

HURRICANE

Preparedness & Recovery Guide

For Community Associations



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PREPAREDNESS AND RECOVERY GUIDE

FOR COMMUNITY ASSOCIATIONS



Resources

Useful Contacts Before, During & After a Storm or Disaster

Federal Agencies

FEMA	FEMA.gov 1-800-621-FEMA (3362)
US Army Corps of Engineers	usace.army.mil 1-202-761-0011
U.S. Department of Housing and Urban Development (HUD)	hud.gov 1-800-245-2691
U.S. Department of Health & Human Services	hhs.gov 1-887-696-6775
Center for Disease Control and Prevention (CDC)	cdc.gov 1-800-CDC-INFO (1-800-232-4636)
Small Business Administration (SBA)	sba.gov 1-800-659-2955
Disaster Assistance Improvement Program To find the Disaster Recovery Center nearest to your location, text DRC + ZIP Code to 4FEMA	disasterassistance.gov
Ready	ready.gov 1-800-621-FEMA (3362)
NOAA/National Weather Service In case of an emergency, call 311 (Dade) and 211 (Broward)	nhc.noaa.gov 1-305-229-4470
Centers for Medicare & Medical Services (CMS)	cms.gov 1-800-MEDICARE (633-4227)

State Agencies

Florida Division of Emergency Management	floridadisaster.org 1-850-815-4000
Florida Department of Elder Affairs	elderaffairs.org (850)-414-2000

Not for Profit

American Red Cross	redcross.org 1-800-RED CROSS (733-2767)
The Salvation Army	salvationarmyusa.org 1-800-SA-TRUCK (728-7825)
The National Emergency Response Team (NERT)	nert-usa.org 1-207-948-3499
The National Organization for Victim Assistance	trynova.org 1-800-TRY-NOVA (879-6682)

Volunteer Organizations

National Voluntary Organizations Active in Disaster (Non-Profit)	nvoad.org 1-703-778-5088
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Communication

The American Radio Relay League, Inc. (ARRL)	arrl.org 1-860-594-0200
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Hurricane Preparedness & Recovery for Community Associations

The State of Florida is no stranger to hurricanes and other natural disasters. The question is not whether communities, homes and families will be impacted by a windstorm event, but when.

Our Hurricane Preparedness and Recovery Guide is designed to assist community association boards and managers to prepare themselves, their members, and their property for the approach as well as the aftermath of a serious storm or other disaster. Our attorneys, many of whom have been representing community associations in Florida for over 20 years and are board certified by the Florida Bar, have assisted in all phases of planning and preparing, as well as recovering and rebuilding.



The Plan

IDENTIFYING THE POTENTIAL CONSEQUENCES OF A DISASTER

The first step toward developing and implementing a disaster plan is identifying the potential consequences of a disaster. The second step is to develop and implement a plan to mitigate the impact of a disaster to the fullest extent possible.

Evacuation

Emergency evacuation routes and special instructions regarding use of elevators and stairwells should be clearly posted. Don't forget to rehearse evacuation procedures on a periodic basis.

Destruction of Real Property

Damage or destruction of real property is often the primary claim and causes the greatest hardship. The main areas of concern include: Buildings and other structures

- Landscaping
- Roads and Pathways

Damage to Personal Property

The items most at risk during a disaster are furniture, fixtures, and personal property. The items of most concern include:

- Electronic equipment, data and other forms of technology
- Indoor and outdoor furniture, art, lighting, pool equipment, pool furniture and assorted fixtures
- Documents and important papers such as governing documents, Association surveys, plans, insurance policies.
- Rental and owner records and personnel files
- Accounting records
- Vehicles and equipment

Injury or Loss of Life

Carbon monoxide poisoning, heart attacks and drowning are the top three causes of death as a result of a hurricane. People over 75 are particularly at risk. Identify "high risk" individuals with disabilities or medical needs requiring special attention when preparing your community's disaster plan.

Relocation

Your disaster plan should anticipate not only the possibility of a total casualty loss, but also the need to relocate, temporarily or permanently, depending on the level of impact. While many communities are able to clean up storm debris promptly, many others will remain in turmoil for quite some time after being impacted by a disaster.



Planning For A Disaster

Designation of a Disaster Coordinator or Disaster Committee

The ability of a community association to minimize its damages and speed up its recovery depends in large part upon its preparation.

Every disaster plan should include having a person or committee in place prior to the disaster with full authority to implement the Disaster Plan.

Designation of an Information Facilitator

In times of crisis, communication is key. A major hurdle to recovery is rumor and misinformation; both can hamper successful recovery efforts. An information facilitator can help to stop the rumor mill in its tracks. Today's computer and smart phone technology provide the ideal vehicles to communicate with residents. Every association should have its own website, which can be a great resource for disseminating information and staying in touch with the unit owners. A text messaging system for community members is also valuable for disseminating information quickly.

Home and cell phone numbers must be collected before a disaster and stored in a safe, easily accessible location.

A properly prepared plan will include plans for temporary relocation of residents in situations where the community must be evacuated. This can include Red Cross or other emergency shelters, hotels, schools, or staying with family members in other cities.

Now that the Florida Legislature has granted emergency powers to boards, a board may require the evacuation of the property in the event that the local or state authority has declared a mandatory evacuation order. Owners

Impact on Employees

The board should consider the emotional impact a storm's approach has on the association employees, particularly an on site manager. Association employees will not only be responsible for preparing the community for a storm's approach, but they are also concerned about preparing their own homes and families for the potential disaster.

Associations are well advised to task their attorneys with creating a reasonable approach to these pre- and post-storm employee policies.

Economic Impact

The economic impact of a disaster can be extensive. Unit owners displaced from work may be unable to meet their financial obligations to the association. Uninsured, under-insured or non-covered losses under both the association's policy as well as the owner's policy may require the board to pass special assessments. The higher cost of goods and services resulting from shortages further compounds the problem in the short-term.

In sum, the impacts of a disaster will vary from event to event. It is advisable to prepare for all possibilities.

(cont.)

who refuse to abide by that evacuation order do so at their own risk and without the possibility of pursuing the association for loss of life or injury to themselves or their property. Boards can also declare the property unfit for entry or occupancy based upon the advice of experts retained by the board or on the advice of emergency management officials.

Photographic Imaging

Your plan should include annual preparation of a date stamped video and photo documentation of the community such as all of the common areas, each unit owner's home, the association's office and property.

Digital technology and photographic records can be conveniently and safely stored off premises and easily retrieved, if needed.

What should be photographed?

Specifically include:

1. Inside and outside of buildings and premises
2. equipment, computers and books
3. accounting records
4. insurance policies, bank accounts, personnel records, records of units/unit owners, as-built plans and specifications

You should prepare an inventory including the date, place of purchase, and purchase price of each item of personal property.

Community Emergency Response Team (CERT)

Many shared ownership communities have already taken the positive step of undergoing CERT training under the auspices of FEMA. A Community Emergency Response Team (CERT) can fill the large gap that often results when a disaster overwhelms local emergency services. CERT teams trained in basic disaster response skills, such as fire safety, light search and rescue, team organization, and disaster medical operations. CERT members are encouraged to support emergency response agencies by taking a more

active role in emergency preparedness projects in their communities.

Your board's quick response in accordance with your disaster plan will minimize damage and promote a speedy recovery.

Activating The Disaster Plan

Following a disaster, the disaster coordinator and information facilitator move into action. The information facilitator opens lines of communications with the owners. The disaster coordinator contacts emergency services and notifies the contractors and employees, advising of their duties and needs. In some cases, it may be necessary to suspend or cancel on-going contracts such as lawn and pool maintenance. Hopefully, a provision was made in the contract for such right of suspension without monetary penalty in disaster situations when the contracted services are no longer needed. There certainly is no reason to pay to hedge the bushes when they have all blown away!

Knowing the whereabouts of all residents greatly enhances emergency response time following a disaster. In a situation such as a hurricane, in which there is advance warning, a committee should ascertain which residents are remaining in the community and which are evacuating. A temporary destination address and phone number should be obtained from those who are evacuating. Once disaster strikes, the board's first action should be to direct emergency medical assistance to any residents in need. Naturally, if the community is under a mandatory evacuation order, that order should be obeyed by all.

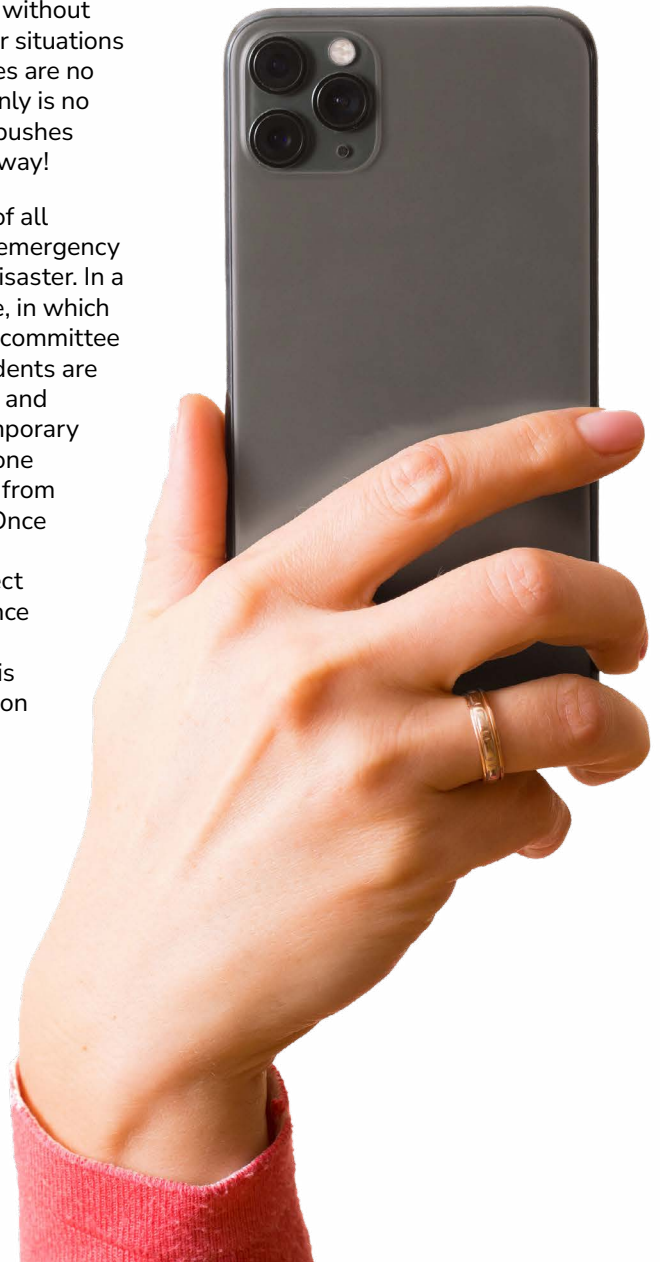
Be sure to attend to the injured and secure the community from acts of vandalism and looting. Be sure to remove all storm debris.

"Drying In"/"Shoring Up" the building structures in order to mitigate against further damage.

"Drying Out" is the removal, where necessary, of wet carpet, wall board, cabinets, etc. when necessary to prevent the growth of mold.

The insurance carrier for the community must be notified immediately at the conclusion of the storm.

If the insurance carrier is not able to promptly inspect and document the damage from the storm, it may elect to deny the claim.



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Quick Reference List

INFORMATION ON EACH RESIDENT

- ✓ Name
- ✓ Unit number
- ✓ Other residences
- ✓ Next of kin name(s)/contact info
- ✓ Identifying features
- ✓ Social security number
- ✓ Medications
- ✓ Cell phone number
- ✓ E-mail address

INFORMATION ON EACH EMPLOYEE

- ✓ Address
- ✓ Home and cell phone numbers
- ✓ E-mail address
- ✓ Social security number
- ✓ Next of kin name(s)/contact info
- ✓ Medications

BANK INFORMATION

- ✓ Account numbers, authorized signatures, certificates of deposits, and/or other investment documents

INSURANCE POLICIES

- ✓ Nature and extent of coverage, carrier, and policy number
- ✓ Name(s) of agents with pertinent information

VENDOR LIST

- ✓ Pool maintenance, security, landscape maintenance, roofer, etc.
- ✓ Professionals - CPA, Insurance Agent, Attorney and Manager

INVENTORY OF FURNITURE AND EQUIPMENT

- ✓ Detailed descriptions
- ✓ Photographs
- ✓ Receipts
- ✓ Serial numbers

EMERGENCY SUPPLIES

- ✓ Emergency medical supplies, food, water, waterproof matches, a defibrillator, flashlights, battery-operated radio, an emergency generator and an ample supply of fuel to power the generator for an extended period of time.
- ✓ Tools, such as shovels, crowbars and a power saw, might be considered.

BUILDING PLANS

- ✓ A set of as-built plans and specifications.
- ✓ Location of shut-off valves and structural components
- ✓ Names, addresses, telephone numbers and e-mail addresses of the architects, engineers, contractors and sub-contractors who designed and built the structures.

BUDDY SYSTEM

- ✓ Let a neighbor or the property manager know if you will be away from your unit for an extended period of time
- ✓ Make sure residents who might need special assistance are identified

DATA INVENTORY

- ✓ Maintain a record of information maintained in the community's information systems.
- ✓ Regularly back up all data to a safe and accessible location.



It's that time of year again... **NOW WHAT?**

by Brandon R. McDowell

FLORIDA COMMUNITY ASSOCIATION JOURNAL

The snowbirds and spring breakers have all returned home. The weather is warmer, and the days are longer. The summer vacationers have not yet arrived but will soon be here. Unfortunately, this also signifies the potential arrival of a dreaded and uninvited guest: a hurricane. While hurricanes are unpleasant, as with many things in life, a little preplanning can go a long way. The time to evaluate, prepare, and plan is now before the season is firmly upon us.

I have read the following quote many times from different sources: Everyone has a plan until they get punched in the face. Few things punch harder or cause more damage than a hurricane. It is very likely that there will be property damage. How much or how little is to be determined. However, by preparing in advance, you can hopefully minimize some of the damage and simplify the process for recovery after the storm has passed.

While there are no storms on the horizon, now is the time to begin your preparations. What should those preparations include? Associations and owners should take photographs (time/date stamped) and video of the lot, the unit, any structures, the common areas, personal property, etc. These photos/videos can then be used in the event of damage and when filing a claim. Clearly showing

the insurance company the condition of your property pre-storm can help shorten negotiation/litigation with the insurer as to what should be paid on the policy following the storm damage. The preparations should also include a review of your contracts, a review of your insurance policies, and a disaster plan. Each of these topics is discussed in further detail below.

Contracts

Hopefully, any contract that your association has entered into was reviewed by the association's counsel. Now is the time to dust off these contracts and "rereview" to determine what services are provided.

1. **Management Contract**—What extraordinary relief services are provided by your management company? Will the management company oversee repair projects? Does the management contract obligate the association to use its manager in this capacity? Are there additional costs associated with the same?
2. **Landscaping Contract**—What preventive services can be provided pre-storm (i.e., tree trimming, staking of trees, etc.)? Is there an additional cost associated with this? When can these services be performed? If the services are scheduled, can the schedule be altered and the services provided sooner? What cleanup services will

be provided post-storm? What is the time frame for the post-storm cleanup?

3. **Security Contract**—What relief services will be provided pre- and post-storm? How soon after the storm passes will the association have security personnel in place? What does the contract say with regard to allowing security personnel to leave when a storm warning has been issued?
4. **Elevator Contract**—What preventive services can be provided pre-storm? What relief services will be provided post-storm? What about a generator? If the association has a generator, does the association have a generator service contract? Who will man the generator to ensure it remains running? If the association does not have a generator for its elevators, what arrangements has the association made in the event the power is out and residents cannot use the elevators?
5. **Additional / Miscellaneous Contracts**—If the association has electronic gates, is there a service contract for them? If so, what does the contract state regarding securing those gates during a storm? What about manual overrides if there is no power? How about construction that may already be underway in the community? If there is ongoing construction, those contracts should require the builder/contractor to secure all materials in

advance of a storm. The same is true of securing dumpsters and/or other trash/recycling receptacles

Insurance

Associations and owners alike need to confirm that their insurance premiums have been paid and their policies are up to date. Associations and owners need to have copies of those policies on hand (electronic and hard copy are recommended) and understand what the policy limits are as well as the deductibles.

It is also highly recommended that both associations and owners speak with their agent and have their agent explain any exclusions under the policy. It is also important to understand how to file a claim.

The Condominium Act provides that it is the unit owner's responsibility to insure the following items ("unit owner list") against casualty: ceiling, floor, and wall coverings; appliances; water heaters and water filters; built-in cabinets and countertops; electrical fixtures; personal furnishings/property; window treatments; and all improvements or upgrades the owner makes to the unit.

Disaster Plan

It is recommended that the association prepare a disaster plan that documents and incorporates important information in a written instrument that may be distributed to all owners. Examples of information to be included are as follows: emergency phone numbers (i.e., fire rescue, police/sheriff, electric company, animal shelters, local hurricane shelters, hospitals, etc.) as well as each of the directors' phone numbers and the property manager. The plan may include a list of pre-planning activities such as gathering canned food, water, prescription medications, first aid kits, battery-operated radios, flashlights, candles, and other supplies; identifying a safe evacuation route; helping elderly and/or disabled residents; removing personal items from porches and balconies; parking/storing vehicles; etc.

The day-to-day operation of most

associations is a largely document-driven affair. In order to ensure that the association can function post-storm, it is recommended that those documents be secured prior to the storm and maintained in a readily accessible format. While it's great (and often required) that the documents be available via the association's website, what happens if there is an extended power outage/limited internet connection? As such, it is recommended that documents be scanned and uploaded to secure internet storage/cloud storage as well as printed. The printed copies should be placed in watertight containers and then secured in a fireproof container. What documents should be included? We recommend (at a minimum) that the following be secured: all governing documents, insurance policies, financial records (including bank account information along with signatory information), contracts, community plat, any plans/specifications for the community, and resident lists (names, addresses, phone numbers, etc.) as well as any employee records.

In addition to the contracts listed above, it is also highly recommended that lists with contact information for all professional vendors be created and secured. Such vendors include the attorney, insurance agent, management company, engineers, contractors, pool company, landscaper(s), elevator company, etc.

Further, it is also recommended that a list of vital equipment be created and secured. Such equipment includes location of shutoff valves, location of water lines and cutoffs, electrical main circuits, gas lines and cutoffs, sewer clean-outs, etc. Any emergency equipment (i.e., fire extinguishers, defibrillators, etc.) should also be noted.

As part of the disaster plan, the association should also have a process in place for securing facilities such as the pool. For example, the association needs to ensure that any common areas are secured, the electronic gates are

secured, the pool and spa have been prepared, and the pool furniture has been stored. This is also a great time to remind owners of their obligations (i.e. removing furniture and other items from their balconies, closing their shutters, etc.).

For condominium associations, the law requires that hurricane shutter specifications detailing the type, color, and size of hurricane shutters (or other hurricane protection) that unit owners may install be adopted. If those have not been adopted, now would be the time to do so.

Post-storm

While this article is focused on pre-storm preparations, it is important to note that after the storm, the association should contact its attorney as well as its insurance agent as soon as it is safe to do. Many associations become immediately inundated with offers from contractors, roofers, disaster-related companies, and adjusters. As the association, you should not sign any contract and/or settle any claim without your counsel's involvement.

To read the original FLCAJ article, please [click here](#).

Brandon R. McDowell is a senior attorney in Becker's community association practice. He provides legal counsel across the entire spectrum of community associations, encompassing condominiums, cooperatives, timeshares, and homeowners' associations. In addition to aiding in the day-to-day management and governance of these communities, he assists boards of directors, unit owners, and association managers in analyzing and resolving complex contractual and transactional disputes.



WHAT WILL THE DAMAGE COST?



A well-designed disaster plan will include safeguards against future risk which are designed to minimize economic and property loss, as well as the loss of human life.

It is dangerous to ever become complacent about hurricanes when you live or own property in Florida. Knowing that disasters can occur and being prepared to deal with them will certainly minimize damages and promote a speedy recovery.

Disaster planning and recovery are two areas where communities should not attempt to go it alone. There are experts in all areas related to disaster planning and recovery who have the knowledge and experience needed to help you make the right decisions for your community. Unfortunately, there are countless stories of associations that misunderstood the perils of a disaster and its aftermath and paid the consequences for years to come.

Here are some helpful tips from other community association industry professionals to assist in developing your association's customized disaster plan.

Adequate Insurance

Adequate property insurance must be based on the replacement cost of the property as determined by an independent insurance appraisal. Statutory mandates, along with provisions of the governing documents, determine the extent of the association's insurance coverage responsibilities as well as those of the individual unit owners.

In addition to basic coverage, some major sources of economic loss, such as landscaping, fencing, screening, exterior building paint, building foundations, walkways, pools, tennis courts, and satellite dishes, are not normally covered by insurance. Some areas of potential loss can be covered for additional premiums including coverage for displacement from the property as previously discussed.

One of the most important types of coverage exclusions every board needs to discuss

with its insurance agent is "ordinance or law" exclusion.

Ordinance or law exclusion states that the insurer will not pay for losses 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 debris. This exclusion is designed to address building codes that may require more expensive reconstruction material, installation, design or methods than those which were originally used in the existing building. It may also apply to environmental laws that require elaborate and expensive decontamination processes, or upgraded construction practices in hurricane and flood zones.

For example, following Hurricane Andrew, a Miami-Dade County ordinance required that a number of buildings considered to be damaged by 50% or more could be restored



only if they were elevated to a specific height above sea level. Under such circumstances, the cost of elevation plus repair of the damage generally would exceed the limit of building insurance, unless there was coverage provided under the rider to the base policy.

Many communities were left waterlogged by the hurricanes of 2004 and 2005 only to discover that their basic policies did not cover water damage from flooding. Under a typical master flood policy, the entire building is covered under one policy, including both the common elements and the individual units.

In the Florida Panhandle after events such as Hurricane Opal and the BP Oil spill, the greatest monetary loss was not because of damaged property, but from lost rental income. Business interruption insurance is essential for owners or managers who rely upon vacation rentals for their livelihood.

Managers need to ensure that their business interruption coverage is not just for the premises where they maintain their offices, but also for the communities where they manage rental units.

Many homeowners failed to maintain coverage for their personal effects and improvements within their homes.

It is recommended that homeowners residing in shared ownership communities maintain homeowner coverage with at least these 4 endorsements:

1. Loss Assessment Coverage

Protects against special assessments levied by boards to cover losses from covered peril, when the primary coverage is inadequate.

2. Water Seepage Coverage

Covers water damage from wind-driven rain or water entering from a source other than an opening in the building (e.g., through stucco or around window frames).

3. Additions, Alterations, Improvements and Betterments Coverage

Covers upgrades, as well as real property added by the unit owner. This endorsement is often available with all risk coverage, without a water seepage exclusion.

4. Insurance + Reserves

Even with adequate coverage, there is a risk that not every insurer will survive extraordinary claims. Hurricane Wilma's, and most recently, Hurricane Ian's and Hurricane Nicole's widespread impact brought many insurance companies to their knees with some going out of business and the Florida Insurance Guaranty Association (FIGA) dealing with the

aftermath. Careful consideration must be given to the financial strength and rating of the insurer as well as their consumer practices over the years. Keep in mind that the lowest quote is not always the most secure coverage. Given the current state of the insurance market, Communities who maintain reserves for contingencies, deductibles and other uninsured losses going to fare the best post-disaster.

Pre-Negotiated Service Contracts

Boards who enter into pre-negotiated contracts specifically designed to deal with the aftermath of a disaster often have the peace of mind that they have a set price and a designated contractor at their disposal.

These kinds of service contracts include:

- Emergency service contracts which provide “drying out” or “shoring up” the premises.
- Debris removal
- Security services
- Extraordinary management services.

“Insurance Trustee” Provisions

Generally found within the insurance section of the documents, these provisions require that the proceeds of insurance settlements be paid to a third party for disbursement at the instruction of the association’s engineer. When such a provision exists, insurers will not pay proceeds to the association until a trustee is designated. This can critically delay the receipt of funds necessary for disaster response as well as add an unnecessary cost to the association to pay for the Insurance Trustee. It is preferable for the board to act as a “trustee” with disbursements being authorized only when approved in advance by an independent engineer or construction manager employed by the association.

Emergency Powers

State laws and document restrictions designed to ensure owner access to information and input in the decision-making process previously impeded disaster recovery for condominium

associations. Fortunately, the Condominium Act and the statutes for homeowner associations and cooperatives have been changed to provide emergency powers. Check with your counsel to better understand these statutes.

Even with the acquisition of emergency powers, your association’s governing documents should be reviewed and amended to remove any unnecessary barriers to recovery.

Reconstruction vs. Termination

The unit owners at one South Miami-Dade County condominium destroyed by Hurricane Andrew were shocked to learn of a provision in their declaration of condominium which provided for automatic termination when damage exceeded fifty (50%) percent or more of the condominium, unless a majority of the total voting interests voted within sixty days to rebuild. Since the unit owners had scattered all across the country, the association had to seek court relief to prevent the activation of the provision. It is preferable for the documents to require a vote of the owners to terminate the condominium, not to rebuild it. That said, The Condominium Act was amended subsequent to the hurricanes of 2004 and 2005 to provide a method for terminating condominiums in the event of economic waste, disrepair of the property and when continued operation of the condominium is made impossible by law or regulation.

Survey the Property and Identify Areas Needing Priority Attention

Depending upon the nature and extent of the damage, it may be necessary to evacuate the premises or shore-up the structure. In some cases, it may be necessary to hire security personnel to protect against vandalism, theft and other criminal activities. In the case of widespread disaster, unit owners will not be able to depend upon local law enforcement agencies whose attention

might be diverted to higher priority matters. Arrangements for security, debris cleanup and emergency repairs should be made as part of a disaster plan, not after the fact, when it will be difficult, if not impossible, to find help.

Beware the Quick Fix

Within hours of any disaster, the affected community will be besieged by companies and individuals looking for work and/or offering disaster recovery services. Some of these folks may have come to the disaster area from other states and many may be unlicensed and uninsured. Interspersed among the new arrivals will be the con men and profiteers who prey upon the misfortune of others. While still reeling from the shock of the disaster, it is often very tempting to sign the first contract presented to you. Resist that urge as experience has shown that these quick solutions are formulas for disasters of greater magnitude than those already suffered.

The old adage that “haste makes waste” truly applies in these situations. The best advice is to stick to your disaster plan which, hopefully, will include a plan that anticipates the five (5) phases of reconstruction:

1. Project planning/scheduling
2. Construction bidding
3. Contract negotiations
4. Construction/rehabilitation
5. Project completion/close out

There are intervening steps you should take which may require contracts of short duration and for specific purposes. For instance, your immediate need in the aftermath of a windstorm is usually to cover your structures with a tarpaulin to protect further water intrusion and exposure to the elements. Interim contracts should be reviewed by your association attorney to ensure that proper precautions are taken. All reconstruction contracts need to be carefully reviewed and negotiated by your legal counsel to ensure that the association’s interests are protected.



Avoiding the Pitfalls of Disaster Recovery

Common pitfalls that plague associations following a hurricane strike include:

- Disputes frequently emerge between various insurance carriers (flood, windstorm, property) and the Association over the nature and extent of damage, cost of repair or replacement, and/or whether appropriate mitigation efforts were put in place. It is important for the association to timely file its proof of loss. Be aware that if the insurer can prove that the association failed to cooperate, then no payment is due under the policy, regardless of the size of the claim. In addition, if the association commits fraud in the application for insurance or in the presentation of the claim, such act(s) can result in the loss of all coverage, not just the portion upon which the fraudulent claim is based.
- Making necessary repairs, if required by the insurance contract, even if doing so requires the board to levy a special assessment or borrow money to pay for such repairs, prior to receipt of the insurance proceeds.
- Claims made by unit owners against their boards over the mismanagement of insurance claims and insurance proceeds. The association owes a fiduciary duty to the owners and their

mortgagees to exercise reasonable care in the pursuit of their insurance claims and management of any insurance proceeds received. It is not acceptable for a board to choose to not pursue a legitimate claim and, instead, opt to specially assess the owners for necessary repairs and replacements. A southwest Florida community learned this lesson the hard way when it was sued by its members for not properly pursuing a large insurance claim after Hurricane Wilma.

- Claims of contractors, sub-contractors, materialmen and suppliers, who were not paid by the general contractor, resulting in the Association's having to pay double because of its failure to comply with Florida's Construction Lien Law.
- Suits against contractors and subcontractors over poor quality repairs.

Restoration Of The Property

Putting Your Professional Team in Place

Once conditions stabilize, the association's disaster recovery team will be in a position to meet with trained professionals to assess the damage and begin recovery including:

- Architect/Engineer - Responsible for assessing the damage, preparing plans and specifications in accordance with new building codes, assisting in selection of construction manager and defining other reconstruction requirements.
- Construction Manager - Oversees selection of general contractor, competitive bidding and administration; directs and coordinates pay requisitions, change orders and all other activities of the parties; and resolves disputes.
- General Contractor - Employs and supervises laborers, supplies materials and builds project in accordance with architect's/engineer's plans and specifications, under the direction of the construction manager.
- Attorney - Reviews construction contracts to ensure adequate protection for job performance and warranties, and compliance with applicable lien laws.

Funding Repairs

An association should have several sources of money available to fund repairs after a disaster.

- A review of your governing documents; particularly, the "repair after casualty" section of the insurance provision to determine the mechanics of the process.

- Estimates of Costs - Immediately after deciding to rebuild or repair damage to property for which the association is responsible, the association must obtain reliable and detailed estimates of the cost to rebuild or repair.
- Construction Fund - The construction fund shall be disbursed to pay costs in the manner required by the board of directors of the association upon approval by an architect qualified to practice in Florida and employed by the association to supervise the work.

When the foregoing provisions exist in your documents, contracting for reconstruction prior to obtaining a scope of work will be contrary to both the association's best interests, and the obligations set forth in the documents.

In order to respond to an emergency, the association may need to obtain a short-term loan.

Without a restriction in the documents, not-for-profit community associations can borrow funds. 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 secured by the association's accounts and/or assessment and lien rights. The association also may obtain a Small Business Administration (SBA) loan that is available to victims of disaster, generally, at lower interest rates. Of course, reserve funds are also a possible source of funds which can be utilized immediately if a state of emergency has been declared or later if approved by a majority of the total voting interests. Many communities have decided to take a revolving line of credit well in advance of storm season so they have necessary funds at their disposal if needed year-round.

Immediately following a disaster, the association must secure the property to mitigate against further damage and arrange for clean up of debris. Most insurers will offer advances for this purpose. As long as the association doesn't sign any releases or settlements, there is nothing wrong with accepting such advances.

Settling The Insurance Claims

Insurance policies need to be examined to ensure that "proof of loss" forms are filed within the time limit required under the policies. As a general rule, flood policies require that proof of loss be filed within sixty days after the flood.

The adjuster employed by your insurance company is not incentivized to get you the most money possible. His or her job is to ensure that the claim remains as small as possible. For this reason, many associations decide to hire their own Public Adjuster to shepherd their claim through the often convoluted process. In some instances, the assistance of an independent public adjuster may be beneficial when dealing with the nuances of an ambiguous insurance policy.

Most adjusters will work for a fee based upon a percentage of the insurance proceeds. As with other contracts, your association attorney can assist you in navigating the terms and conditions of any contract you are considering with a public adjuster and any others involved in emergency services or repairs. It is important to remember that public adjusters provide a specific set of services to adjust and value a claim. They cannot perform any activities restricted to the practice of law, such as filing a lawsuit to collect monies owed to you if your insurance company denies your claim or decides to greatly undervalue it, evaluating whether a release should be signed in order to recover insurance proceeds, or complying with complex post-loss duties to recover under the policy.







ASSOCIATION EMERGENCY POWERS

Florida Statutes provide boards with broad emergency powers in response to damage, injury or public contagion caused by or anticipated in connection with an emergency for which “a state of emergency” is declared.

The Governor of the State of Florida must have declared a “state of emergency” in order for an association to utilize the statutorily prescribed emergency powers. The specific Statutory provisions regarding the emergency powers can be found in section 718.1265 Florida Statutes for condominium associations, section 720.316 Florida Statutes for homeowners’ associations, and section 719.128 Florida Statutes for cooperative associations. While each version of these emergency powers is very similar, there are a few subtle differences which are discussed below.

It is important to note that when exercising emergency powers, there should be a rational relationship between the action undertaken and the disaster itself and that emergency powers may not be exercised unless and until the statutory trigger has occurred.

Emergency Powers for Condominium Associations

Section 718.1265 of the Florida Condominium Act provides as follows:
718.1265 Association emergency powers.—

- To the extent allowed by law, unless specifically prohibited by the declaration of condominium, the articles, or the bylaws of an association, and consistent with s. 617.0830, the board of administration, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), for which a state of emergency is declared pursuant to s. 252.36 in the locale in which the condominium is located, may exercise the following powers:
 - Conduct board meetings, committee meetings, elections, and membership meetings, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication with notice given as is practicable. Such notice may be given in any practicable manner, including publication, radio, United States mail, the Internet, electronic transmission, public service announcements, and conspicuous posting on the condominium property or association property or any other means the board deems reasonable under the circumstances. Notice of decisions also may be communicated as provided in this paragraph.
 - Cancel and reschedule any association meeting.
 - Name as assistant officers persons who are not directors, which assistant officers shall have the same authority as the executive officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any officer of the association.
 - Relocate the association’s principal office or designate alternative principal offices.
 - Enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.
 - Implement a disaster plan or an emergency plan before, during, or following the event for which a state of emergency is declared which may include, but is not limited to, shutting down or

(cont. on page 21)

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- Without unit owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association when operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions as are contained in the declaration of condominium, articles, or bylaws of the association.
- The special powers authorized under subsection (1) shall be limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and the unit owners' family members, tenants, guests, agents, or invitees and shall be reasonably necessary to mitigate further damage, injury, or contagion and make emergency repairs.
- Notwithstanding paragraphs (1) (f)-(i), during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36, an association may not prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the unit and the common elements and limited common elements appurtenant thereto for the purposes of ingress to and egress from the unit and when access is necessary in connection with:
 - The sale, lease, or other transfer of title of a unit; or
 - The habitability of the unit or for the health and safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the unit. Any such access is subject to reasonable restrictions adopted by the association.

As stated above, under the Emergency Powers provision, a condominium may implement a disaster plan before, during, or following the emergency event which may include shutting off elevators, electricity, water, sewer, security

systems, and air conditioners. Many condominium associations suspend the operation and use of these items in an effort to protect these systems which may become damaged or compromised during an emergency event.

Associations are often concerned with the personal injury aspect of these items used during an emergency situation and take action to prevent these injuries from occurring or residents getting stuck in an elevator.

As such, the association should ensure that the residents who decide to stay in their unit during the disaster event are properly notified of the suspended operation of any services and provide a warning that those residents should be prepared to go without these services in advance of the disaster and for the next few days after the disaster. Residents who choose to remain in the building after such notification do so at their own risk.

The Condominium Statute also authorizes a condominium association to require the evacuation of the condominium property in the event of a mandatory evacuation order being issued for the association's local area. If residents refuse to leave, the association becomes immune from liability or injury to persons or property that may arise from the resident's failure or refusal to evacuate.

Additionally, Florida law permits a condominium association's Board of Directors, upon the advice of licensed professionals, emergency management officials or public health officials to determine any portion of the condominium property, including units, unavailable for entry or occupancy by unit owners, their family, tenants and guests to protect their health, safety, or welfare. This restriction of access to condominium property can extend well beyond the disaster as remediation efforts are often delayed due to labor and material shortages immediately following a disaster.

Oddly, the emergency powers were amended to prohibit boards from denying realtors and their client's access to property if such access is needed to facilitate a transfer of the property.

As the implications of implementing a disaster plan can have a substantial impact on the association's residents, condominium boards that are considering adopting a disaster plan should consult with their association's attorney to ensure they adopt a plan that works for their community and complies with both the governing documents and Florida law.

Emergency Powers for Homeowners' Associations

Like condominium associations, Section 720.316, Florida Statutes, provides homeowners' association boards with broad emergency powers in response to damage or injury caused by or anticipated in connection with an emergency for which a state of emergency is declared. The emergency powers homeowners' association boards may exercise substantially mirrors the powers provided to condominium boards discussed above with two exceptions.

Firstly, homeowners' associations do not have the power to require evacuation of the property. Secondly, homeowners' associations do not have the power to contract on behalf of owners for items for which owners are otherwise individually responsible.

Also, just as with condominium associations, homeowners' association boards cannot exercise powers which are specifically prohibited by the declaration or other recorded governing documents.

Emergency Powers for Cooperative Associations

Section 719.128, Florida Statute mirrors exactly the emergency powers provided to condominium board in 718.1265, Florida Statute. Hence, the same application discussed above under emergency powers for condominium associations will apply to cooperative associations.







IMPORTANT

CRUCIAL TIPS

for Filing Your Hurricane Damage Claim

by Ken Shriberg

An Adjuster's Insight into a Board's Fiduciary Duties

This article provides key considerations from an insurance adjusting perspective to help navigate the complexities of hurricane damage claims effectively, as well as damages caused by flood, fire, water pipe leaks, wind, hail and other weather occurrences.

As another hurricane season sweeps across Florida, Condominium Associations (COAs), Homeowners Associations (HOAs) and their residents brace for potential storms. With predictions for a particularly intense season, preparation is paramount. From understanding your insurance policy to knowing the critical steps to take before and after a hurricane, being prepared can make a significant difference in handling damage claims as a board navigates their fiduciary duties.

Pre-Hurricane Prep

Document Your Insurance Policy

Before a storm hits, ensure you have a complete and easily accessible paper and digital copy of your association's insurance policy. This includes the dec pages, main policy jacket, and all endorsements and exclusions sections. It's advisable to have a certified copy. Reach out to your commercial insurance agent for help in obtaining. When a hurricane occurs, you'll need to know exactly what your coverages are. Having this documentation handy saves time and stress during a crisis.

Review Your Policy with Professionals

Conduct a thorough review of your policy with your insurance agent. Understanding your coverage details, potential exclusions and the time-sensitive steps to take in the event of a weather-related loss is crucial. A professional perspective, as a second set of eyes consultation from an association specialist licensed public adjusting firm can provide additional insights into potential gaps in your coverage and suggest necessary changes to your policy before a weather event occurs. These Initial consultations are free of charge and can be done virtually.

Consider Policy Adjustments

Based on the policy review, consider making changes if necessary. This might involve increasing coverage limits, adding endorsements for specific risks, obtaining discounts and credit, or clarifying any ambiguous terms. Making these adjustments ahead of time ensures that you are adequately covered and can assist in preventing complications during the claims process.

Know Your Fiduciary Duties and the Updated Law

Both condominium and homeowner associations have pre and post loss hurricane fiduciary duties, such as making a good faith effort to prepare and keep the property protected, making a good faith effort to preserve and protect official records prior to the hurricane and recover official records which are lost or destroyed, and a good faith effort to recover all insurance monies owed to the association. Because damage is not always apparent to the visible eye, trained experts should be consulted.

The 2024 legislative session introduced several key changes addressing various aspects of community association governance relating to hurricanes.

Florida Statute Chapter 718.113, as amended, calls into question who pays to remove and reinstall hurricane shutters in condominium associations. It is important that the association confer with counsel and if necessary, amend the declaration to clearly define the responsibility for the removal and reinstallation costs of hurricane protection before it becomes an issue during a repair or renovation project.

Likewise, Florida Statute Chapter 720.3035 for HOAs was amended to require HOA boards to adopt specifications for hurricane protections on homes and to prohibit associations from denying applications for hurricane protection by a parcel owner which conforms to specifications adopted by the board.

Post-Hurricane Actions

Communication is vital. After making sure that everyone is safe, provide frequent updates for the shareholders and explain what steps the board is taking.

Contact A Qualified Public Adjusting Firm

Right after the weather event, contact a public adjusting firm who is experienced in large loss association claims handling. If you are acting as a property manager or board member on behalf of your HOA, you have specific fiduciary duties to perform after a loss. These include documenting the damages, evaluating the property and mitigating damages. It is best to familiarize yourself with all the required duties and adhere to the required time-frame, as failure to do so can result in claim denial.

Engage Emergency Services

A qualified public adjusting firm can coordinate all your emergency needs, including scheduling experienced emergency mitigation contractors for you. These emergency service companies include tarping, boarding up, water removal, mold remediation, debris removal, and possibly structural

stabilization, among others. Having a professional public adjusting firm who specializes in emergency claims handling will help to smoothly guide you through the process from start to finish, ensuring that all necessary steps are taken and documented correctly.

Develop a Repair Budget

A qualified public adjusting firm will guide you in determining the dollar value and scope of work required to bring the property back to its pre-loss condition. Once you have these details, the information can be used in preparing a base budget, in which you can solicit "Apples to Apples" bids from at least three qualified contractors.

Remember, you should not execute a contract for final restoration repairs unless you have the necessary funds allocated in reserves, or alternatively a written agreement for full payment from your insurance company!

Pitfalls to Avoid

Beware of Unlicensed and Uninsured Contractors

In the aftermath of a hurricane, desperation can unfortunately lead to poor decisions, resulting in chaos. Avoid hiring contractors who knock on doors randomly, as they may not be properly licensed, insured, bonded, or have adequate workers' compensation. Initially bringing in a licensed public adjusting firm can help guide your decisions towards selecting qualified contractors who bid the damages in alignment with insurance scope of work so that all contracts are up to those same standards.

Use a Standardized Bidding Process

For the building reconstruction, especially the larger losses, it is advisable to have a standardized bidding process. This ensures that all bids are uniform and comparable. A standardized process also helps in making informed decisions and prevents disputes over the scope and cost of the work.

Attorney Review of All Contracts

Never sign any contract for reconstruction without having it reviewed by your lawyer or legal team first. Signing without legal oversight could lead to losing your rights

regarding the reconstruction work, and/or payment of same. This also ensures that the terms are fair and that your interests are protected.

Do Not Dispose of Damaged Items Prematurely

Insurers have the right to inspect damaged property to assess the claim. Document by taking photos and do not throw away any damaged items, except items like porous water damaged drywall and carpeting (keep a sample) before they have been documented by your public adjusting firm and insurance company. Premature disposal can complicate your claim and potentially reduce the compensation you receive. Make sure this has been communicated to everyone who lives in the building.

Conclusion

Navigating a hurricane or other property loss can be challenging, but being prepared and having the assistance of a qualified public adjusting firm can make a significant difference. Becker's Hurricane Preparedness and Recovery Guide also helps boards and managers to prepare for the approach as well as the aftermath of a storm or other weather disaster.

Ken Shriberg is affiliated with Becker's Association Adjusting, a licensed and insured public adjusting firm exclusively and specifically experienced in serving community associations throughout Florida, assisting with claims from all weather-related events, including hurricanes, storms, water damage, fire, theft and vandalism and mold and roof leaks. Association Adjusting provides pre-loss policy review consultations, on-site damage analysis, and documentation, loss estimate valuation, negotiation, and claim settlement with insurance companies. Ken has been a licensed public insurance adjuster specializing in association loss claims since 2006 and is a longtime a member of the Florida Association of Public Insurance Adjusters (FAPIA), including as a Retired Board of Directors. Ken also has 40 years of experience in multi-unit commercial property restoration/reconstruction projects.



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Every community association will experience a significant property damage claim at some point during its lifespan. In addition to windstorms, fires and floods there are the everyday water leaks with which volunteer boards and managers must contend. While it is reasonable to believe that after years of dutifully paying your insurance premiums your damage claims will be paid quickly and in full, the reality is often quite different.

Time-strapped volunteer board members and managers are at a significant disadvantage while trying to shepherd an insurance claim on their own. And the insurance company's adjuster is not there to help you maximize your claim-in fact, it is the opposite. The insurance company's adjuster is there to minimize or even deny your claim if possible. Our team intimately knows your business and will fight hard to maximize your insurance payout.

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SAFETY TIPS FOR ELECTRIC VEHICLES ("EVS")



- When there is a hurricane or flood warning, EVs should be moved out of parking garages that are located inside, below, or adjacent to buildings as well as be moved out of congested outdoor parking areas. Associations may want to consider adopting rules requiring EV removal when such advisories are in effect.
- Condominium associations, co-ops, and townhouse HOAs may want to consider adopting rules preventing EVs from being stored in the community for long periods of time during hurricane season while an owner's property is unoccupied.
- **One of the lessons learned from Hurricane Ian is that EVs that are exposed to storm surge have a significantly increased probability of catching fire. This is because of the high electrical conductivity**

of sea water. EVs should be parked inland, on high ground, and away from buildings as well as away from highly flammable materials when storm surge is possible.

- Even freshwater has sufficient electrical conductivity to make it dangerous to leave EVs parked in a location where they might foreseeably be partially submerged in flood waters. Most EV designs place powerful batteries low to the ground where they can easily be contacted by rising water. EVs should not be parked in locations where they may become partially submerged in rising and/or standing water.
- Associations should require residents to finish charging their EVs and to disconnect them from charging stations before the onset of severe weather. In high winds,

when debris is being moved or becoming airborne due to natural forces, and in rising waters it can be dangerous to leave an EV connected to a charging station for a variety of reasons.

- If an EV catches fire, it is recommended to contact the local fire department right away and to specify to dispatch that an EV (as distinguished from just a "car") has caught fire. Sometimes it can require extensive efforts from a professional fire department to extinguish EV fires and to prevent their re-ignition. Time spent by nonprofessionals trying to extinguish an EV fire before contacting the local fire department may result in a delayed response and a more volatile emergency. While internal combustion engine vehicle fires are serious emergencies, certain attributes of EVs make extinguishing EV fires particularly challenging.

Electric Vehicle Quick Tips

Know your Evacuation Route

Maintain your battery at 100% state of charge if you plan on evacuating in an EV. Understand your vehicle's range to ensure you can safely reach your destination. Avoid relying on charging stations along the evacuation route, as they may experience long lines or power outages.



Never Drive Through Flood Water

Water infiltration into the high-voltage battery of an electric vehicle can lead to damage, heightening the risk of a battery fire. Such fires may erupt instantaneously or manifest days, weeks, or even months after exposure to saltwater.

Leaving Electric Vehicles Behind

NEVER park EVs inside a garage in flood-prone areas. DO NOT leave electric vehicles plugged into a charger. ALWAYS ensure they are parked at least 50 feet away from any structure or other vehicles. Exposure to storm surge can damage the battery, leading to a fire risk. When leaving an EV behind, maintain the battery at less than 30% state of charge. NEVER attempt to drive or charge a vehicle that has been submerged in floodwaters.



General Lithium-ion Battery Safety

Properly dispose of any lithium-ion batteries or devices containing lithium-ion batteries exposed to floodwaters. Using or charging batteries exposed to floodwaters poses a serious risk of fire. DO NOT discard these batteries in regular trash.



Hurricane Preparedness and Electric Vehicles

Where are you in your hurricane preparedness? In addition to general hurricane preparedness, local municipalities and programs throughout the state have been warning against the potential dangers of leaving electric vehicles, e-bikes, e-scooters, electric golf carts, etc. ("EV") plugged-in during storms. The combination of salt water and the battery systems in EVs could result in a fire. EVs left in a garage (especially those within a flood zone) could be potentially even more disastrous. Recent recommendations are that any EV that cannot be fully removed from the premises should be parked at least fifty (50) feet away from any structure and/or any other vehicle.

In addition to all other hurricane planning ([see link for a recent article regarding hurricane preparedness here](#)), Boards should consider adopting appropriate rules related to EV removal as storms approach and contact their legal counsel to discuss adoption of same.

In the interim, please also consider the below safety precautions and recommendations related to approaching storms and EVs. EV owners should:

- ensure their battery is charged to 100%;
- know their evacuation route and understand their vehicle's range;
- avoid relying on charging stations along their evacuation routes due to the potential for power outages and/or long lines/wait times;
- never drive through flooded areas;
- never leave EVs plugged into a charger;
- never leave EVs inside a garage in flood-prone areas;
- ensure that EVs are parked at least 50 feet away from any structure or other vehicle; and
- never attempt to operate or charge an EV that was submerged in floodwaters.

Following the publication of the article mentioned above, both House Bill 1021 ("HB 1021") and House Bill 293 ("HB 293") were signed into law by the Governor. HB 293 became effective upon the Governor's signature and HB 1021 became effective July 1, 2024.

HB 1021, among other items, included potential changes related to hurricane shutters and the responsibilities for same in condominiums. Boards should contact their legal counsel to discuss a potential amendment to their Declaration specifically defining costs related to removal and reinstallation costs related to code-compliant shutters.

HB 293 requires homeowner's associations to adopt hurricane protection specifications for reach structure on a parcel governed by the homeowner's association. Boards should contact their legal counsel to discuss adoption of same.



Important Safety Tips for Generator Use

Prevent Carbon Monoxide Poisoning

- Never use a generator indoors, including in homes, garages, basements, crawl spaces, and other enclosed or partially enclosed area, even with ventilation. Opening doors and windows or using fans will not prevent CO build-up in the home.
- Follow the instructions that come with your generator. Locate the unit outdoors and away from doors, windows, and vents that could allow CO to come indoors.
- Protect yourselves and your neighbors by positioning your generator in front of your garage with the muffler facing street side. Positioning the generator in back of the house is not recommended because of the increased potential of CO leakage into your house and those of others.
- Install battery-operated CO alarms or plug-in CO alarms with battery back-up in your home, according to the manufacturer's installation instructions. The CO alarms should be certified to the requirements of the latest standards for CO alarms [UL2034, IAS6-96, or CSA 6.19.01].

- If you must connect the generator to the house wiring to power appliances, have a qualified electrician install the appropriate equipment in accordance with local electrical codes. Or check with your utility company to see if it can install an appropriate power transfer switch.
- For power outages, permanently installed stationary generators are better suited for providing backup power to the home. An overloaded portable generator can result in overheating or stressing the generator components, possibly leading to a generator failure.

Prevent Fires

- Never store fuel for your generator inside your home or garage. Storage of gasoline should always be outside. The fumes from the gas tanks are flammable and could ignite. Do not store gasoline near a gas grill.
- Before refueling the generator, turn it off and let it cool down. Gasoline spilled on hot engine parts could ignite.

Reprinted courtesy of Barbara Zee and H.E.R.E. (Hurricane Emergency Resident Effort)

Eliminate Electrical Hazards

- Keep the generator dry and do not use in rain or wet conditions. To protect from moisture, operate it on a dry surface under an open, canopy-like structure. Dry your hands before touching the generator.
- Plug appliances directly into the generator. Or use a heavy-duty, outdoor-rated extension cord that is rated (in watts or amps) at least equal to the sum of the connected appliance loads. Check that the entire cord is free of cuts or tear and that the plug has all three prongs, especially a grounding pin.
- NEVER try to power the house wiring by plugging the generator into a wall outlet, a practice known as "backfeeding." This extremely dangerous practice presents an electrocution risk to utility workers and neighbors served by the same utility transformer. It will, also, bypass some of the built-in household circuit protection devices.



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