



HURRICANE INSURANCE CONSIDERATIONS FOR COASTAL PROPERTIES

Presented By:

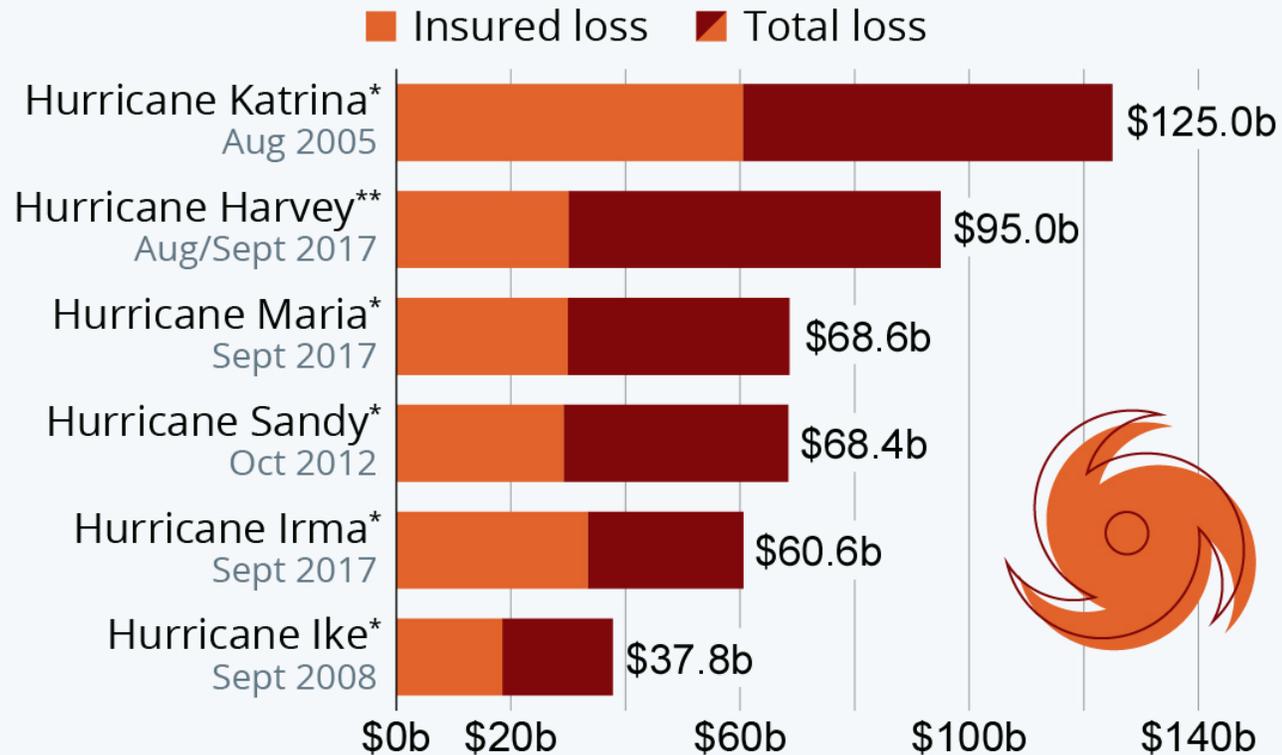
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The Economic Fallout of Hurricanes

Most devastating hurricanes by total and insured losses worldwide from 1980 to 2019



* U.S., Carribean ** U.S., Caribbean, Central America
Source: Munich Re



What is a “flood?”

- “The coming of a great quantity of water over a place that is usually dry.”
E.K.S., Inc. v. U.S. Fire Ins. Co., 1999 WL 299574 (N.D. Ill. 1999)
(adopting the broader term of flood where insurance policy did not define the term).
- The NFIP defines flood as “a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties, at least one of which is your property.”

NFIP-approved Insurance Policies

- Standard policy covers building and contents
- Excludes coverage for things like landscaping, seawalls, docks, swimming pools
- Also excludes business interruption losses.
- Preferred flood insurance policy will cover losses from outside water intrusion not otherwise covered by flood insurance, and will cover additional living expenses

Seawalls and Docks

- Many homeowner and commercial property policies provide coverage for seawalls and/or docks if damage is not caused by an excluded peril, such as flood.
- Be wary of policy exclusions!
- Many flood insurance policies cover the building and contents in the event of a flood but exclude other outdoor structures, such as seawalls and docks.
- Thus, a property owner may have a coverage gap that requires an additional insurance policy (or endorsement to an existing policy).

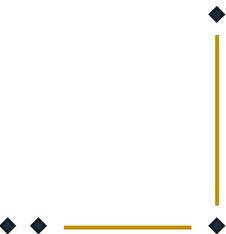
September 6, 2014



Before and After Hurricane Matthew

Hurricane Matthew's storm surge and waves overwashed 177 miles of beach dunes in four states

October 13, 2016



FEMA 50% Rule

- If a structure is substantially damaged to a point where the cost of repair would be 50% or more of the market value, the structure must be brought “up to code,” i.e., brought into compliance with current FEMA regulations.
- This can have significant impact, especially in cases where minimum elevation levels have changed since the building was constructed.
- Local governments set the standard and method for defining and calculating “substantial damage.”

Valued Policy Law – Fla. Stat. §627.702

- States that in the event of a total loss of a structure, the insurer must pay the full limits of the policy.
- Florida uses the “identity test” to determine whether a structure is a total loss.
- Identity Test looks to whether the structure has lost its identity and character as a building and becomes so far disintegrated that it cannot be possibly designated as a building. However, some parts of it may remain standing. *Lafayette Fire Ins. Co. v. Camnitz*, 149 So. 653 (Fla. 1933).
- Thus, you could have a “constructive total loss,” i.e., the building is still standing, but due to the FEMA 50% rule, for example, the building cannot be repaired.
- See, e.g., *Greer v. Owners Ins. Co.*, 434 F. Supp. 2d 1267 (N.D. Fla. 2006) (finding home was not a total loss where windows, doors, walls, and roof remained intact).

Takeaways

- Review all of your policies to identify gaps in coverage
- Fill the gaps!
- Understand the deductibles and exclusions, and set a loss reserve
- Consider the need for umbrella or excess policies
- Photograph everything now, undamaged
- Keep insurance policies in a safe place and maintain accurate records of insured items