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IMPORTANT INFORMATION FROM YOUR LEGALSHIELDSM OF FLORIDA PROVIDER ATTORNEY

Due to the recent storms that have impacted our State, our Firm has had the opportunity to assist many individuals and small businesses with legal issues related to the after effects of the storms' damage. As we have consulted with our clients, we have identified certain frequently asked questions or concerns. In an effort to assist you as a LegalShieldSM Plan member, we have prepared the following information for your review.

YOU ARE ADVISED THAT THIS INFORMATION IS INTENDED FOR REVIEW BY CURRENT LegalShieldSM MEMBERS ONLY. FURTHERMORE, THIS INFORMATION IS ONLY INTENDED TO PROVIDE GENERAL INFORMATION REGARDING THE SPECIFIED ISSUES AND IS NOT INTENDED TO SERVE AS A SUBSTITUTE TO, OR IN LIEU OF, ANY LEGAL ADVICE OR CONSULTATION THAT MAY BE PROVIDED BY ANY MEMBER OF THE FLORIDA BAR. AS SUCH YOU ARE URGED TO CONTACT OUR FIRM AT 1-800-591-7311 FOR FURTHER ASSISTANCE IN ACCORDANCE WITH YOUR PRE-PAID LEGAL SERVICES PLAN MEMBERSHIP.

HOMEOWNER ISSUES:

***Question:** I live in a condominium complex or subdivision (administered by a homeowners' association) that sustained damage to its common-area facilities (i.e., pool, gym, playground, parking areas) during a recent Florida hurricane. Can I withhold payment of my homeowners' association dues until the homeowners' association makes repairs to these common areas, since I cannot use these facilities in the meantime?*

Answer: No. While the homeowner's association is certainly obligated to arrange for the repairs of these common areas, you and every other homeowner are jointly the members of this homeowners' association, and repair issues should be pursued with the homeowners' association itself. Moreover, the means and/or budgeting for these repairs may require the input of the homeowners collectively. Any unexplained failure to engage or address repairs must be pursued through the homeowners' association itself in accordance with its rules, by-laws, and voting rights. Failing even those remedies, a lawsuit may be necessary against the homeowners' association to legally enforce these remedies.

Q: As a result of the hurricanes, I am not able to pay this month's mortgage payment. I don't want my property to go into foreclosure. Is there a law requiring the mortgage company to excuse my premiums due to the hurricanes?

A: NO. There is no law excusing mortgage payments due to hardship from the hurricanes. The mortgage company may foreclose upon a default. However, many mortgage companies are offering grace periods as a matter of customer service to allow homeowners to get back on their feet and resume normal payments. If your mortgage company grants you an extension, try to get this in writing. If it does not, you may be eligible for mortgage payment relief by contacting FEMA at 1-800-621-3362. Additionally, if you have lost employment income, seek assistance from the Unemployment Compensation division.

Q: Who is responsible for damages caused by a falling tree and for removal of the tree.

A: If the damages were caused by a tree falling as a result of an act of God and there was no prior knowledge that the tree was a hazard and likely to fall, the damages are likely the responsibility of the owner of the damaged property. Additionally, the removal of the fallen tree will in most instances be the responsibility of the property owner upon whose property the tree landed, including a neighbor if the tree fell across the property boundary. As to whether the parties' liability insurance should pay the cost will depend on their individual policies. Generally, if covered, there will usually be a high deductible on damages resulting from high winds and acts of nature.

Q: I have hired an individual or company to complete my repairs and they have told me that a permit is not needed or it is my responsibility to get a permit from the local governing authority.

A: First, we strongly suggest that you only hire State licensed or County certified contractors to work on your property. Such a license or certification has been issued to the contractor because he has demonstrated a certain level of competency to do the particular work and maintains required insurance. Before entering into an agreement, we suggest that you ask for and receive the individual's license number. Please note that many individuals will provide you with a copy of an occupational license issued by a city or county, this is **NOT** a license that indicates competency it is merely a tax imposed by a local government on individuals who conduct business in the geographic area. As such it can be obtained by anyone who pays the appropriate fee.

Unless you have minor repairs, (as a general rule of thumb, a repair project less than \$500 and not electrical, plumbing or structural in nature may be considered minor), most repair projects will require a city or county permit. Please note that the failure to obtain a required permit may ultimately become the problem of the property owner because it may subject the owner to administrative fines and liens if pursued by the local government. Therefore, if the person you hire, advises you that you do not need a permit, we urge you to contact the building department at your city or county and obtain written confirmation. If the individual you speak with advises you that a permit is not required, and will not give you written confirmation, we suggest that you obtain that person's name and title and record the time and day that you spoke with them for your use in the future, if needed. If you confirm that the information your contractor gave you is incorrect, we suggest that you hire another contractor. Additionally, in certain instances, a homeowner may act as his own general contractor, even if he does not have a license, and obtain certain permits. Therefore, if your contractor asks you to obtain the permit, this may be an option, however, there are restrictions that you will have to address. For instance, a homeowner can only obtain a

permit if it is for work on a house in which he actually resides. In addition, if the work is electrical, plumbing, structural or related to a major roof repair, it may still be necessary for a contractor who is licensed in those areas to obtain the permit under his license number. Finally, you should be aware that the contractor licensing restrictions have been relaxed in recent weeks to allow out of state contractors to do business in the State. Although, we recognize that hiring an out of state contractor may be the only option available, it is suggested that you proceed with caution in that if you have a problem with the repair work after the contractor has returned to his home state, it may be very difficult to obtain a remedy.

LANDLORD/TENANT ISSUES:

Q: *What can a tenant do if the landlord has not repaired hurricane damage?*

A: The tenant must mail or hand deliver a 7-day notice to the landlord to fix or repair the damages, unless the tenant's obligation in the lease. If the landlord makes a reasonable effort to cure the violation within 7 days, or if the noncompliance is beyond the landlord's control, the tenant cannot terminate the lease unless the unit is uninhabitable. However, the tenant can, after providing the notice, withhold all the rent if the premises are uninhabitable, or if the tenant still lives in the premises, an amount in proportion to the loss of rental value caused by the noncompliance. Remember, a tenant does not have any of these rights until the 7-day notice to fix or repair is mailed or hand delivered to the landlord.

Q: *If I am renting an apartment and my personal property is damaged, what recourse do I have?*

A: Hopefully, you have renter's insurance. If so, you should contact your insurance company and report your loss. If not, you should see if the landlord's policy will cover your losses. If not, you may be eligible for a FEMA Individual and Family Grant.

Q: *Am I as a tenant liable for damage caused by a hurricane to rental property?*

A: We will need to review your lease, however, generally, the landlord will probably be responsible unless you were negligent in some aspect that resulted in the damage.

INSURANCE ISSUES:

Q: *Can my car or health insurance be cancelled or non-renewed?*

A: By order of the Office of Insurance Regulation, because Governor Bush declared a State of Emergency, auto and health insurance policies cannot be cancelled or non-renewed unless the insured so requests the cancellation or non-renewal. Please contact Department of Financial Services Insurance Claim Hotline: **1-800-22-STORM (1-800-227-8676)**.

Q: *How long do I have to wait until an insurance adjuster assesses the damages?*

A: Due to numerous claims being filed simultaneously you may experience some delay. Thus, it is suggested that you follow-up your telephonic request with one in writing. However, if the delay is unreasonable, you should contact the Florida Department of Insurance at 1-800-342-2762.

Q: *My insurance company sent me a check payable to my name and that of the mortgage company. Why must the mortgage company endorse the check?*

A: As a general rule insurance companies issue this type of check because as required by the mortgage documents, your mortgage company is an additional insured on the insurance policy. The mortgage

company includes this requirement as a condition to loan because it has a lien on your property in the amount of the outstanding mortgage and therefore, has a vested interest in seeing that all the necessary repairs are completed in a workmanlike manner. Therefore, most mortgage companies have the right to require a homeowner to endorse the insurance check and deliver the funds to the mortgage company to be disbursed by the company periodically as the repairs are made. The mortgage company also may have the right to inspect the repairs before it releases the money. Depending on the extent of the damage and the amount of equity that the owner has in the property, the mortgage company may not require that the funds be held by it and may endorse the check and provide it to the homeowner. It is suggested that you contact your mortgage company to discuss the specific guidelines.

Q: What if, after I obtain repair estimates and receive the payout amount from my insurance company, the payout amount is less than my repair estimates?

A: First at the time you receive your payout amount you should not sign any release or satisfaction of claim without contacting our office. In most instances, your repairs will not have been completed and therefore, if you sign a release you may be waiving valuable rights and claims you may have against your insurance company. You should only be asked to sign a release or satisfaction of your claim after all of the repairs have been made and, once again, you should not do so without first contacting our office. In the event, after your deductible has been taken out, the amount of your repair estimates exceed the amount that your insurance company has agreed to pay you, most insurance companies will review the additional information and, if the additional costs are legitimate, your claim amount should be supplemented. You will likely be required to provide to your insurance company copies of the estimates. As with any part of your claim, it is important that you keep copies of all documents and correspondence, including e-mails that you provide to or receive from your insurance company. The insurance company is entitled to review the information and estimates you provide before making a determination. If your claim is denied or if they fail to respond, we urge you to contact our office for assistance. As provided under Title I of your PPL plan, we will review the documents that you provide and, in most instances, send a letter on your behalf to the insurance company. You may also hire a public adjuster, whom will assess the damage himself then work on your behalf with your insurance company with the hope of a settlement. Please note that public adjusters work for a fee based on the amount of your settlement. By law, a public adjuster's fee is limited to 10% of any settlement. If you elect to use a public adjuster, you are advised to ensure that he is licensed, to not pay anything up front, and to check his driver license when he arrives to make sure the person you hire is the one whom performs the work. If you are interested in retaining such an adjuster, you can obtain names by going to the Florida Association of Professional Insurance Adjustors website at www.fapia.net.

Q: What do I do if the insurance adjuster says that the damage is due to a building defect in my new home and not a result of the hurricane, and my contractor is claiming "act of God" and refusing to repair?

A: We suggest that you obtain a written statement from your contractor stating that the construction was not defective. The statement should include the contractor's State of Florida Contractor's License Number. We then, urge you to contact our office and consult with one of our attorneys to determine a course of action and review your legal options.

Q: If my insurance company refuses to approve my claim is my only option to file a lawsuit?

A: You can request mediation with your Insurer through a program set up through the State of Florida Department of Financial Services (formerly called the Department of Insurance). The DFS Mediation Program can be contacted by calling the Consumer Help Line at 1-800-342-2762. If you elect to avail your self of this services, we urge you o contact us to discuss the process and the information you may need to have availabe to present to the mediator.

MISCELLANEOUS ISSUES

Q: *Do I need to be a U. S. citizen to apply for disaster benefits?*

A: No. There are non-cash FEMA Programs that are available to non-U.S. citizens.

Q: *How can I find out if I am entitled to any disaster benefits?*

A: You can call the FEMA Hotline at 1-800-462-9029.