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Condo board powers in storm emergency raise questions

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Should a hurricane again strike Florida, condo boards now possess an unprecedented ability to quickly act.

A new state law allows boards to temporarily suspend condo governing documents during an emergency, said Leigh Katzman, of the law firm Katzman Garfinkel, which represents more than 1,000 community associations in South Florida.

"It became evident after Hurricane Wilma that these emergency powers are necessary," he said. "They free boards do what it takes to preserve the health, safety and welfare of members, as well as the integrity of property."

Florida statute (Section 718.1265), which took effect Oct. 1, allows boards to impose assessments, shut down and secure buildings before, during and after a storm, and tap reserve accounts to pay for repairs — all without a membership vote.

Boards may also:

Conduct emergency meetings with as much — or little — notice as is practical, including radio and e-mail messages, or public postings around association grounds.

Name "assistant officers" who can stand in for directors who are not available.

Enter into agreements with counties and cities to remove debris.

Require the evacuation of condo property. The association is not liable for injuries or damages involving unit owners who disregard the order to leave.

Shut down electricity, elevators, water, sewer, air conditioners and security systems. Boards can also block access to all or parts of condo property.

Borrow money without unit owners' approval, and pledge assets as collateral to pay for emergency repairs and to carry out general duties. The amount to be borrowed is not restricted.

Proponents say it enables boards to be quick and nimble as they fulfill duties to help their associations recover from a disaster. Others counter the law is vague about when the powers cease to be in effect. The exact wording says the powers remain in effect until "that time reasonably necessary."

"I have mixed feelings about this kind of power being given to boards," said Jean Winters, a [Boca Raton](#)



attorney who represents unit owners.

Katzman points to what he calls the greatest ambiguity in the law.

"The issue is going to be when do these powers end? In some circumstances, you are going to have boards who want to extend these powers months after a state of emergency is declared. And in certain situations, that may be a reasonable," he said.

Winters said, "the statute should be clarified." Allowing boards to use emergency powers indefinitely "makes no sense and would give boards more power than the government."

This month marks the third anniversary of Wilma, which instantly conjures memories of what can go wrong. In South Florida, it took months, even years, for some people to be able to return home because boards had trouble getting roofs fixed, leaks stopped or mold cleaned.

Ivan Ondrus is vice president of the Southgate Gardens Condominium Association in Tamarac, which had about 90 buildings damaged by Wilma and still has 42 under repair.

He believes the emergency powers should "require boards to establish or hire a skilled project manager to handle restoration, including hiring contractors instead of leaving the project to lay people."

Hurricane season ends in six weeks. But tough questions about the effectiveness of Florida's new condo emergency powers will be with us for some time.

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