



# Property Coverage and Full Recovery

by Chip Merlin

**C**ondominium Property Insurance is bought for peace of mind and is required by regulation, statute, or bylaw. Association managers rarely read the actual policy, much less are able to decipher the language. Most associations “hope” that their insurance agent has provided them with “full coverage” and pray that the big catastrophe never happens.

Unfortunately, catastrophes are prominent in the news. Buildings burn, floods wash away waterfront property, earthquakes shatter structures, and communities are devastated by hurricanes. These calamities are why insurance companies exist.

After these disasters, associations hope that skilled professional adjusters act promptly, honestly, and thoroughly to provide fair payment of benefits; however, adjusters are in a “no win” situation as their employers, large insurance companies, are typically only interested in cutting costs and maximizing profit.

Association management must face the realities of insurance. They must review, in detail, their coverage BEFORE the loss and must take steps on their own to ensure full payments are forthcoming after the loss.

### The Uninsured and Underinsured Problem

Policyholders cannot receive full benefits if they are not adequately insured. Agent claims of “cheaper” premiums come at the risk of less coverage as a result of excluded property, or through limitations in coverage. The first rule is to know what is required to be insured. The agent should be provided with the bylaws, and the policy must conform to those requirements and to all applicable laws.

Next, make certain that enough insurance is purchased. Underinsurance is a significant problem. A leading valuation company estimated in 2001 that more than 75 percent of all commercial businesses are underinsured; and many are underinsured by figures that approach 40 percent per building. In the aftermath of the 2003 Southern California wildfires, the California Department of Insurance said that of about 3,000 total loss


homeowner insurance claims, 676 consumer complaints were filed, with almost half involving underinsurance.

Full replacement cost and code upgrade coverage must be purchased. As buildings age, their values diminish in relation to the actual cost to replace or repair with new materials.

### Insurance Recovery Problems

Claim delay is the chief nemesis of associations. Lack of money, indecision by claims managers, and layers of claims bureaucracy are all too familiar. Accordingly, a logical planned sequence must be developed in advance to document the loss and mitigate the damage of the catastrophe.

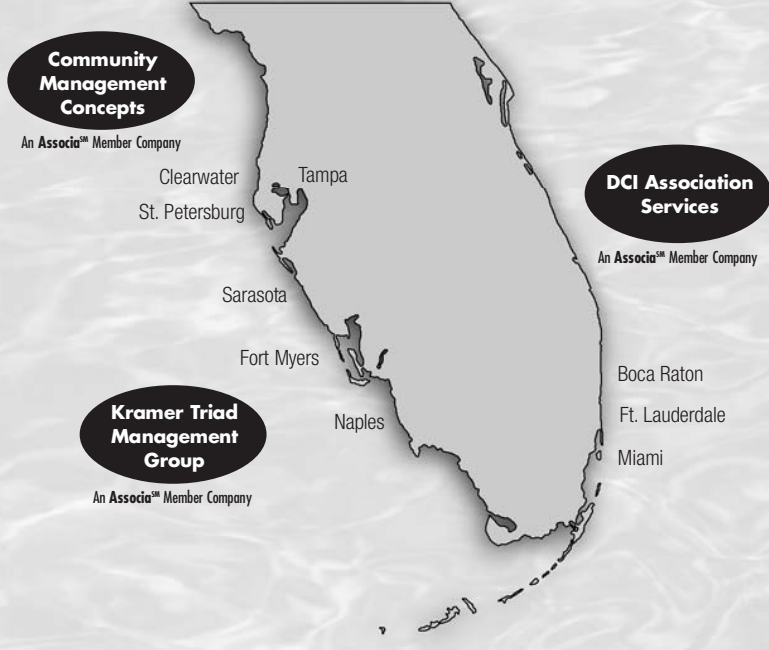
Associations need strategic plans prior to a catastrophe to effectively cope with the situation after the loss. Following the loss, insurance



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company adjusters must be contacted and appointments immediately made. In a complex loss situation, many associations hire claim professionals to assist and present the claim. In some states, such as Florida, regulations prevent property managers from adjusting the association's loss.

Public adjusters are individuals who adjust claims for policyholders. They often charge a percentage of any recovery to the policyholder's representative. Public adjusters typically estimate and scope the loss and prepare the claim submittals. Similarly, insurance coverage attorneys are available, often on a contingent fee basis, to assist with claim presentation to the insurance company and with coverage disputes.

When presenting an insurance claim, you should:

- Obtain independent estimates for repairing the damage.
- Call, confirm, and follow-up in writing everything discussed with the adjuster. Keep a diary of claim activities.
- Keep receipts for everything repaired, replaced, and/or other costs associated with the repairs. Ask for immediate reimbursement.
- Estimates must consider the increased cost of materials and labor in a catastrophe climate.
- Do an independent damage review of every room with photographs and a written description.
- Do not allow an adjuster to write up to only 45 percent of the property's value in order to escape new building code requirements, which are potentially triggered at damages exceeding 50 percent.

Proof of loss forms should be submitted in timely manner. Windstorm and property insurance policies either require that a proof be proactively submitted by the insured, or that a proof be submitted within a certain number of days after requested by the insurer. National Flood Insurance policies require proofs of loss within sixty days following the loss, unless a formal, written waiver is given by FEMA. A verbal waiver, or a waiver by an adjuster cannot circumvent the sixty day proof of loss requirement. Failing to properly and timely submit a flood proof of loss will result in the inability to recover under a Federal Flood Insurance policy.

Insurance policies contain conditions requiring an insured to submit to an examination under oath, if requested by the insurer, and allow the inspection of the documentation of the insured. These requests

must be completely met, so that there is no argument that the insured has breached policy conditions. If a cover issue arises, counsel should be retained.

#### A Final Consideration

Emotional distress and fear naturally follows significant catastrophe situations. Communicating with the association before a catastrophe can reduce the emotional burden following a loss.

The association's members should be aware of the insurance in place at least on a yearly basis. The agent should prepare a summary of coverages and explain the coverages to avoid surprises. Insurance is bought for peace of mind. Natural catastrophes create havoc with the lives and livelihood of entire communities. The more preparation completed before the loss can help achieve a quicker and less painful recovery process.

*Chip Merlin is the founder and managing partner of Merlin Law Group, P.A. in Tampa, and Coral Gables, FL. ■*



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