinguish and clarify certain types of property for insurance coverage. The consequences of the

2004 legislation was to shift building items and fixtures many of which were often insured under the master association policy to the unit owners responsibility, many of whom are uninsured (with a general consensus being as much as 50%) or underinsured. The clarification of these items in the 2004 legislation: Afloor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a unit and serve only one unit and all air conditioning compressors that service only an individual unit, whether or not located within the unit boundaries,@ may unfortunately leave a void of insurance coverage for many unit owners, all of which will become apparent from the public outcry from the condominium community following storms and large losses in the future.

Although the unintended consequence of the legislature's last change to 718.111(11) is not yet fully known, I suggest that the State of Florida condominium czar appointed by the Governor consider investigating a plan for notice requirements to unit owners similar to the plan enacted following Hurricane Andrew, which exposed voids in coverage for single family homeowners. As many of you will recall, Saga Bay, a residential community in Dade County, suffered severe flood and wind damage following Hurricane Andrew. As a result, these homeowners were required to meet code requirements, in part by elevating their homes to levels established by the National Flood Insurance Program (NFIP). Despite the homeowners' position that their "reasonable expectations" were that their replacement cost property policy should pay for the total replacement cost of their loss, which in their case went well beyond repairing the direct wind and flood damage, their claims for code items were denied. Justifying the denial of these costs, the insurance companies cited common policy language that excluded any law and ordinance or code upgrade requirements. Thus, for the first time on a large scale the old adage "The big print giveth and the little print taketh away" became apparent to the Aman on the street.

As a result of this conundrum, it was judged to be a great public policy issue to the extent that the Dade County legal department advocated this matter on behalf of the homeowners, resulting in the

homeowners prevailing in the local court. The insurance industry subsequently appealed and ultimately the Florida Supreme Court sided with the insurance companies and they were not required to pay the elevation and code upgrade costs. Following this lengthy litigation, Florida=s legislature drafted a bill that was ultimately passed that required homeowners' insurers to provide additional law and ordinance coverage (typically 25% of coverage A). This coverage would be in all a residential policies unless the insured signed a rejection form.

My point in revisiting this past controversy is that it may help to illuminate voids in unit owners coverage that have resulted in the shifting of these items to the unit owner, whom many feel are uninsured and/or underinsured. Perhaps we should take the prior controversy regarding replacement cost coverage or lack thereof as an example and require insurance companies to provide additional coverage specifically for these items or, if the unit owner so chooses, require them to reject this coverage in writing.

With the large number of condominium communities currently in Florida and with those being built or proposed, there will be a major outcry when the next large loss hits and these unit owners find they have no coverage or are underinsured for those items that they are now required to insure beginning January 1, 2005. Instead of merely reacting, I respectfully suggest that the insurance industry and the condominium communities and their representatives be proactive on this issue while there is still time.

In conclusion, condominium loss adjusting has and always will remain problematic. It offers unique challenges not only for the claim and legal professionals, but also the managers, the unit owners, and others who, by choice or chance, are brought into the fray. If this is your field, staying educated and involved is crucial. The devil will always be in the details in the statutes, the insurance contract, condominium documents, and the interpretation of these documents by the courts.