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EMERGENCY POWERS: WHAT CONDOMINIUM AND HOMEOWNERS ASSOCIATION BOARD MEMBERS NEED TO KNOW

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The windows are shuttered, patio and pool furniture is stored away, the pantry is stocked with food, water bottles and gas tanks are filled, flashlights have new batteries, and insurance policies and other important papers are in a safe place. Hopefully, the preparation for the storm will be worst part.

But, if you do experience tropical storm or hurricane conditions are you prepared for the storm and the aftermath? Do you know who to call if downed trees block the roads? What if the lakes start to overflow or the electricity goes out? Are the emergency generators in working order? Are owners required to leave and, if so, when can they come back? The list goes on and on and on.

Both condominium associations and homeowners associations should maintain communications with owners before and after the storm. While there is still time, Association's should make sure that they have current contact information for all owners, and all owners should have contact information and know how to reach board members, the Association's manager, and the management company. The board should also know how to reach the Association's attorney and insurance agent.

Boards of both condominium and homeowners associations have statutory powers in the event of certain emergency conditions. Both the Florida Condominium Act (Chapter 718 of the Florida Statutes) and Chapter 720 of the Florida Statutes governing homeowners associations provide for emergency powers during the "time reasonably necessary to protect the health, safety and welfare of the association and the unit/parcel owners the unit/parcel owners' family members, tenants, guests, agents or invitees." Such emergency powers include those "reasonably necessary to mitigate further damage and make emergency repairs." In addition, Florida law specifically authorizes certain actions by the board in order to respond to events for which a state of emergency is declared including the following:

- The power to conducting board meetings and membership meetings with notice given as is practicable and in any practicable manner, including publication, radio, United States mail, the Internet, public service announcements, and conspicuous posting on the condominium or association property or any other means the board deems reasonable under the circumstances.
- The power to cancel and reschedule any association meeting.
- The power to name persons who are not directors as "assistant officers" to accommodate the incapacity or unavailability of any officer of the association and who have the same authority as the officers during the state of emergency.
- The power to relocate the association's principal office or designate alternative principal offices.
- The power to enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.

- The power to implement a disaster plan before or immediately following the event for which a state of emergency is declared which may include, but is not limited to, shutting down or off elevators, electricity, water systems, sewer systems, security systems, or air conditioners.
- Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the board, the power to determine any portion of the condominium or association property unavailable for entry or occupancy in order to protect the health, safety, or welfare of such persons.
- The power to require evacuation of condominium property in the event of a mandatory evacuation order by the governmental authority, and, in the event the board requires evacuation, should any unit owner or other occupant of a condominium fail or refuse to evacuate the condominium property, the association is immune from liability or injury to persons or property arising from such failure or refusal.
- Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the board, the power to determine whether the condominium or association property can be safely inhabited or occupied.
- The power to mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including, but not limited to, mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the condominium or association property, even if the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.
- The power of a condominium association to contract, on behalf of any unit owner, for items or services for which the owners are otherwise individually responsible, but which are necessary to prevent further damage to the condominium property including, without limitation, the drying of units, the boarding of broken windows or doors, and the replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property. In such event, the unit owner on whose behalf the board has contracted is responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority to enforce collection of the charges.
- The power to levy special assessments without a vote of the owners.
- The power to 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.

Both condominium and homeowners associations should have emergency plans in place and be prepared to weather the storm.

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