

## "Who's On First"

### Let's End the Game of Condominium Loss Adjusting

An original © article by Public Adjuster Charles R. "Dick" Tutwiler, C.P.C.L.A., P.C.L.A.  
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In the Windstorm Insurance Network Incorporated's brochure announcing the Second Annual Windstorm Conference the rhetorical question of *"who's on first"* describes the workshop that will discuss the condominium loss-adjusting environment in Florida today. The following quote was taken from this brochure and is the genesis of this article: *"One of the most intriguing legal and claim issues in the State of Florida is the division of coverage between association policies and unit owner policies for condominium projects"*. Stated another way, from this writer's experience, confusion continues to be the rule rather than the exception in condominium loss adjusting.

On a good day most I think would agree the work of an insurance adjuster is difficult with challenges that are many and varied. Given the nature of the beast the adjusting process for the most part can be described as adversarial, controversial, complex and at times a lengthy and surly affair.

Enter the condominium lifestyle and ownership issues into the fray and adjusters soon find themselves at war with condo commandos, be it the unit owners, the Board or a combination of both. In this writer's opinion there simply is no other loss that is more adversarial, controversial, complex and lengthy than condominium loss in Florida.

In part, the communal living environment contributes significantly due to the number of owners, all of whom have different opinions, philosophies, backgrounds and life experiences that are now living in close proximity to one another.

While recognizing this living arrangement with neighbors literally on top of one another will not change I believe it is necessary to undo the complex, burdensome, bureaucratic rules and regulations, which have primarily been imposed by the Florida Legislature. In all fairness to the Legislature they have had issues involving complex insurance matters dealing with loss and damages presented for which there was little precedent given the recent (relatively speaking) popularity of the condominium concept in our state. [\[1\]](#)

It is time for a change in this process. If you believe the status quo is correct, mention a condominium loss to a seasoned adjuster in Florida and the reaction will be universally one of disdain. Mention the condominium lifestyle to a seasoned property lawyer and their response will most likely be similar to that which was quoted in a recent newspaper article detailing a controversial condominium law suit, "I would rather move my family under a bridge than have them live in a condominium." [\[2\]](#)

Following a loss at a condominium association the adjustment process often fails in that coverage issues concerning interpretation of condominium documents, policy language as it relates to the documents, separation of unit owners' interest versus the condominium master association's interest and arguments over value and improvements compound to hinder the adjustment of the loss. It is simply unconscionable given Florida's large condominium community, particularly when a large segment of this population is elderly that the following factual events have occurred and will again if changes are not implemented to change the process.

1. Following Hurricane Andrew insurance companies had to be told by an outside law firm how to adjust condominium losses. Even after a detailed document was presented to insurance adjusters to help them understand the myriad of issues they needed to consider before calculating loss and damages this document still required interpretation when applied to real work issues encountered in the field.

2. Following Hurricane Georges, all of the unit owners' claims in a condominium complex were denied in that a data was entered incorrectly in the documents due to an error. This required a lengthy search of the courthouse records, which ultimately resolved the dispute in the insured's favor.

3. Following Hurricane Irene, a unit owner's claim for loss and damages in excess of \$40,000.00 was denied a condominium documents were mis-interpreted as to "what was originally conveyed". It took nine months to resolve this issue by ultimately seeking out original residents, having affidavits signed, as well as conducting an exhaustive search concerning original building plans and etc.

4. In another Hurricane Irene loss the two carriers (unit owner and master association) both denied coverage based on their interpretation of the documents when the issue was raised whether an item was structural or non-structural after 70% of the roof was blown off causing extensive damage to drywall on interior non-load bearing walls.

Notwithstanding the fact that claims are being incorrectly denied and/or unreasonably delayed the insurance underwriting is in many cases directly affecting insurance decisions unit owners are making in purchasing insurance. Understandably they lack the sophistication in knowing the issues that will follow a loss that precludes them from making intelligent decisions on what to insure and for how much. As an example a unit owner has no standing to argue issues of replacing drywall, building fixtures, and in some cases carpet when his unit is damaged. Depending on the documents these items may be covered under the master association policy where the unit owner will not be listed as a named insured with the rights afforded that designation. In the case of mold and mildew a common result from water damage, if the mold and mildew is growing in the walls it may be difficult or impossible for the unit owner to convince the master association's adjuster that it needs to be treated and paid for under the master association's policy in lieu of the individual unit owner's policy.

Anecdotal stories are prevalent in the insurance adjusting industry about nightmare condominium claims the genesis of which in this writer's opinion are the coverage issues. The events listed above as well as the antidotal stories will continue unless changes are implemented to change the process. The Florida Windstorm Underwriting Association in a good faith effort to resolve issues as it relates to condominium documents has now begun a lengthy and presumable costly cataloging and librarying of condominium documents for future storms. Notwithstanding the effort to date, in this writer's travels throughout the state, this library will be a never ending work in progress in that the cranes have once again returned to the sky lines in Miami, Palm Beach, the Panhandle and the West Coast of Florida as new condominium developments are coming out of the ground. These condominiums of course will have new documents, articles of incorporation and by-laws all of which presumable will need to be catalogued and placed in the library.

The solution to the condominium adjusting problems is simple in that one policy should cover all loss and damages from the perils that apply to the policy. Adjusters should not have to track down, interpret condominium documents, nor should they have to debate with their colleagues as to the meaning of these documents and policy language as it relates to the unit owners' claims versus the master association's policies.

Adjusters in a CAT (catastrophic) situation, particularly those brought in from out of state, should not be thwarted in their attempt to determine the fair amount of loss and damages by having to first seek coverage opinions or refer to crib notes taken at hastily initiated seminars following large catastrophic losses.

By advocating a one policy adjustment for the total loss and damages that has occurred to a condominium is not to imply that separate policies cannot be purchased and structured to cover the unit owners' personal property losses. The proposition for a one policy adjustment speaks only for the necessity to eliminate the conflict and interpretation between the master association and the unit owner's property as it now exists regarding improvements, building fixtures, carpet, appliances and etc. As indicated above the solution is simple, the implementing of the solution is another matter. Clearly due to Florida Statutes and administrative rulings by the regulators the change will have to be implemented through legislation.

As this is a matter of grave public concern given Florida's large condominium communities and the exposures they face from catastrophic losses, this issue needs to be placed before the Florida Legislature, the Governor, Regulatory and Insurance Industry Representatives for debate and consensus on a sound, logical and reasoned plan to eliminate this problem.

To the nay says who say it can't be done, I would say to them to look at the Federal Flood Program wherein a policy has been implemented that when a flood causes damage to a condominium building the flood policy responds regardless of the documents, consideration to unit owners improvements and etc.

In another example, a Florida insurer provided total coverage to a condominium association which included payment for all fixtures, appliances, carpets or other improvements as "initially conveyed" when a fire caused in excess of five million dollars in damages to the condominium building. As the units were "initially conveyed" with these items, the only argument we encountered in the settlement other than code or law and ordinance issues which this policy provided 100% coverage for, was the minor upgrade calculations for fixtures, appliances and improvements that were upgraded in a particular unit. There is further precedent for the one-policy covers all concepts in Puerto Rico where one policy pays for all loss and damages without the cumbersome process now imposed on Florida residents.

Finally to the underwriters and actuarial people who may view this proposal as untenable due to the inability to accurately assess the risk, I would answer that the insurance industry has a long history of using reporting forms. I believe that it would be less cumbersome if a reporting form process was in place wherein improvements, which is presumably the un-calculable risk the underwriters would argue, could be reported on a yearly or some other time basis with adjustments and premiums based on increase or decrease in improved values that unit owners make.

As many of you know who are now involved in the condominium communities this process is currently being undertaken by condominium associations for underwriting valuations on the master association's property by commissioning "valued appraisals" made on a periodic basis. Just as the federal government has implemented a one policy pays for all flood damages in a condominium, they have also adopted a valuation requirement in their policies to enable condominiums to get law and ordinance coverage. The nuance of this program is that national flood insurance will provide some law and ordinance coverage to the condominium communities provided the buildings are adequately insured to value.

In closing, Florida has not had the big one yet. When it does happen and a significant portion of the condominium communities are damaged, if the confusion that has occurred historically re-occurs in the future, the condo commandos will be marching to Tallahassee with torches lit and knives drawn.

It's time for a change now. The Florida Legislature needs to overhaul the practices and procedures of condominium loss adjusting and make this agenda one of their highest priorities.

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[1] "More than 42 million Americans now live in condos, co-ops or planned communities" – U.S. News & World Report, October 30, 2000 [\[RETURN TO YOUR PLACE IN ARTICLE\]](#)

[2] "Hi Neighbor, want to get together? Let's meet in court!" – U.S. News & World Report, October 30, 2000 [\[RETURN TO YOUR PLACE IN ARTICLE\]](#)