



Lid Blows Off When Contractor is Hired

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Condominium associations face a variety of issues when planning for hurricanes, and even those who plan can end up with problems when disaster strikes.

This column has been looking at the mysteries surrounding post-catastrophic responsibilities in condominiums. This is the fifth installment of our case study of hypothetical Hurricane Christi and the Green Flash Condominium Association.

As reported earlier, Green Flash Association spent about two hundred thousand dollars in the immediate aftermath of the hurricane, including temporary patches to the roof, water extraction, and various miscellaneous expenses.

Fortunately, Green Flash had set up a reserve fund called "Hurricane Deductible Expenses", which covered about half the initial costs. The board levied a special assessment for the other one hundred thousand dollars. Many owners were pleased to learn that their individual insurance policy contained a feature called "loss assessment coverage", which reimbursed them for the special assessment levied by the association, although many of the policies capped loss assessment reimbursement at one thousand dollars.

After the initial emergency repairs, Green Flash took prompt action to rebuild the condominium. A contract with Randy's Roofing was entered into, after review of the contract by Attorney Justice and preparation of the new roof's specifications by

Engineer Tom Techno. The association also hired Techno to administer the contract, and make sure work was progressing as draw requests were made by Randy's.

Justice also helped the association with filing a "Notice of Commencement" in the Public Records of Lee County, Florida, and advised Green Flash to make sure that "lien waivers" were secured from subcontractors and material suppliers who had filed "Notices To Owner", before draw payments were made to Randy's Roofing. The contract also protected the association by requiring the issuance of a new manufacturer's warranty for the roof before Randy could receive final payment.

The total cost for the re-roof came to two hundred thousand dollars. Fortunately, Green Flash was only expecting a few more years of service life out of the old roof, and had accumulated \$150,000.00 in the roof reserve, leaving a shortfall of only fifty thousand dollars for the roof replacement cost.

Because Randy's wanted to get the roof work done during the dry season, and to avoid another immediate assessment against the beleaguered owners, the association took out a line of credit with Carl's Community Bank, to provide cash flow for the roof work as it was progressing. Carl's was one of many local banks willing to loan money to condominium associations, after verifying that the condominium documents would not preclude the board of directors

from taking out a loan. While the Green Flash condominium documents are antiquated, they do not specifically require unit owner approval to borrow money, and confer all corporate powers on the association, to be exercised by the board. On that basis, Attorney Justice was comfortable in opining that the board could borrow the money without a vote from the members.

The association also hired Storm Chasers, the contractor who did the initial emergency repairs, to act as the general contractor for the remaining aspects of the rebuilding. Unfortunately, things with Storm Chasers did not get off to such a smooth start. Because many owners were starting to question how long the process was taking, and how much things were costing, Manager Goodfellow and Association President Dooright made the uncharacteristic and soon to be regretted decision to sign with Storm Chasers without legal review of the contract, nor assistance from Techno in generating the specifications for the repair work. Storm Chasers' foreman was apparently able to convince Dooright and Goodfellow that Storm

Chasers' three-page form was "industry standard", was "used all over the country", and was not full of "legal gobbledygook."

It did not take long for the lid to start coming off at Green Flash. Those owners whose units were not damaged insisted that it was because they had the foresight to install hurricane shutters, and they should not be assessed for their neighbor's penny-pinching decisions. Some of the owners with damaged sliding glass doors insisted that the association replace them with state-of-the-art hurricane impact glass doors, at the expense of the association. Others questioned why Storm Chasers was being hired to do interior drywall work, since several of the owners had other contractors they would rather hire. No one knew how much the contract with Storm Chasers was going to cost, or who was going to have to pay.

Next week, the saga continues with a review of the relevant provisions of the Green Flash condominium documents, followed by Attorney Justice's opinion and attempt to act as referee for interior warfare. ■

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.

Assessment OK'd Without Unit Owner Vote

Question: My condominium association recently levied a special assessment without a vote of the unit owners. Rather, the board of directors adopted the special assessment at a board meeting. Is this allowed?
D.H. (via e-mail)

Answer: The question of whether your board of directors can levy a special assessment without a vote of the unit owners can only be answered by reviewing your condominium documents. Some condominium documents permit the board to levy special assessments without a vote of the unit owners, and others require that unit owner approval be obtained before any special assessment may be levied. You will need to review your condominium documents to see how this issue is addressed for your association.

That said, even if the board of directors is permitted to levy a special assessment without a vote of the owners, the Florida Condominium Act provides that any meeting at which a non-emergency special assessment will be considered must be mailed, delivered, or electronically transmitted to the unit owners, and must be posted conspicuously on the condominium property at least fourteen days prior to the meeting. The notice should also contain a statement that assessments will be considered, and the nature of the assessments. After the assessment is adopted, the board must also notify the owners of the amount they owe, when it was due, and reiterate the purpose for which the assessment was levied. In order for a special assessment to be valid, it is important that these procedural steps are followed.

Question: When I lived in another state, the members of the association voted on almost every issue. I just moved to a condominium development in Southwest Florida and it seems the board of directors is making all

the decisions. Can you tell me what types of decisions the board cannot make on their own?
L.B. (via e-mail)

Answer: Florida law requires that certain decisions be made by a vote of the unit owners of a condominium. However, the law also allows a certain amount of flexibility for the board of directors to attend to the business aspect of association affairs. Generally, unit owners are entitled to vote on amendments to the declaration, bylaws, or articles of incorporation.

A unit owner vote is also required for such things as the election and recall of board members, the decision to waive or reduce reserve funds, or to spend reserves for non-authorized purposes, and to waive financial reporting requirements. There are other issues that arise less often that require a vote of the owners, such as a vote to terminate the condominium, cancel some types of contracts, and convey title to association-owned property.

An area of confusion for many unit owners are the requirements for a unit owner vote in the event a "material alteration" or "substantial addition" to the condominium property is undertaken. Depending upon the language in your declaration, or whether the contemplated change amounts to necessary maintenance, a unit owner vote may not be required for a material alteration.

Question: I am a new member of the board at my condominium association. We are working on our budget which will be voted on at our annual meeting coming up in a few months. I am somewhat confused about reserves. I was under the impression that they are not necessarily required, but I do not know if the board or the owners determine

this. Can you offer any help on this subject?
L.D. (via e-mail)

Answer: There are specific reserve accounts that an association is required to maintain pursuant to the Florida Condominium Act, including reserve accounts for roof replacement, building painting, and pavement surfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other item where the deferred maintenance expense or replacement cost exceeds \$10,000.00. The reserve accounts must be fully funded unless a vote is taken on an annual basis to waive or reduce them.

It is a vote of the membership, not the board, that is required to waive or reduce the reserves. The membership can agree to waive or reduce the reserves by a majority vote at a duly called meeting of the association. Similarly, reserve funds can only be used for authorized reserve expenditures unless their use for other purposes is approved by the membership in advance by a majority vote at an association meeting.

You should also note that even if your condominium documents allow the board to adopt the annual budget, a membership vote is still required to waive or reduce the statutorily required reserves. ■

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