Overview

The damage from the “Hurricanes of 2017” so far is staggering. The estimates for damage from Harvey alone are difficult to comprehend.

- Single family: 203,000 homes of which 12,700 and perhaps as many as 30,000-40,000, were destroyed. 80% lack flood insurance.
- Multi-family: To date, 181 multifamily properties report damage to 10,571 apartment units. In some parts of Houston, ten percent of all apartment units sustained damage.
- Vehicles: 500,000 to one million vehicles were damaged beyond repair.
- Businesses: unknown . . . so far.

Damages from Hurricane Irma are still being assessed but one startling fact already has emerged: 18% of Florida homeowners have flood insurance. Damage in Puerto Rico from Hurricane Maria is even worse and it may take months to restore the island’s power grid.

As of September 20, the cost of Hurricanes Harvey and Irma already approaches $180 billion. Maria may add over $85 billion to the total. If this is not bad enough, statistics tell us that the likelihood of a hurricane increases again around October 20. Remember Hurricane Wilma in 2005? It arrived on October 19.

The effects of the Hurricanes of 2017 will be remembered and felt for years. Dealing with the problems caused by these natural disasters will require careful and ongoing attention to many different issues. Dykema attorneys have experience developed during the Hurricanes of 2005 – Katrina, Rita and Wilma – that they can bring to bear in helping businesses and lenders deal with recovery from this year’s storms.

Questions for Lenders and Servicers to Ask

For lenders and servicers, the questions about hurricane or other catastrophe loss can be summarized in two words: collateral protection. Because borrowers face difficult problems after a hurricane loss that may drive them away from loan repayment, Lenders face unique challenges:

- Shall I step in and take a direct role in insurance recovery? Rebuilding? Should I make a disaster recovery loan? Can I do a refinancing? On what terms? How shall I reserve a reduction in collateral value? Can I resell flood-damaged property for enough to recover the loan balance? For lenders, prompt, proactive and directed activity can support a borrower’s rebuilding and ensure that a loan is paid back.

The questions for lenders depend upon the type of property involved:

Real Property

- What is the damage to the property? Can it be repaired? How long will repairs take? What will they cost? Can the borrower pay? Will they?
- What are the borrower’s intentions?
Hurricane Triage (Cont.)

- What is the current status of the loan? Does the borrower seek a disaster recovery loan? Can/should the lender provide one?
- Is insurance available? If so, how much? How is the lender listed on the policy? Will the borrower make a claim? What are the lender’s options if the borrower does not make a claim . . . or walks?
- Do I have coverage under my lender-placed flood policy? E&O policy? Mortgage insurance?
- What regulatory issues are presented? Loan reserves? Capital reduction? Flood insurance and National Flood Insurance Program (NFIP) compliance?

**Vehicles**

- What is the damage to the vehicle? Can it be repaired? How long will repairs take? What will they cost? Can the borrower pay? Will they?
- What are the borrower’s intentions?
- Is insurance available? If so, how much? How is the lender listed on the policy? Will the borrower make a claim? What are the lender’s options if the borrower does not make a claim . . . or walks?
- Can a flood car be repossessed and resold? Under what circumstances? With what disclosures?

**Questions for Business and Property Owners to Ask**

A lender’s collateral often is a business owner’s livelihood or a property owner’s home. Public entities also own property and face storm damage, and may have taken out loans or be subject to requirements in bond indentures. Prompt action by a business owner with its insurers and coordination with its lender may be the “stitch in time” that increases the chances of successful return to operations.

The questions for business and property owners overlap with those for lenders:

- Are you insured? For property damage? Business interruption? What coverages do you have? How they work? What are the limits? The deductibles?
- Do you have insurance for flood losses? Privately placed or through the NFIP?
- Are you aware of the special rules and deadlines governing claims under the NFIP program? Have you taken steps to comply?
- Do you have business interruption coverage? Does it provide coverage for your claim? Have you made a claim? Do you have the financial records necessary to support your claim?
- Are you prepared to contest a denial of coverage or a dispute as to valuation? Do you have the records to pursue such a dispute and operate in the meantime?
- Have you consulted with your lender or trustee concerning negotiation of claims? Payment? Obligation to repair? Timing of repairs?
- Do you have specific concerns such as mold? Inflow of contamination? Valuation concerns? What must be done to resolve these issues?

**Questions for Insurers to Ask**

For insurers, the Hurricanes of 2017 mean a surge of claims, including flood-related claims. How those claims are handled will vary from state to state, and may involve statutes such as recent changes to the Texas Insurance Code governing property loss claims caused by “forces of nature.” Whether or not statutes apply, the surge of hurricane related claims will increase stress on insurers (as well as on insureds) and create multiple questions.

Questions for insurers (and insureds seeking coverage for storm losses) include the following:
● Does the policy cover the loss? To what extent? Do concurrent causation clauses apply? Ancillary coverages?
● Do coinsurance penalties apply?
● Is there an appraisal provision? An arbitration clause?
● With whom do I negotiate the claim? The insured? A lender?
● To whom should the claim be paid? What if there are different lenders on different properties insured by a single global policy?

You can learn more about business-related issues caused by the recent hurricanes by visiting our Alert Center for Hurricane-Related Legal Considerations.

Publications

"The 2019 Hurricane Season Has Begun"
June 3, 2019
Texas Lawyer

Speaking Engagements

Trying to Reason with Hurricane Season: Response and Recovery to Hurricanes Harvey, Irma and Maria
October 26, 2017