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COMMUNITY ASSOCIATION
NEWSLETTER

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AVOID PITFALLS WITH EMERGENCY REPAIRS

By: Susan M. McLaughlin, Esq.

Citizens Property Insurance Corporation may be Florida's insurer of last resort but it is not alone in adopting stricter policy provisions covering emergency repairs and further restricting what repairs are considered part of the casualty loss. These changes are aimed at combatting what insurance industry views as "abuses" in the emergency repair industry. From a property owner's or property manager's perspective, the bar has just been raised on the level of sophistication required to deal with the contractors and insurance adjusters in repair process. Here are some tips to avoid making some of the most common mistakes.

1. Do Not Assign Your Rights to the Contractor.

Requesting a signature on the assignment is usually the first thing contractors specializing in emergency repairs do. Complying generally allows the contractor to take control of the repairs and the claim but leaves the property owner holding the bag if the insurance company does not pay. Associations with money in the bank or even good credit do not need to sign anything over to the contractor except a check. Contractors have statutory lien rights on the property regardless. Reputable contractors dealing with even the most financially challenged Associations should be willing to modify the assignment to provide only that the contractor has the right to collect directly from the insurance funds. Also, as the property owner you should be making the call on things like whether to rip out the carpet or invest in drying it out.

2. Strictly Limit the Scope of the Authorized Initial Work.

Limit the scope of the work the contractor is authorized to perform to the bare minimum necessary to prevent further damage until you can get the insurance adjuster in the loop. Citizens has even placed a bright line cap on the available coverage for emergency repairs at \$3,000 or 1% of the coverage unless the policyholder receives approval from Citizens. Especially, in zip code events, you may need to decide between taking the risk the carrier will claim that you failed to mitigate the damages or being penalized by the emergency repair cap.

3. Report the Loss As Soon As Possible.

Citizens' residential policy now provides that permanent repairs may not begin before the earlier of: 1) the time they inspect, 2) they authorize the repairs, or 3) 72 hours after the loss is reported. Therefore, reporting the loss as soon as possible can help eliminate an argument about the emergency repair cap. A report in writing, even if by email is always best.

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4. Have the Actual Policy Available.

Many property owners never bother to get the policy itself from the agent and rely only on the “declaration” page. Also, while many carriers have resources online that provide general instructions for reporting and preserving claims, these are no substitute for knowing and following the rules contained in your specific policy because the provisions, especially in commercial policies, vary. The policy should also be scanned to a digital file where it can be accessed and reviewed immediately even if the paper copies are lost or destroyed.

5. Don’t Be Pressured Into Signing a Release of Your Claim.

Often a “Proof of Loss” or similar document, containing a release, is presented as if it were a condition of receiving your check. This is wrong. The insurer is responsible to promptly pay all undisputed claims. You are also entitled to the time needed to review the sufficiency of the repairs that have been made. Any form like this should be reviewed by the Association’s attorney before anybody signs it.

6. Hire the Professional Help Indicated But on Your Terms.

Especially, in a situation with involving extensive damage, it makes sense to stop immediately after making the emergency repairs and take inventory. Get proposals from several contractors. Consult an engineer and counsel and any other professionals you need if there is disagreement about what repairs are needed or what is covered. A Public Adjuster can provide invaluable help with documenting the damage and preparing the inventory of the loss but, again, don’t feel compelled to sign the standard contract. That will give away a percentage of your claim and some control as well. Likewise, hiring an attorney on a contingent fee basis is not always the best option. Acting promptly is important but don’t be afraid to take the time you need to consult with “corporate” counsel on proposed all contracts.

This newsletter is provided as a courtesy and is intended for the general information of the matters discussed herein above and should not be relied upon as legal advice. Christopher J. Shields (christophershields@paveselaw.com) is a Florida Bar Certified Real Estate Lawyer and Partner in the Pavese Law Firm and heads the Community Law Section for the Firm. Christina Harris Schwinn (christinaschwinn@paveselaw.com) is a Partner in the Pavese Law Firm. Ms. Schwinn also practices in Labor/Employment Law. Susan M. McLaughlin (susanmclaughlin@paveselaw.com) is a Partner in the Pavese Law Firm. Keith Hagman (keithhagman@paveselaw.com) is a Partner in the Pavese Law Firm. Brooke N. Martinez (brookemartinez@paveselaw.com) is a Partner with the Pavese Law Firm. Charles B. Capps (charlescapps@paveselaw.com) is a Florida Bar Certified Real Estate Lawyer and Partner with the Pavese Law Firm. Chené Thompson (chenethompson@paveselaw.com) is a Partner with the Pavese Law Firm. Christopher Pope (christopherpope@paveselaw.com) is an Associate with Pavese Law Firm. Matthew B. Roepstorff (matthewroepstorff@paveselaw.com) is an Association with the Pavese Law Firm. Matthew G. Petra (matthewpetra@paveselaw.com) is an Associate with the Pavese Law Firm. Matthew P. Gordon (matthewgordon@paveselaw.com) is an Associate with the Pavese Law Firm. Every attorney listed above is a member of the Firm's Community Association Law Section and is experienced and capable of handling all aspects of community association law, including the following:

- Planning, Drafting, and Creating the Community Projects
- Developer Representation and Regulatory Approvals, Vendor Contract Review and Preparation
- Turnover from the Developer
- Construction Defect Litigation
- Covenant Interpretation and Enforcement
- Amendments of Governing Documents
- Collection of Assessments, Liens, and Foreclosures
- Insurance and Maintenance/Repairs/Replacement and Reconstruction Issues
- HOA Pre-Suit Mediation, Arbitration, and Litigation

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