

Hurricane Sandy, real estate and your practice

By Andrew M. Lieb

Long Beach was destroyed. Patchogue was underwater. Montauk became an island. Hurricane Sandy left her mark on Long Island, both in the short-term and in the long-term. In the short-term, we experienced power outages, flooding and displaced homeowners. In the long-term, questions were raised about our infrastructure, the location of generators in buildings and weather zoning ordinances should be modified to dissuade communities from being built anew on our coastlines. Yet, we are a resilient people and we will rebound. That is, we can be stronger, safer and happier if we choose the correct path. Yet, the answer needs to come from within and our leaders, like members of the Suffolk County Bar Association, need to guide their communities to a better tomorrow.

You see, immediately following the storm my law firm, as I am sure many of yours did as well, received a multitude of panicked questions about what was legal and what our clients should do in the face of their personal loss.

We were asked whether cooperative shareholders had to pay their maintenance while they were displaced. These individuals could not utilize their homes due to destruction and many were forced to either move in with family or into a hotel. Moreover, some estimates were placing the recovery months away and these people needed their limited funds to stay warm in

the cold winter that was fast approaching. By law, a cooperative's proprietary lease is subject to the Implied Warranty of Habitability embodied within Real Property Law §235-b and case law supports a 100 percent abatement of maintenance while a unit is unusable. Nonetheless, by withholding maintenance a shareholder is cursing his building into foreclosure as it will soon become insolvent and unable to meet its ongoing expenses. We received the same question for condominiums, but unlike a cooperative, a condominium's owner does not have the benefit of the warranty and must pay their common-charges in the face of destruction.

Then, came in the questions of risk of loss, from those who were in fully executed contract of sale concerning a real estate transaction where the structure, at issue, had been damaged. They wanted to understand the default rules pursuant to General Obligations Law §5-1311 and how to ascertain whether the vendee had a right to cancel the contract, which they do if there is material damage. We explained that the issue was whether the damage was material or immaterial to the contract. Thereafter, we were asked how to adjust the purchase price for immaterial damage when the contract remained in full force and effect, which we explained was a question of fact requiring estimates for repairs, at the least.

Subsequently, we had calls from fore-



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closure clients who had not paid their homeowner's insurance in years, but had a pool of water in their living rooms. They wanted to know if their lender had maintained the policy and how they should respond. We explained that lenders generally do maintain insurance to protect their investment, the home. Yet, in the first instance, the lender is not required to maintain insurance as it is optional to them and in the second, that even if insurance did exist, it would be a struggle to get the insurance proceeds from the lender as they often hold those monies hostage in escrow during the foreclosure litigation.

Let us also not forget those gouging their prices while trying to reap a profit from this destruction. There were those who immediately saw profit in Sandy's wake. The weekend warrior instantly became an unlicensed contractor, not mindful of the State's General Business Law's rules on Home Improvement Contracts embodied at §771. These laws are designed to protect the vulnerable. Nor was the weekend warrior aware of the many local municipalities, which often have their own license requirements and laws affecting the trade.

My fellow attorneys, it is time for us to lead. Our job is not only to advocate, but also to educate. We need to guide our communities to a better tomorrow. Yes, our services are necessary and there is

much work ahead. I am asking for your leadership. Review your client's homeowner's insurance policies. Explain to them that the Governor has waived hurricane deductibles within their policies as a result of the hurricane. Articulate the definition of flood insurance and how a policy likely will exclude floods or surface water damage in the absence of a proper endorsement. Identify a policy's provision for replacement value and explain that unlike cash value, depreciation will not be counted in providing coverage if a client's policy contains this valuation for loss. Review the conditions' precedent to coverage like the notice provisions and ensure that they are complied with. Understand that it is not typically the insurance broker's fault if the wrong policy exists and absent a special relationship between client and broker, the broker will not be found liable for poor advice. Then, when you feel that you have provided sufficient education to your client, send them to www.disasterassistance.gov where they can learn of the many resources that our Government is offering to its victims. Stay safe and we will rebuild together.

Note: Andrew M. Lieb is the Managing Attorney at Lieb at Law, P.C., a law firm with offices in Center Moriches and Manhasset. Mr. Lieb serves as Co-Chair to the Real Property Committee of the Suffolk Bar Association and served as this year's Special Section Editor for Real Property in The Suffolk Lawyer.