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Association Financial Problems: Pursuing Unresolved Casualty Claims May Be The Solution

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If your community is struggling today to meet its financial obligations in light of a growing number of delinquencies, it might be time to revisit the issue of any storm damage that may have impacted you several years ago. Many associations do not readily see the connection between storm damage that hurt them several years ago and their current economic woes but that connection may be closer than you think.

The following hurricanes battered the State of Florida:

Charlie-August 13, 2004;
Frances-September 4, 2004;
Ivan- September 16, 2004;
Jeanne- September 26, 2004;
Katrina- August 24, 2005; and
Wilma- October 25, 2005

Many boards submitted claims for storm damage and were told that their claims did not reach their deductible level. Others received some money from their carriers but not nearly enough to pay for repairs and were forced to specially assess their members for those costs that weren't covered. Incredibly, a few associations never even made claims because they either felt they did not meet the deductible or they feared having their coverage canceled or their rates raised. Quite simply, a board of directors cannot accurately assess the amount of damage that a community may have suffered without a thorough inspection by properly trained experts.

For far too many communities, the storms that ravaged Florida in 2004 and 2005 created a hole from which they never dug out. The special assessments that their members were forced to pay for damage that should have been covered by their insurance carriers made them less able to bear the current real estate market conditions.

However, all is not lost for those communities who understand the insurance process and take the time to pursue their rights. Typically you have five (5) years to make a claim with your insurance company after a casualty loss so even the oldest storm claim listed above is STILL RIPE unless your claim was cut short by a FIGA deadline, an appraisal award or a release agreement you signed which specifically used the word "release".

In order to understand whether or not your association walked away from insurance proceeds that were rightfully owed to you, it is important to understand how most insurance companies operate. **It does not benefit the insurance company's bottom line to make you whole for any claim you may submit so they are hoping you will accept less money than you deserve or they are hoping that you will simply forget that you still have rights to assert a substantial claim for money that you may be owed. It is even better for them if you do not submit a claim at all.** The way insurers achieve these goals is to perpetuate the following myths:

1. *If you file a claim you will be dropped.* This is false. It is illegal under Florida law for insurance companies to drop policyholders for filing claims. Specifically, Section 627.4133(3) provides: "Claims on property insurance policies that are a result of an act of God may not be used as a cause for cancellation or nonrenewal, unless the insurer can demonstrate, by claims frequency or otherwise, that the insured has failed to take action reasonably necessary as requested by the insurer to prevent recurrence of damage to the insured property."

   The reality is that if you do not file a claim and the neighboring property owner files a dozen, you both have the same chance of being dropped if your insurance company decides to reduce its exposure in the State. The neighboring property owner, however, at least had the benefit of filing a claim;

2. *If you file a claim your insurance rates will go up.* Again, this is the same issue as #1. Insurance companies must submit rate increases to the State for approval. Whether or not you make a claim will not impact the carrier's business decision to move forward with a proposed rate increase;

3. *Your damage did not come close to exceeding your deductible.* This is a common tactic to ensure that policyholders simply give up and pay for insured damage out of their own pockets. Damage visible to the naked eye does not tell the whole story of damage which your personal and real property may have suffered. Trained experts can properly advise you on the full extent of the damage inflicted including structural damage, mold, loss of power, relocation expenses, cleanup and dumpster costs, etc. If your community endured a special assessment to pay for storm damage you may have been on the receiving end of the deductible excuse; and

4. *If you already received a check from your insurance company it is too late to revisit your claim.* Unless you signed a release, receiving funds alone does not prevent you from pursuing your carrier for the full extent of damage you suffered.

Unfortunately, a volunteer board of directors is a particularly easy target for the scare tactics outlined above. Many boards simply do not know their rights with regard to casualty claims or are bullied into accepting less than the community, which is ultimately the individual members, deserves.

The statutory deadlines for most of these storm events are nearing. Boards, particularly new ones who were not seated at the time any damage was incurred, would be well advised to have their property inspected as soon as possible in order to provide themselves with the reassurance that they were paid in full by their carrier or to arm themselves with the ammunition needed to recover any amounts still owed.

If you were lucky enough not to suffer any storm damage over the last four tumultuous storm seasons, please keep in mind that every board member bears a fiduciary duty to the membership and that duty includes the proper handling of insurance claims.

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