

apm NEWS

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HURRICANE RECOVERY ISSUE

NOTE: The following articles are reprints from the 2001, 2002 & 2005 **APM News**. They are important reminders due to the above average hurricane activity that we have experienced.

CONTRACTOR LIEN RIGHTS

Many associations find themselves in a dispute with contractors because they do not comply with the Florida Construction Lien Law (Chapter 713, Florida Statutes – The Mechanic's Lien Law). There are stories of community associations who have paid roofers, painters all of the required funds, received release of liens and final release of lien, when the project was finished, only to receive a notice of lien from a supplier of materials or labor that they had never been paid from the contractor. This can be very expensive for the association as they may be paying for the same work twice!

The State of Florida Construction Lien Law is a mandatory statewide legislation, which shall be enforced in every jurisdiction throughout the State. Applicants for a permit are required to provide information concerning the Owner, Mortgage lender and the Architect/Engineer. In addition the application has to have the Owners notarized signature affixed.

A certified copy of the recorded Notice of Commencement must be posted and maintained, along with the permit, from the start of the job through the final inspection. **The State mandates that no inspections shall be approved without this notice being posted.** This requirement applies to all permitted work regardless of building valuation or funding (cash or credit) source.

What to do to protect your association – For your protection, if you are planning to spend over \$2,500 on building or improvements, before you start building, repairing or replacing, it is suggested:

You consult an attorney regarding the Mechanics Lien Law before starting a major construction project. Make sure that all requirements for recording and posting the "Notice of Commencement" have been accomplished.

Before making any payments to your contractor, you should get a sworn statement in writing that the contractor has paid all the bills for your job.

If you have received a "**Notice to Owner**" from anyone, you should require your contractor to get a sworn statement from each such person stating that they have been paid for all work done on your job. **This should be done before making any payments to your contractor.**

If a Mechanics Lien is filed against your property, consult an attorney immediately.

The Mechanics Lien Law (Chapter 713, Part I, Florida Statutes) provides a method by which a contractor, subcontractor, laborer, building material supplier, architect, landscape architect, interior designer, engineer, or land surveyor may claim a lien on real property on which they have done work, or to which they have furnished materials. If the lien is not satisfied, your property may be sold to pay the lien.

What is it? A "**lien**" is a charge or encumbrance on real property (land that is improved and the improvements thereon, including fixtures), which must be satisfied by the property owner to ensure clear title.

“**Attachment**” means that if a court finds a claim a lien valid, the owners’ property may be seized and sold to satisfy the lien if it is not voluntarily paid.

A “**Notice of Commencement**” is a notice, which is filed with the Clerk of the Circuit Court in the county where the work will be performed. The notice should not be recorded before the construction or development mortgage is recorded, but must be recorded before actual construction begins. It contains detailed information on the property owner, financing arrangements, and other specifics regarding the construction project. If a performance bond is to be posted, a copy of the bond must be attached to the “Notice of Commencement”.

The owners’ responsibility – Before any construction begins, and after the construction mortgage has been recorded, the owner should take the following steps:

At the time application is made for a building permit, a “**Notice of Commencement**” form may be created by the Association’s attorney or obtained from an office supply store.

Complete the “Notice of Commencement” form with the required information and retain a certified copy.

After the building permit is issued, record the Notice of commencement with the Clerk of the Circuit Court in the county where the work will be performed. If a performance bond is to be posted, a copy of the bond must be attached at the time of, or prior to, recordation of the “Notice of Commencement”.

Post the certified copy of the “Notice of Commencement” at the job site. There is no requirement to post a copy of the bond at the construction site. An owner’s failure to comply with these requirements could affect title to your property.

When can a lien be filed against your property?

– There are two instances, which can result in a lien being filed against your property:

If you fail to pay your contractor for work performed, your property can be subject to a Mechanics’ Lien filed by the contractor.

If a laborer, subcontractor, or a person supplying materials to your property is not paid and has given you a “Notice to Owner” and your contractor fails to pay laborers, subcontractor, or material man, they can file a Mechanics Lien against your property. A “Notice to Owner” is a written statement that gives

you the name, address, and description of the work to be done by the subcontractor or material man. The steps to protect the association may seem to be very involved but by following the Florida Mechanics’ Lien Law, the association will be protected from loss and potential delays in having any sales/transfers take place.

ESSENTIALS OF SERVICE CONTRACT

Contracts for goods, services and repairs are a common occurrence for community associations. Yet, even with this common occurrence, there are always problems and disputes that are associated with a contract. Many times, the contracts do not spell out enough of the details that are essential in a fair agreement. In all cases, the association’s attorney should review all details and contracts prior to the association executing a contract.

By taking your time and making sure that the following elements are integrated into any contract that the association enters into, it should help to eliminate many of the common problems associated with service contracts.

1. Changes to the contract, should be spelled out as to how they will be handled, how they will be executed and paid for by the parties involved with the contract.
2. Who is the point of contact for the parties involved? This should be spelled out in order to eliminate people not in power from interfering.
3. Any details that will help to delineate exactly what should maintained or repaired should be included as an exhibit to the contract. This would include any pictures, maps, photos and drawings helping to clarify the written word.
4. How will any disputes be handled. Will they be addressed through litigation or arbitration? How will pay for the expense of this procedure?
5. Proof of insurance should be provided in a prescribed form prior to any work being performed. Also, as a precaution, the association should be named as an additional named insured in order to be notified immediately of any change of status in the contractors/vendors insurance status.
6. Both the contractors and association’s responsibilities should be spelled out in detail. This may include a minimum amount of men or equipment that is required to be on the job. Maybe it includes certain times and days that the association must allow the contractor on the property or certain preparation that

the association perform prior to the contractor starting their work.

7. The contract should provide details and specifications in enough detail in order for the work to be accomplished to both parties satisfaction. This would also spell out any alternates to the work being performed in cases there could any delays in materials.

8. There should always be a start date and a completion date stated in the contract and what the penalties would be to either party if there was a problem with the start or end performance.

9. The termination of the contract should always be defined by both parties and made a part of the contract.

10. The terms of the contract should always be spelled out and defined. This would include any billing procedures, when any payments are to be made and when any extras to the contract should be billed and paid.

11. All warranties should detailed and spelled out and agreed to. In addition, how quickly will the warranty work be performed. How should the warranty item be declared to the contractor. Any manufacturer warranty information should also be attached.

By addressing the above issues and agreeing to the various items with your contractor, an association can eliminate most of the potential problems in your next service contract.

RETHINK HURRICANE PREPAREDNESS

In the wake of Hurricane Charley, Frances and Ivan, we need to rethink our preparedness for hurricane and other major emergencies. Associations, local governments, management companies, sub-contractors, suppliers and other professionals related to community associations, need to realize that whatever plans that we had in place for emergencies was inadequate. This is especially true for multiple storms and/or slow-moving storms that cause destruction in large areas that will overload the resources of the public and private sectors in terms of preparedness and post-storm clean-up.

Within days of the passing of Hurricane Frances, we saw many associations that sustained roof, structural, common area and landscape damages. For the most part, associations were not prepared for damages and most are not prepared for the resultant costs that now accompany the post-storm clean-up.

Due to the lack of budgeting for emergency funds and storm clean-up funds, many associations will now have to resort to emergency special assessments, deplete any savings that may be on hand or borrow from banks to help accomplish the clean-up and repairs.

If the damage to your association was covered under your Windstorm Policy, most associations do not have the funds and/or made provisions to have the funds to make up the 2% Windstorm Deductible. These funds will also have to be made up in some fashion that was not budgeted.

Recently, the National Weather Service predicted that we have entered into a period of "Above Normal Hurricane Activity." If this is true, and it seems to be, we need to begin to make preparations and provisions for this future heightened activity in terms of planning and budgeting. In most cases, this will require increases in future maintenance assessments and reserve funding.

It may make sense to hire structural engineers to evaluate and survey your buildings and common elements and make recommendations concerning their ability to withstand various strength hurricanes. Are there items and elements that can be changed, altered or retrofitted to strengthen your building and structures? Have the engineer recommend and evaluate these items and then act upon them, as they may help to lessen any future damages and expenses.

To begin preparing, we need to educate our Membership on the realistic costs on the planning for, actual preparation of a storm and then for the cost of the post-storm clean-up. Begin including in your operating budgets or your reserves for the following items:

- Pre storm labor
- Pre storm tree trimming
- Post storm labor
- Post storm tree trimming & removal
- Storm repairs
- Repair items not covered under the "deductible"

(If not included in the Operating Budget, then establish Reserves for these items)

We recommend that associations have reserves for these items. After the reserve is in place, if we have a season without a hurricane, the reserve would not have to be funded until they were used. Whereas, if these items are included in the operating portion of the budget, they need to be included year after year. What happens if the funds are not expended? Will this create a surplus that needs to be returned to the owners? By this method, you have defeated the purpose of saving for an emergency and having the funds

Mailing Label

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available immediately.

After Hurricane Frances many associations have been unable to get contractors to respond to their needs quickly. Should an association have emergency equipment, chain saws available and supplies on hand to protect their residents and common elements, etc.? Prior to the hurricane season, should the association have contractors "on staff" or "on retainer" in order to ensure that they will show up and respond quickly in the preparation of a storm and in the aftermath of a hurricane? This list of contractors would include roofers, electricians, plumbers, landscapers, tree trimmers, HVAC, irrigation and labor. Other contractors might include screen, railing and gutter contractors, pool, glass, sign, awning companies, elevator, generator and pump contractors. When hiring or considering a contractor or professional consultant for your association, it might be wise to inquire about their emergency preparedness plans. Do these contractors have the resources and labor to handle a situation like Frances? If they will not be able to respond to or be available prior to a storm, or after the storm how can help you're your association? At least choose the contractor that also has a plan in place to respond to your needs.

Finally, if associations are unable to or are unwilling to budget for these expenses, then at least set up a Line-Of-Credit with your bank, that could be used in case of an emergency. In this way you can respond quickly to an emergency without having a special assessment that is not only time consuming, but at that point-in-time, difficult for many to fund. Have credit cards for Home Depot or Lowes available for supplies and materials for immediate repairs. Have accounts set up with labor companies, whereby you can call for day labor and pay later. Prepare for the worst and hope for the best. But overall, be prepared as well as possible.

We need to begin to prepare, plan and save for emergencies, especially for future heightened hurricane activity or be prepared to suffer the consequences and costs of being complacent. We all know now what we have to do in the future, it is the right thing to do in order to secure our homes, protect our investments and our way of life without too many disruptions.

FOR FURTHER INFORMATION

Call 588-7210