

Battered Property Owners Find Relief on Storm Damage Claims

By Christopher Parrington, Esq.

A homeowner association is much like any other business, with one main distinction – its primary (and often sole) asset is the property owned by the individual home owners. Associations will go to great lengths to protect this asset, including the purchase of insurance to protect against any unforeseen damage. Wind and hail damage insurance is one of the most commonly purchased types of insurance for associations.

Until recently, associations assumed that the insurance they purchased would allow them to repair or replace storm damage to their property. Around 2008, however, insurance companies began to ignore their contractual obligations and either refused pay to repair or replace storm damage to property – or even worse, refused to participate in a contractually-provided for appraisal process to determine the amount of loss that resulted from a storm. In March 2010, however, the Minnesota Court of Appeals issued a ruling in favor of Minnesota homeowner associations, making it clear that insurance companies better begin complying with the terms of their own insurance policies.

In March 2010, the Minnesota courts were asked to consider the scope of authority of an appraisal panel appointed to determine the amount of loss caused by a storm, pursuant to the terms of a homeowner association's policy of insurance. In that case, known as *QBE Insurance Corp. v. Twin Homes of French Ridge Homeowners Association*, 2010 WL 607409 (Minn. Ct. App. Feb. 23, 2010), an appraisal panel was appointed to determine the amount of loss caused by a hail and wind storm in May 2007. Pursuant to the insurance policy, the appraisal panel concluded that the roofs of Twin Homes of French Ridge Homeowners

Association's ("Twin Homes") property suffered significant hail damage that warranted a repair or replacement pursuant to QBE Insurance Corp.'s ("QBE") insurance policy. Given that the existing shingles on Twin Homes' roofs were no longer available through their manufacturer, the appraisal panel concluded that a full roof replacement was warranted to repair or replace the storm damage. As a result, the appraisal panel issued an award in an amount sufficient to allow Twin Homes to replace their entire roofs, including shingles that were not damaged by the storm.

Despite the insurance policy, QBE refused to honor the appraisal award and challenged it in district court, alleging that the appraisal panel exceeded the scope of its authority by awarding a full roof replacement when portions of the roof were not damaged by hail. The district court confirmed the appraisal award, stating that pursuant to QBE's insurance policy, which mirrors the mandatory insurance policy language set forth in Minnesota Statutes Section 65A.26 and is commonly found in many other policies, the appraisal panel was authorized to determine the amount of loss caused by a wind and hail storm, but also the method of repairing or replacing the loss.

According to the court of appeals, the appraisal panel did not exceed the scope of its authority by awarding a full roof replacement under the policy even though only a portion of the shingles on the roof were actually damaged by wind or hail, because the appraisal panel believed the only way to repair or replace the damaged property was by awarding a full roof replacement. From 2008 until this ruling, most insurance companies refused to pay for roof replacements unless the entire roof was damaged.

Weather forecasters are predicting large storms this spring and summer. If true, many home owners could be entitled to receive a new roof rather than patching their existing roofs, depending on the circumstances that may exist. For homeowner associations, this could mean the difference between temporary patchwork that will eventually require a full roof replacement paid through assessments of individual home owners, and a full roof replacement paid for by the insurance company following a storm. The existence of new roofs could also increase home values, giving selling homeowners a competitive edge in the current real estate market.

The Minnesota courts have clearly indicated that home owners and homeowners associations have certain rights pursuant to Minnesota law and insurance policies, and going forward, insurance companies will be required to honor and respect those rights, especially where wind and hail storm damage is involved. Many insurance companies will try to avoid this ruling; therefore, it is important that home owners and homeowners associations are fully aware of their rights under insurance policies and Minnesota law.

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