

## Remodeling Special Issue For Condos

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Today's column continues a review of common legal issues addressed by community associations when updating the governing documents. Last week, we took a look at alterations of common property by the association. Today, we'll explore the other side of that equation, alterations by individual property owners. On this topic, the issues applicable to condominiums and homeowners' associations are quite different. Today, we will tackle alterations to condominium units made by owners. Next week's column will address alterations by property owners in homeowners' associations and the general concepts of architectural control and review in HOAs.

There seem to be a few common hot buttons in condo living involving a unit owner's maintenance, repair, or improvement of their apartment:

**Flooring Restrictions:** In the 1970's and 80's, the typical boilerplate set of condominium documents written by a developer required wall-to-wall carpeting in all areas of apartments (at least those units above the first floor) typically with exceptions for kitchens, bathrooms, and similar areas. The obvious intention of a carpeting requirement is to minimize noise transmission to the lower-floor apartments. In the past two decades, various types of "hard flooring" have entered the scene. Ranging from traditional tile floor, to hardwood flooring to marble, many people simply prefer hard flooring to carpeting. However, particularly when there is no sound-deadening underlayment installed beneath hard flooring (and even in some cases where there is), complaints from neighboring units abound, and frequently blossom into litigation. The "best rule" for any particular condominium depends on the collective desire of the owners. Whether the association wishes to retain a strict carpet-only rule, or permit hard flooring with a requirement for sound insulation, this is something that should specifically be addressed in a well-written and updated set of documents.

**Hurricane Shutters:** The Florida condominium law provides that a board of directors must adopt specifications for hurricane shutters, and cannot prohibit a unit owner

from installing shutters in accordance with the board's specifications. Most associations strive toward a "standard" hurricane installation, usually focusing on the style of shutter, the location of its installation, and approved color. Associations are also well advised to have professional assistance from an engineer or other consultant to assist in developing technical specifications for shutter installations to make sure that there is no compromise of water drainage, that the fastening of the shutters to the building will not cause structural problems, and the like. Shutter specifications are typically addressed through a board-made rule. The declaration of condominium should also provide that any improvement to the condominium by a unit owner, including shutters, is the responsibility of the unit owner as far as maintenance, repair, replacement, as well as the expenses that may be incurred if the item has to be removed and re-installed in connection with maintenance of the building.

**Structural Alterations of the Unit:** Most associations do not desire to have a role in an owner replacing appliances, cabinetry, and other items originally installed when the building was built. The rub usually arises when someone wants to "remodel" their apartment, and that involves knocking down walls, relocating partitions, modifying common area electrical or air conditioning facilities, and similar items. Several different interests of the association are implicated here. One common controversy involves whether heavy remodeling work should be permitted during certain times of the year. For example, some condominiums will not permit jack-hammering and other noisy or messy work to be done during the typical "high season" months. Secondly, an association is well advised to have control over significant structural alterations, or the relocation of plumbing or electrical facilities. For example, moving a unit's bathroom over the bedroom of the downstairs neighbor is a likely source of future legal disputes. Additionally, many associations find it desirable to require the unit owner to submit detailed plans and specifications, and in some cases assurances to the association from an outside engineer, if significant work

involving the building's structural elements, electrical system, plumbing system, or air conditioning system are involved in the remodeling job.

**Alterations Visible from the Exterior:** One of the most pleasing aspects of condominium living to many people is the uniformity found in many developments. As mentioned in last week's article, alterations by the association can be a source of contention. Likewise, if a unit owner is going to do work which alters the exterior appearance of the property, the potential for problems escalates. In

addition to a minimum requirement that any exterior alteration be approved by the board of directors, some associations even require a vote of some percentage of the other unit owners to approve a neighbor's exterior alterations to the "look" of the property.

As condominium buildings age, or as owners wish to keep their units updated in a market of escalating property values, a well-written set of documents will help draw the line between individual rights and protection of the collective good. ⚖️

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## Termination Clause Covers Redevelopment Projects

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**Question:** Our condominium association board appointed a five-member landscape committee. The landscape committee does not have the authority to make decisions, only recommendations to the board. Are the meetings of this committee subject to the sunshine rules? T.D. (via e-mail)

**Answer:** It depends. The committee you have described is what is commonly called a "non-statutory" committee, because it has not been granted the authority to take final action on behalf of the association or make recommendations to the board regarding the association budget. Committees which can take final action or make budget recommendations are often referred to as "statutory committees."

Statutory committees are always subject to the sunshine rules of the law, including the posting of meeting notices, unit owners' right to attend and speak, minute-keeping, and the like. Conversely, non-statutory committees are subject to the sunshine rules unless the bylaws exempt their operation from the sunshine requirements. Therefore, if your bylaws exempt the committee from the sunshine rules, they do not apply. If the bylaws do not address the subject, then the committee must follow the sunshine rules until the bylaws are amended.

**Question:** I live in a homeowner's association, which has various governing documents including bylaws. Our bylaws state that a quorum is a majority of our members, although I learned on the Internet that the Florida State statutes sets a thirty percent quorum for homeowners' associations. What percentage should we use? J.W. (via e-mail)

**Answer:** Your question is a common one, and has not been answered by the courts.

The Florida statute applicable to homeowners' associations was amended in the mid-1990's to state that a quorum for the conduct of HOA business is thirty percent of the parcel owners unless a lower number is stated in the documents, implying that thirty percent is the highest quorum permitted for homeowners' associations. However, many associations that existed prior to the change in the law specified a majority for a quorum, as is your case.

Most attorneys I have discussed the issue with feel that the change is "procedural," which means that it can be applied retroactively to existing associations. However, most also feel that if the HOA documents set a specific quorum requirement for a particular action (as many do for special assessments), then that quorum would need to be followed.

The best thing for your association to do is update the bylaws to conform to current state law, which would basically eliminate that question.

**Question:** I recently purchased a unit that is within a community with a mandatory homeowners association. The association's management company has asked that I provide it with a copy of my warranty deed and the settlement statement from my closing. They state that the reason they need this information is to assure correct billing of future assessments and for accounting purposes. The deed is available through the Lee County Property Appraiser's website. The settlement statement includes financial information relevant to the purchase of my home which I feel is an invasion of my personal privacy. Am I required to provide this information? D.B. (via e-mail)

**Answer:** There is nothing in Chapter 720, the law governing homeowners' associations, which would require you to provide this information. There may be something in the association's governing documents that would require this information to be provided after a parcel has been sold, but without reviewing the governing document, I could not say for sure. Even if not specifically required by the documents, you may have an obligation to assist the association in carrying out its duties. For instance, it is important that the association know who the record owners of the unit are for purposes of billing and collecting the assessments if they were to become delinquent and to determine who is eligible to vote for the unit. This information is best determined through the warranty deed and it is not unreasonable to ask that it be provided by the new owners. Regarding the settlement statement, it will usually show whether any outstanding assessments were collected at closing and also if any assessments were paid through a certain date. If the monthly or quarterly dues were collected at closing, the association will not want to bill you for those assessments. I would recommend that you talk to the management company to determine what information they are looking for on the settlement statement. If there is some personal information that you feel is not relevant, you could black out that information.

**Question:** My condominium association recently determined to replace the spiral staircases at the rear of each unit. However, the association has not decided whether to specially assess the members for the cost or fund the

project with reserve funds. I am currently trying to sell my unit. If the association has not decided how to fund the project by the time I sell, or if I sell the unit before the special assessment is due, am I responsible for paying the assessment since the decision to pursue the project was made while I was an owner? Do I need to disclose this information to the buyer? L.S. (via e-mail).

**Answer:** In regard to your first question, you are not responsible for payment of any special assessment until the association actually levies the assessment. Just because the association decided to move forward with the project while you were an owner, does not obligate you to pay the assessment. If the assessment is levied after the sale of your unit is concluded, the new owner is responsible for payment.

As to whether you must advise prospective purchasers of the possibility of the assessment, I recommend that you disclose the information to save yourself from future aggravation. Particularly relevant to your inquiry is a 1985 Florida Supreme Court case called *Johnson v. Davis*. In its opinion, the Florida Supreme Court stated that "where a seller of a home knows of facts materially affecting the value of the property, which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer." While the courts have not, to my knowledge, extended the concept of this duty to condo re-sale disclosures, I think the potential exposure to a seller warrants a conservative approach, which your buyer may well appreciate too. ⚖️

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*Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.*

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