



Legislation Tackles High-Rise Problems

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This week's column will focus on new legislation affecting "high rise" buildings. House Bill 7121, an act relating to emergency management, was passed during the 2006 Legislative Session and became law on July 1, 2006. This bill includes many measures that attempt to remedy the problems with emergency systems exposed by the last two hurricane seasons. Especially relevant to condominium, cooperative and timeshare associations are those portions that apply to residential high-rise buildings defined as 75 ft. or higher from the lowest level of ingress to the floor of the highest occupiable space.

The new law requires that residential multifamily dwelling high-rises containing at least one non-service elevator comply with new safety measures designed to protect residents in times of emergency. These safety measures include the installation of an alternate power source for an elevator as well as emergency lighting and fire alarms and the creation of an emergency operations plan. The new law sets out fast approaching deadlines for these modifications to be completed, and there are a number of questions to be addressed.

Who is Affected?

The first important thing to note is that this bill only affects a residential multifamily dwelling, including a condominium, which has at least one non-service elevator that is a HIGH-RISE. A non-service elevator is one that is not exclusively used for service personnel. If your building contains multiple

elevators, you are only required to make the necessary changes to one elevator.

When Must My Building Comply?

If your building is a high-rise then the first deadline to consider is July 1, 2006, for implementation of the Emergency Operations Plan outlined below. It is believed that the drafters of this bill may have overlooked the language requiring this plan to be in place in advance of the actual generators being installed but nevertheless a strict reading of the bill reveals that the plan must be adopted by July 1, 2006. Failure to have such a plan in place potentially subjects an association to liability, and all boards of affected associations should work on putting an Emergency Operations Plan in place as soon as possible.

The second deadline to consider is December 31, 2006. By the end of this year, your building must provide the local building inspection agency verification of engineering plans that provide for the capability to generate power by alternate means. The last deadline is December 31, 2007, by which date the modifications must be completed and operational capability of the alternate power system must be verified by the local building inspection agency and reported to the county emergency operations agency.

What is an Emergency Operations Plan?

An Emergency Operations Plan details the sequence of operations before, during, and after an emergency. The association must maintain a written Emergency

Operations Plan that meets certain statutory requirements. At a minimum the plan must include a life safety plan for evacuation, maintenance of the electrical and lighting supply, and provisions for the health, safety, and welfare of the residents.

What is an Alternate Power Source?

An alternate power source provides electricity in the event that normal electricity is shut off. It is commonly referred to as a generator. Under the new law, each building must have a generator and fuel source on the property or have proof of a current contract posted in the machine room or other conspicuous place affirming that a fuel source is available on-call within 24 hours of a request. The generator must be able to power the elevators, a connected fire alarm,

and provide emergency lighting to interior lobbies, hallways, and other public portions of the building for a specified number of hours each day over a 5-day period. The key to the generator must be kept in a lockbox posted at or near the generator.

What Records Must be Kept?

The association must keep records of any contract for the alternative power generation equipment. The association must also keep quarterly inspection records of life-safety equipment and post them in a conspicuous place so that the elevator inspector can confirm that the equipment has been properly maintained and is in good working condition. These records are also open to periodic inspections by local and state governments as necessary. ■

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.

Association Fine can Morph into Messy Lawsuit

Question: I live in a homeowners association and the board of directors has threatened to fine me because they say I am not following all of the rules. They also told me that if I do not pay the fine they will place a lien against my home. Are they able to do this? T.D. (via e-mail)

Answer: If your homeowners association's governing documents so provide, the association can levy a fine against you for violations of the association's rules, and other provisions of the governing documents. You cannot be fined for a failure to pay assessments or other charges. The association can also suspend your right to use common areas and facilities.

In 2004, Chapter 720, Florida Statutes, which governs homeowners associations, was amended to provide that a fine cannot become a lien. However, the association can seek to collect a properly levied fine by filing a lawsuit. Such lawsuits are typically "small claims" lawsuits, and whoever wins the lawsuit is entitled to collect their reasonable attorneys fees and costs from the losing party.

In anticipation of legal action to collect a fine, associations should be careful to properly follow statutory requirements, as well as any requirements contained in their governing documents, in order to properly levy a fine. Chapter 720, Florida Statutes, states that a fine may not be imposed without notice of at least fourteen days to the person sought to be fined and an opportunity for a hearing before a committee of at least three members appointed by the board. The members of the fining committee cannot be officers, directors, or employees of the association, nor can they be the spouse, parent, child, brother, or sister of an officer, director, or employee. If the fining committee, by majority vote, does not approve of a proposed fine, the fine may not be imposed.

The homeowners association's governing documents should also be consulted because sometimes there are additional requirements imposed by them to properly levy a fine.

Question: My association's board did not budget enough money to pay insurance premiums and are now going to impose a large special assessment against all of the owners. They claim that they can do this on their own without any input from the owners. Is this true?

J.A. (via e-mail)

Answer: Most condominium associations are facing substantial increases in their insurance premiums, which were not foreseeable when annual expenses were budgeted. The Condominium Act requires condominium associations to maintain certain insurance coverage, and it must be paid for. Many condominium associations are facing the same issue, and one of the ways this unexpected insurance expense can be covered is to levy a special assessment.

The question of whether your association's board can levy a special assessment on its own as opposed to obtaining a vote of the membership can only be answered by reviewing your association's condominium documents. Often times, the condominium documents will grant this authority to the board. Even so, there are a number of steps that must be followed for a special assessment to be properly levied. Written notice of the board meeting where non-emergency special assessments will be considered must be both mailed, delivered or electronically transmitted to the unit owners and posted conspicuously on the condominium property not less than fourteen days prior to the meeting. An affidavit executed by the person providing the notice is to be filed with the official records of the association.

After the special assessment is levied, a written notice is to be sent or delivered to each unit owner indicating the specific purpose or purposes of the special assessment.

Question: According to the new laws, wall coverings are not covered by the condominium association insurance policy. Our condominium was built in 1979 and “popcorn” (textured) ceilings were put on at the time by the builder, so if any damage to the ceiling should occur, whose responsibility would it be to repair? Is “popcorn” considered a wall covering? C.C. (via email)

Answer: The Florida law that you refer to is part of the Condominium Act at Section 718.111(11)(b).

This statute requires a condominium association to maintain an insurance policy that provides coverage for all condominium property, including the unit as it was initially installed, but the statute specifically excludes certain items from the association insurance responsibility. These exclusions include all floor, wall, and ceiling coverings. While the statute does not specifically define “ceiling coverings,” it is my opinion that such coverings would include paint, wallpaper, “popcorn”, and any other finish or covering of a unit ceiling. Therefore, I believe that the “popcorn” is a “ceiling covering,” and is excluded from the association’s insurance responsibility. However, the unit owner’s HO6 policy should provide coverage for those items of property that are not covered by the association’s insurance. ■

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