



Responsibility For Tree Falling Examined

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By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

Q: If a tree on condominium common areas damages my unit as the result of a storm, is the association liable for the damage? **T.A. (via e-mail)**

A: The association will not be "liable" for damage to those portions of the condominium property which you are required to maintain, repair and replace, unless you can demonstrate that the association was negligent in the maintenance of the tree in question. Negligence will depend on the specific facts of each case. For example, trees knocked over in a named storm would arguably not be actionable. Otherwise, one could argue that every association would have to denude the entire community of trees, to be totally "hurricane safe", which the state's arbitrators have found to be a "material alteration" of the common elements, which usually requires a unit owner vote

However, even if the association is not liable in negligence, it may be obligated to have provided insurance for damage of this nature. That is because Section 718.111(11) of the Florida Condominium Act requires the association to insure most structural elements of a condominium "building" (with some exceptions listed in the statute) without regard to who is obligated to maintain the element.

For example, damage to lanai screening from a storm should be covered under the association's master insurance policy, even though many condominium

documents require such screens to be maintained, repaired and replaced by the individual unit owner.

However, even if there is coverage for damage to your property under the master policy, there may also be the issue of whether there will be coverage due to the deductible. The responsibility for association deductibles is an unsettled area of the law at present, which has been the subject of extensive writings in this column, which are available on line for review.

Further, the insurance law only applies to condominium "buildings" and does not apply in the case of certain "land condominiums" or non-residential condominiums, depending on how the language of the condominium documents is written

Q: My husband and I recently bought a condominium, and two months after we moved in, we were told about special assessments for the insurance premium, which is understandable, and a roof assessment. Prior to moving, the seller was paying off a roof assessment, but it turns out that the assessment the seller was paying was not for the entire job. Apparently, the association was repairing or replacing the roof one-half at a time. We were unaware of this, and want to know if this is legal. **S.A. (via e-mail)**

A: First, if your question relates to whether or not the board of directors has the discretion to do projects in stages, I can safely say that there is no

legal prohibition to completing projects in a “phased” fashion. The board of directors has discretion to complete projects in the manner it reasonably determines to be in the best interests of the association.

The issue concerning the special assessment for the roof is potentially more complex. Typically, a board of directors will levy a special assessment to cover the entire cost of a major project, such as a roof replacement, in order to make sure that all necessary funds are available. While I am not aware of any specific legal prohibition against levying multiple assessments for a single project, it would seem prudent for a board to levy the entire special assessment related to a project at one time. Some association governing documents limit the amount of special assessments that can be levied by the board in any given year without membership approval. Perhaps your board has elected to do the roof project in stages over two or more fiscal years in order to avoid the requirement of obtaining membership approval for those special assessments. If this is the case at your condo, you should carefully read the provisions of your governing documents to determine if the limitation on the board’s special assessment authority is determined by reference to the specific project, or simply the timing of a special assessment.

Therefore, you should review the governing documents of your association to determine if the board’s approach to the roof project complies with those requirements, and you should review your closing documentation and the records of the association to determine if a special assessment with installments had been passed. If the special assessment was levied after you took title, and was levied in a legally proper fashion, you are most likely liable for its payment.

Q: My condominium board approved a resolution creating a committee for the approval or disapproval of tenants and potential buyers. Our

bylaws say that the board has the authority to approve or disapprove new tenants or buyers. Can the board give its authority to a committee without amending our bylaws? **B.C. (via e-mail)**

A: Many communities use committees as an effective tool in conducting association business. There are two types of committees. The first type of committee is an advisory group that has no authority to carry out any functions of the board. This type of committee simply gathers facts, analyzes issues and submits its findings to the board.

The next type of committee is one that is vested with authority to carry out duties which are generally reserved for the board. This second type of committee only has authority if it is created by the articles of incorporation, the bylaws, or by a resolution which is adopted by a majority of the board. The committee will only have the specific authority granted to it in the resolution, articles of incorporation or the bylaws. However, no committee may take actions that are delegated to the members by the Florida statutes nor may they fill vacancies on the board of directors or unilaterally amend the bylaws.

If the condominium documents grant the board the authority to approve or disapprove new tenants or buyers, the board may pass a resolution specifically granting that authority to a committee. Bear in mind, that even when the board delegates some or all of its authority over a specific issue to a committee, the board is not relieved of its fiduciary duty. The board is ultimately responsible for the actions of the committee and must always act in good faith and in the best interest of the association.

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.

