



Take Steps to Keep Condo in Good Shape

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The week following the celebrations of the Easter and Passover holidays is usually considered the unofficial end of the “season” in Southwest Florida.

At this time of year, many local community associations experience a drastic drop in occupancy, as seasonal residents filter back to cooler northern climes for the dog days of summer. Unfortunately, experience has shown that community association properties, particularly condominium buildings, are most vulnerable to damage when a high percentage of units are unoccupied.

Besides the fact that the exodus coincides with hurricane season, most incidents involving damage to condominium property involve water intrusion of one form or another. Obviously, the longer water intrusion incidents go unaddressed, the greater the potential for more serious damage and liability claims.

Here are some things that associations and their members should look at to reduce the number of damage incidents, or at least lessen their severity:

- **Shut Off The Water:** Most condominium buildings are constructed with a plumbing fixture known as a water shut-off valve, which is usually located somewhere inside the home. Although some valves are difficult to get at, most are readily accessible. Many condominium associations require owners to shut off the water supply when the owner will be away from the premises. Such

a requirement would likely be enforceable if properly promulgated by the board, and would carry greater weight if found in the recorded condominium documents.

- **Leave A Key:** Although the Florida Condominium Act states that the association has an irrevocable right of access to each unit for maintaining the condominium property or addressing emergencies, there is nothing in the law about owners being required to leave a key with the association. Obviously, when a major calamity occurs, or is being threatened, immediate access to the property is often critical in mitigating damage. The state agency which regulates condominiums has ruled that a key-posting requirement is valid if contained in the recorded condominium documents, and under certain circumstances, would also be upheld if imposed through a board-made rule.
- **Control Indoor Climate:** Although it is debatable whether it is more a matter of education or coercion, it is clear beyond a doubt that many so-called “mold cases” confronting associations involve inadequate temperature and humidity control within the living quarters. While people obviously want to save energy costs, homes with inadequate cooling, venting, or humidity control while the property is not occupied are prime targets for mold growth, even arising from minor water intrusion incidents.

- **Have Your Hurricane Preparedness Plan Ready:**

It is hardly a news flash that the past two years have made us all acutely aware of the devastating potential affiliated with hurricane events.

Associations should ensure that their hurricane preparedness plans are in place, and that any part of the plan which requires action by the owners,

such as rules mandating that patio furniture be brought inside when a hurricane is approaching, are known to the members, and are enforced.

While accidents cannot always be prevented (that is why they are called accidents), common sense and a bit of diligence may help keep the price tag down. ■

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.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.

Boards Can Appoint Non-directors as Officers

Question: Recently, the board of directors of our condominium association appointed a person who is not a member of the board of directors as the treasurer. Is this legal? H.R. (via e-mail)

Answer: There is no requirement in the Florida law that officers of a corporation be members of the board. This general rule applies to condominium associations, cooperative associations, and homeowners' associations as well.

Therefore, unless your association's bylaws provide that the officers must also be directors, the board may appoint non-directors as officers.

Question: Our condominium association has voted to "pool" our reserves, which are only partially funded. Does this vote have to be taken each year, or is "pooling" permanent until changed by a new vote? J.B. (via e-mail)

Answer: Pooling of reserves, also known as "cash-flow funding" is permissible for condominium associations, by virtue of a recent amendment to the administrative rules which govern condominiums. Once existing reserve funds are placed into the "pool" (which does require a vote), it is not necessary to vote each year thereafter to maintain "pooled" reserves. However, if the reserves are not going to be fully funded (whether calculated on a straight-line basis, or under the cash-flow method), an annual vote of the owners must be taken.

Question: We had a disagreement at our recent board meeting regarding the authority of the association's president. The President maintained that under Florida's Condominium Act, the President is free to override the majority decision of the board on any decision, at any time. Others disagreed. What is your opinion? P.S. (via e-mail)

Answer: I disagree with your president.

While the association's president serves as the corporation's chief executive officer, the president is duty-bound to

follow the lawful directives of the board of directors. Most bylaws provide that officers can be removed by the board, with or without cause, at any time. If a board president does not faithfully discharge the decisions of the board, it is my opinion that the remaining board members should remove the president from office.

Question: I am writing you from a gated homeowners association community. The members here at our club are currently faced with a situation involving an amendment to our documents. Our Declaration of Covenants contains a sign policy that was put in place by the developer, prohibiting any signage whatsoever. This restriction has been ignored and not enforced by previous boards. Recently, the board published and distributed a revised policy for real estate signage. The revision was not recorded with the County, as required by our documents. At no time prior to the board meeting was any contact made with membership regarding the proposed amendment nor was a vote taken or offered to members. My main area of concern is that the policy, as written, is not equitable for all members to use and benefit from the placement of signs. I would appreciate any input or guidance you might be able to provide. P.Y. (via e-mail)

Answer: It appears that you are a member of a homeowners' association, governed by Chapter 720, Florida Statutes, commonly called the Florida Homeowners' Associations Act. First, if the provisions concerning sign restrictions are contained within the declaration of covenants for your community, then those restrictions may only be altered by amending that declaration. It is my experience that the vast majority of declarations require membership approval for amendment.

If the board of directors is authorized by the governing documents to adopt rules and regulations, then the board may adopt such rules and regulations as long as they are not inconsistent with any provisions of the superior recorded documents, and as long as those rules and regulations are reasonable. Section 720.303(2)(c)(2) of the Homeowners' Associations Act requires that notice of board meetings at

which a rule regarding parcel use will be considered must be mailed or delivered to all members and parcel owners not less than 14 days before the meeting. Therefore, at the very least, the members should have received a 14 day notice of a board meeting at which rules and regulations concerning parcel use were considered.

Question: Our six story building is more than 30 years old. The majority of our board members favor modernizing our elevators and consider it a maintenance concern. Our president contends it is a material alteration which requires a vote of the owners. Is a vote of the owners necessary in order to proceed? E.H. (via e-mail)

Answer: The most often quoted standard for determining what is, and is not, a material alteration or substantial addition to the common elements comes from a 1971 Florida appellate court decision, where the court stated that a material alteration or addition means to “palpably or perceptively vary or change the form, shape, elements or specifications of a building from its original design or plan, or existing condition,

in such a manner as to appreciably affect or influence its functions, use or appearance”.

Determining whether your Association’s efforts to modernize the elevators is a material alteration would require more information regarding the exact changes and updates that are to be made. However, there is a pretty good chance that the work to be done to the elevators (or at least parts of it) would amount to a material alteration. Most “aesthetic” changes (such as “updating” the look of the cabs) would be considered material alterations. Changes in the working parts of the elevator, required for safety purposes, would typically not be considered a material alteration.

If the work is a “material alteration”, the Florida Condominium Act indicates that there can be no material alteration or substantial additions to the common elements except in the manner provided in the Declaration, and if the Declaration does not provide a procedure then you must obtain the favorable vote of 75% of the total voting interests of the Association. ■

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