



No Law Says Condos Must Have Hurricane Windows

Some insurance companies may require them

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Q: Are you aware of any impending law or rule by insurance companies requiring that condominiums must have hurricane resistant windows in order to be insured? **B.F. (via e-mail)**

A: I have, in the past, heard third person accounts of insurance companies or agents stating to associations that either windows must be upgraded or shutters installed in order to obtain insurance through certain private insurers. I have also heard several insurance agents recently opine that the market has now “softened” (meaning that rates have come down and insurance is more available, both relatively speaking), so I am not sure if that is still a commonly encountered requirement from private insurers. In any event, there is no “law” which would impose this requirement on condominium associations.

Many condominium insurance policies are now written through Citizens Property Insurance Corporation. There was a law passed during last year’s Legislative Session dealing with Citizens Property Insurance Corporation and the requirement for “openings protection” (such as hurricane shutters or hurricane resistant windows.) However, the new law has generally been interpreted to apply only to single family homes with an insured value of \$750,000 or more in a

wind-borne debris region and insured by Citizens, but not to condominium buildings.

For single family homes, the law provides that effective January 1, 2009, a personal lines residential structure (i.e., a single family home) located in a wind-borne debris region having an insured value on the structure of \$750,000 or more is not eligible for coverage by Citizens unless the structure has “openings protection.” A residential structure will comply with the requirements of the law if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

I do not believe that the legislation applies to a condominium association master policy because the insurance policy that a condominium association obtains is a commercial lines residential coverage policy, not a personal lines residential coverage policy.

Nevertheless, history has definitely proven that it is a good idea for condominium associations to protect their buildings from hurricane damage, through impact glass, shutters, or a combination thereof. The board should consult with an engineer regarding the preferred methods to protect the building and also with its legal counsel to

determine the proper procedures for addressing installations recommended by the engineer. Depending upon how your condominium documents are written, there are usually a couple of different options for the Board to consider.

Q: I live in a condominium and we seem to be having more and more problems with unauthorized tenants. Our condominium documents require that any lease be at least thirty days in length, and also require that owners provide applications for new leases before the tenants move in. However, it is clear from activity in the parking lot and at the pool that people are renting units for one and two weeks at a time. Moreover, they are not providing applications. Can we evict these tenants? What can we do to get the owners and tenants to follow the rules? **B.L. (via e-mail)**

A: It will probably not surprise you to learn that this is a common problem for condominium associations in Southwest Florida. Especially with the real estate market downturn and other economic conditions, some condominium unit owners are taking liberties with rental policies and requirements in order to collect whatever rental income they can.

From a legal standpoint, your best option to enforce rental restrictions is to have comprehensive provisions in your declaration of condominium to govern not only rental restrictions and application and approval requirements, but also guest restrictions. In my experience, the most frustrating aspect of short-term rental violations is the difficulty in collecting accurate facts to prove the association's case. Unless you have limited access through a manned guardhouse or front desk, or some other entry system that does not allow unauthorized persons to pass through, your only opportunity to identify these renters is to essentially "stake out" the unit. That is neither fun, easy, nor what directors are elected to do. Even when detailed facts supporting the association's case have been gathered, the unit owner often argues that the suspected tenants were only "guests", and in many cases the suspected tenants are long gone by the time the information is

gathered and the owner is confronted with the facts. By also having comprehensive guest limitations and application requirements the association can at least blunt the "guest defense" that we often encounter.

In the end, it is my opinion that the association must focus its efforts against the unit owner. Associations sometimes focus upon the tenant and engage in protracted discussions with the tenant over the issue. However, the association's authority and leverage ultimately lies with the unit owner. The association documents may permit the association to levy a fine against a violating owner. The ultimate authority of the association is the ability to enforce the covenants and restrictions through legal action, which must be preceded by arbitration with the Division of Florida Land Sales, Condominiums and Mobile Homes for this type of dispute. Such legal action is essentially seeking an Order requiring the owner to comply with the leasing provisions. It is proper to bring an action for repeated violations of the leasing restrictions, even if there is no current, ongoing violation at the time the arbitration is commenced or at the time an arbitrator or judge hears the case, provided the association can show that it has given the offender at least one written warning, in the legally required format. Assuming the association has gathered adequate facts to prove its case, and the association ultimately prevails, the association may recover reasonable costs and attorney's fees against the unit owner, and may obtain an order from the arbitrator, and ultimately from a judge, if necessary requiring compliance with the rental restrictions.

Additionally, some condominium governing documents provide the association with authority to evict the tenant. The problem with eviction in short-term rental situations is that by the time the required eviction procedures are followed and an eviction lawsuit is filed, the short-term renters are often long gone. You should note that actions for eviction are not subject to the mandatory nonbinding arbitration provisions in the Condominium Act, and can be filed directly in a Court of competent jurisdiction.

In summary, the best you can do is make certain that you have all of the tools available to you through comprehensive provisions in your governing documents. Then, you must proceed diligently and do your best to enforce those provisions. Generally, if unit owners are aware of the association's diligence, they will comply with the documents to avoid the inevitable action by the association.

Q: I live in a condominium that is still under the control of the developer. Our condominium documents restrict owners parking a truck with commercial lettering in the parking area. I have written to the developer asking him to enforce this restriction, yet nothing happens. What can I do to force the developer to enforce its own restrictions? When the unit owners take over, will we be able to enforce the restrictions since the developer failed to? **S.S. (via e-mail)**

A: Your problem is not uncommon. Unfortunately, there is no "easy" answer.

In my experience, some developer-controlled associations (although certainly not all of them) are unwilling to enforce the restrictions contained in the documents which they themselves drafted. There are many reasons, the most common is that the developer's appointees to the board are more focused on their "other job" (selling units) than operating the association. However, it should be noted that there are many responsible developers who take promises to their buyers seriously, including enforcement of provisions of the governing documents. Usually, the developer-controlled board will rely heavily on the management company for this function.

Non-enforcement of documents is not limited to developer-controlled boards, there are also some unit owner-controlled associations that do not make rule enforcement a priority. While no one signs up to serve on an association board to play policeman, the directors do have a fiduciary duty to

enforce the covenants and restrictions applicable to the condominium. If the restrictions are not in keeping with modern times, then they should be changed.

I would note that Florida law confers standing on an individual unit owner to enforce the provisions of the documents. This means that, in most cases, a unit owner who is unhappy with the non-enforcement of the documents could take the offender directly to court. Of course, few unit owners are willing to invest the time and money necessary to address the problem in this way.

Although I have never personally handled such a case, I am aware of cases where unit owners have filed lawsuits against their associations (both under control of the developer and the unit owners), seeking a court order to compel the board of directors to enforce the restrictions. If such a lawsuit were upheld, the association would also be responsible to pay the attorneys fees of the person who had to take the association to court to force the board to enforce the restrictions.

In sum, this is one of those paradoxes of association living, where theoretical rights are not always easy, or at least practical, to enforce. I would recommend that you write a certified letter to your board of directors demanding that they enforce the vehicle restrictions, or asking for an explanation as to why they are not doing so. If it is important enough to you, you could also obtain personal legal counsel to assist you in remedies that you may have.

You might be also interested in knowing that the State of Florida has ruled, through its arbitration program (which is not binding as "law"), that a developer-controlled association's non-enforcement of rules and regulations will not create "selective enforcement" problems for the association, after the unit owners take control of the board of directors.

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

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