

How to Help South Florida Landlords Avoid Litigation During Hurricane Season

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by Melea VanOstrand

Reading the fine print of a contract between a landlord and tenant is always important, but adding special language to a lease can help decrease the risk of litigation after damage caused by a hurricane.

That's according to Marko Cerenko of Kluger, Kaplan, Silverman, Katzen & Levine in Miami, who said a lease must specify who is responsible for procuring and maintaining the property or casualty insurance.

"For example, is it going to be full replacement value or a lesser amount? Also, the specific coverages to be provided under such insurance. That in itself is the first step," Cerenko said.



Hurricane Irma damage

There can be a lot of pitfalls in the details of a lease, Cerenko noted. Among the most common: who is liable for the damage?

"The leases need to carefully describe what happens in the case of damage from a storm, whether it be a tropical storm

or a Category 4," Cerenko said. "Some of the things I would consider would be, under what circumstances is the damage so extensive that one of the parties, whether it be the landlord or the tenant, have the right to terminate the lease?"

The damage of property in regards to terminating a lease needs to be further broken down, according to Cerenko.

“Is it defined by a certain dollar amount that’s required for restoration, or is it defined by the length of time that it will take? For example, the tenant is allowed to terminate the lease if it’s going to cost \$1 million to replace or the tenant is allowed to get out of the lease if the repairs take longer than six months,” Cerenko said.

If termination is not something that can be done under the lease, there needs to be a plan in place for how property will be restored.

“Can the landlord wait until they get some insurance money and then they take care of the issue, or is the landlord obligated to do so right away?

Is the tenant responsible for any, if so, for what?” Cerenko said.

Landlords should consider whether rent will be abated during restoration, how quickly it will be completed, and who is responsible. Cerenko suggests looking at the force majeure clause, especially for commercial properties that are near the water and susceptible to flooding.

“Hurricanes certainly fall into that category,” Cerenko said. “You would want to spell it out in the force majeure provision.”

Cerenko says the better prepared you are, the more easily landlords can avoid litigation with a tenant. Sometimes there are unforeseen events, like mandatory evacuation orders when a property cannot be

properly sealed, or if tenants might want to enter a building before its fully functioning again.

“The liability may still fall on them,” Cerenko said. “A way to protect against that is for landlords to prepare releases to the extent that the tenant wants to go back to the space before it is fully open after a storm. If they want to stay until the last second, they need to have a release.”

No matter what provisions there are, making a plan and spending the extra money to ensure a lease is solid during the initial negotiation process is always key to hurricane preparedness, in Cerenko’s experience. Because without them, landlords could suffer tenfold down the line.