



## Homeowner Association Limits Storm Shutter Use

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By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

**Q:** I have noticed that many homeowners' associations are trying to change their documents to provide that homeowners may only place hurricane shutters on their residence a short time before a named storm and must remove the shutters a short time after the storm has passed. As you know, many people leave the area for the summer and this makes the restriction quite burdensome for those of us that live out of state. I can appreciate that the association would not want galvanized steel panels displayed for half the year. However, my home has colored accordions which match the paint scheme of my home. As a homeowner, I want to protect my assets and close my shutters before leaving for the summer. Do I have to abide by the association's rule, which was recently adopted, limiting my ability to close the shutters during the summer? G.K. (via e-mail)

**A:** Many governing documents for homeowners' associations grant the board of directors authority to adopt and enforce rules and regulations concerning many aspects of association living. Unlike the Florida Condominium Act, the Florida Homeowners' Association Act does not specifically address hurricane shutters. Accordingly, restrictions such as the time frame in which hurricane shutters may be closed are typically governed by the association's governing documents or by the rules adopted by the board.

An issue that often arises in a homeowners' association setting is whether the board has rule-making authority governing not just the common areas, but also the parcels and homes built on the parcels. If your board's rule-making authority is limited to the common areas, then there would be no authority to create rules regarding the use of hurricane shutters. If your board does have rule-making authority for the homes and parcels, the board may be permitted to create rules regarding the time period in which hurricane shutters may be closed. Such a rule would need to be reasonable and uniformly enforced, and should not contravene any right contained, either expressly or impliedly, in the governing documents.

A 1994 condominium arbitration decision held that a rule prohibiting the closure of hurricane shutters, such as you have indicated, was invalid because it was unreasonable and arbitrary in its potential application, given the specific facts of that case. The arbitrator did, however, note that the rule may have been reasonable if the condominium association had assumed the responsibility for closing the shutters when a storm was approaching. Your community is a homeowner's association and is not governed by the condominium laws, and the above-referenced condominium arbitration decision would not be

considered precedent in a homeowners' association setting. This is a question that remains unaddressed by the legislature and may need to be decided by a Court if the problem cannot be amicably resolved.

**Q:** I reside on the fourth floor of a condominium. My question is, who is responsible for cleaning the windows on the outside - the owner or the condominium association? J.B. (via e-mail)

**A:** The Florida Condominium Act provides the initial framework for analyzing your question. The Condominium Act provides that maintenance of the common elements is the responsibility of the association. Moreover, the declaration of condominium may provide either that certain limited common elements shall be maintained by those entitled to use the limited common elements or that the association will maintain certain limited common elements, either as a common expense to the entire association, or with the cost shared only by those entitled to use the limited common elements. In addition, while the unit is almost always maintained by the unit owner, it is possible for the declaration of condominium to require the association to maintain portions of a unit. Given this general framework, the first question to resolve is whether the windows you referred to are common elements limited common elements, or are part of the unit.

If the windows are common elements, there is no question but that the association must maintain those windows. If the windows are limited common elements or part of the unit, provisions of the declaration of condominium will typically describe the maintenance obligations of the association and the unit owner with respect to those items of property. If a clear answer is not found in your declaration of condominium, you should know that there is a line of condominium arbitration decisions that have been issued by the Division of Florida Land Sales, Condominiums

and Mobile Homes, which have consistently held that the association is obligated to maintain exterior portions of the condominium whenever the maintenance obligation for a specific item of property is not clearly set forth in the declaration of condominium, but where the association is otherwise generally obligated to maintain the exterior of the condominium.

As you might imagine, it is most practical to have the association be responsible to maintain the exterior of the condominium, as the exterior appearance is a legitimate concern for all unit owners who wish to maintain the quality, character, and ultimately value, of the condominium property. In addition, given your location on the fourth floor, it is impractical to require a unit owner to clean the exterior windows. However, in the event your association's declaration of condominium does require unit owners to clean exterior windows in a mid-rise or high-rise building, it is the owner's obligation to do so unless an amendment shifts that responsibility to the association.

**Q:** My condominium association amended its documents a couple of years ago to include a prohibition on rentals. I have noticed that several of the units in the association are currently rented. When I inquired how they were permitted to rent their units, I was told that the rental restriction does not affect units that did not vote in favor of the rental restriction amendment. I did not vote on the amendment at all. Does the rental restriction apply to my unit and how are condominium associations dealing with applying rental restrictions against some owners and not others? D.E. (via e-mail)

**A:** The Florida Condominium Act was amended (effective October 1, 2004) to provide that any amendment to the declaration of condominium restricting unit owners' rights relating to the rental of units only applies to unit owners that vote in favor of the amendment and

unit owners who purchase their units after the effective date of the amendment. The effective date of an amendment to the declaration of condominium is the date it is recorded in the public records of the county the condominium is located in.

If the rental restriction you refer to was adopted through a valid amendment that was effective prior to October 1, 2004, it would apply to all unit owners regardless of whether or not a unit owner voted in favor of the amendment. If the rental restriction was adopted on or after this date, it would only apply to those owners who voted in favor of the amendment, and to those owners who take title to a unit after the effective date of the amendment.

In my opinion, this was a poor amendment to the Florida Condominium Act, and it is problematic because it creates three classes of owners that an association must keep track of when rental restrictions are amended – the owners who vote in

favor of the amendment, the owners who either vote against the amendment or who cast no vote at all, and owners who take title to a unit after the effective date of the amendment.

Although not required by law, many associations simply “grandfather” all existing owners as of the effective date of the amendment, and only apply new rental restrictions to owners who acquire title to a unit after the effective date of the amendment. Doing so means the association only has to keep track of two groups of owners, those who held title to a unit before the effective date of the amendment and those who took title thereafter. Additionally, if all current owners are “grandfathered” under the pre-amendment rental restrictions, this often serves as a good way to achieve more votes in favor of the rental amendment (i.e. current owners who rent out their units are more inclined to vote in favor of such an amendment if they know it will not apply to them, and rather will only apply to future owners).

*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](mailto: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](http://www.becker-poliakoff.com).*