

Being a good neighbor can also be good business

by Meredith P. Hartley

As a builder/developer, when problems arise in your brand-new condominium building, one key to avoiding potential litigation may be to focus first on keeping the building residents as happy as possible under the circumstances. When one builder/developer faced flooding from the roof after torrential rains, it did just that and to good effect.



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This builder/developer was the declarant for a new multifamily high-rise condominium in Virginia. The builder/developer purchased the

building from another entity approximately a year before the storm of the century hit and had sold all the condominium units, but was still in the statutory warranty period when the rains came.

The storm dropped approximately 9 inches of rain in four days on the entire mid-Atlantic region. It was the most rainfall in a four-day period experienced by the condominium's area in the last 200 years. The rainfall overwhelmed the drainage capacities of the roof and damaged the common elements of the condominium, including storage areas on the top five floors and several units on the top two floors.

Having learned of the problem late one evening, the builder/developer had a team on site at daybreak the next day. This team — which consisted of the building's original architect, members of the builder/developer's construction staff, an independent building enclosure specialist retained by the builder/developer, the original general contractor, a roofing specialist, a project management company and the association's building engineer — immediately located the apparent cause of the leaks on the 10th floor roof, took

action to stem the flow of water into the building and ensured the building was secure from further water infiltration.

At this point, the builder/developer had two choices:

1. Sort out liability first and then repair the roof and the damage to the building; or
2. Make the repairs and then sort out who was liable for what.

The builder/developer chose the latter option.

As the first step, the builder/developer's team identified and assessed the cause of the leaks and immediately began to make repairs to improve the drainage capacity of the roof and to repair damage to the roof itself. In the process, the builder/developer was able to determine that there was no structural damage to the building. The builder/developer also provided the unit owners association's board of directors with a full report on the cause of the leaks and recommended remedial actions.

The builder/developer pressed its service providers to speed the work along. At the builder/developer's behest, the project management firm added extra staff to the project. The builder/developer retained several demolition, clean-up and restoration companies and had teams working around the clock at the condominium within 24 hours of the storm.

The builder/developer also arranged for an environmental specialist company to inspect all areas affected by the mois-

ture to reduce as much as possible any potential for mold. The builder/developer brought in as many crews as it was able to find to help with the demolition and clean-up, and was able to achieve impressive results, especially given that it was competing with dozens, if not hundreds, of buildings affected with storm-related damage in the mid-Atlantic region.

Certain units directly below the two areas of leaks on the 10th floor were severely affected. The builder/developer asked these homeowners to vacate their units while they were restored. To make this as easy as possible for these homeowners, the builder/developer helped them locate hotel rooms in the area, made reservations for extended stays and even advanced funds to some of them to cover the cost of alternative accommodations and incidental expenses until they began to receive funds from their individual homeowner's insurance policies. The builder/developer also coordinated the moving of furniture so the units could be worked on.

At the same time, the builder/developer entered into an agreement with the unit owners association under which:

1. The builder/developer would continue to coordinate and advance funds for work on all areas of the condominium until all repairs necessitated by the storm were completed.

2. The association would file an insurance claim for all damage arising out of the storm under the association's master insurance policy, the builder/developer would make available to the association an insurance coverage specialist at the declarant's sole expense to assist in prosecuting the insurance claim, and any insurance proceeds collected by the association related to the storm would go first to reimburse the declarant for funds advanced to perform the restoration and repair work.

3. The builder/developer would complete such repair work within six weeks unless additional damage was reported or discovered.

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(as of May 2, 2007)

4. After a determination of liability and an allocation of responsibility, the builder/developer would be reimbursed by the association — through insurance proceeds or otherwise — for all expenses incurred in evaluating any damage and making any repair that was not the builder/developer's responsibility under the statutory warranty.

5. The association would use its best efforts to ensure that any and all insurance proceeds recoverable for the storm damage were promptly collected and paid to the builder/developer, except that any payment would not exceed the builder/developer's actual costs.

6. The association would promptly advise all unit owners and residents who experienced damage to their units or personal property to file their own insurance claims.

The work is now complete and all unit owners have been restored to their homes.

Unfortunately, the unit owners association began the process of making its statutory warranty claim against the builder/developer in the middle of the repair work and, as a result, the association's insurance company denied coverage for the storm damage. However, since the builder/developer was fully indemnified by the unit owners association under the agreement, the builder/developer should recover its expenses eventually.

In the meantime, neither the unit owners association nor a single unit owner has filed suit against the builder/developer either for damages from the storm or under the statutory warranty. As the association president said in a letter to the unit owners, "We want to express our thanks to the development team — not every developer is willing to step up and be a good neighbor." As it turns out, being a good neighbor can also be good business.

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