



By Howard Stern, Esq.: How effective is your team? Property issues to discuss with your attorney and insurance agent

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If you have been following my articles lately (for which I humbly thank you) you will have observed that the underlying theme of many of them is team. This article continues that theme.

Most of us and many of our properties have suffered recently because of the severe storms. Entire towns have been inundated with water or washed away. Properties are still soaked and water still runs in areas that see a trickle of water at most and only then rarely. Trees cracked and fell. Sometimes onto cars or neighbors property. Flooding destroyed basements and their contents (boilers, hot water heaters, inventory, electrical systems, floors, etc.). Water from neighbors property may have flowed onto your property or yours onto someone else's.

So, exactly how good was your insurance. How effective was your insurance team and legal counsel. Acts of God are generally not covered by insurance. Damage caused by the storms that affect neighbors (e.g. fallen trees, broken fences) are generally covered. In those areas declared emergency areas, FEMA is supposed to assist with the losses. Of course, until then you are still required to maintain your properties and provide services to your tenants (subject to lease exclusions) Hopefully you are covered for those losses or receive FEMA assistance. What your insurance company may declare an act of God and not covered, your neighbor may claim was negligence planning on the water run off. And are you covered for a neighbors claim?

It is essential that you ask your legal counsel to coordinate with your insurance agent to determine what coverages you have and what you don't, and find out what coverages you might consider adding going forward. For instance, do you have coverage for replacement value? More importantly, do you have "up to code" coverage? Replacement value will restore your property as it was pre-loss. But not what it may take for you to bring your property up to current code requirements. Insurance companies, in my opinion, are not in the business of paying claims. They are in the business of making money for those who own the companies and their employees. If they pay off on every claim in full, one counteracts the other. I'm a Jewish lawyer so I have over 5,800 years of paranoia in my blood. Take no ones word that you are covered. When you find out you are not, it is always too late.

Many properties built longer than ten years ago were not required to, nor did the builders or architects factor in water runoff when building that property. Flooding brings an instant deluge of running water and with it debris of all kinds. Shopping carts anyone? Some owners put off cleaning the sewers only to find them overwhelmed by a sudden onslaught of rain. Some sewer systems simply weren't designed to handle the amount of water that runs into them. Some were designed when a neighbor was a open green space only to eventually be paved over, and now find their neighbors water spewing onto their property. In some instances despite all proper precautions, the system into which your system eventually runs into has its own problems.

So what can be done? Well obviously what has happened cannot be changed nor is there insurance

one can obtain retroactive to the days before the storm.

You can however make sure that we have the proper coverage going forward. Immediately sit down with your legal team and management team to evaluate your properties. Each property has unique qualities and needs. In a perfect world one would get the best coverages available for all their properties and feel somewhat secure. However that kind of coverage is expensive (even if you can pass it along) and each property has its own needs. Why pay for coverage you do not need?

Make sure to do your due diligence on the company you chose. Make sure they have an excellent rating. There are some companies I have dealt with over the years that I counsel my clients away from. For the same reason I prefer an independent broker to one that writes only for a specific company. The latter is employed by the company and their loyalties are to that company. An independent is more likely to be more concerned with your needs.

So exactly what are you covered for? Ten to one odds most of you reading this have no idea. Like they say, "no time like the present" to take care of something, especially something this important.

Howard Stern, Esq., is the owner and an attorney at Law Offices of Howard Stern, White Plains, N.Y., and administrator of the Rent Stabilization's Association of New York City's Legal Plan.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540