



Q&A Must Contain Certain Info

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Q: I am in the process of selling my condominium unit. I was recently asked by the buyer's real estate agent for the "Frequently Asked Questions and Answers" document prepared by our Association. I requested this document from our Association, and provided it to the buyer's agent. In doing so, I noticed that the questionnaire includes less than ten questions and answers, and seems somewhat outdated. How much information is required to be included on this document and how often is it required to be updated? **S.P. (via e-mail)**

A: The Florida Condominium Act was amended in 1992 to provide additional disclosure and consumer protection for persons interested in purchasing condominium units. The law was amended to require both developer-controlled associations and unit-owner controlled associations to prepare a "Frequently Asked Questions and Answers" (commonly referred to as a "Q&A Sheet") to assist and protect potential purchasers.

Today, Section 718.504 of the Florida Condominium Act requires the Q&A Sheet to include the following: information regarding unit owners' voting rights; unit use restrictions, including restrictions on leasing of a unit; information indicating whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other

commonly used facilities; a statement identifying the amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which shall further identify the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; a statement identifying any court cases in which the association is currently a party of record in which the association may face liability in excess of \$100,000; and whether and in what amount the unit owners or the association is obligated to pay rent and land use fees for recreational or other commonly used facilities, and whether membership and recreational facilities association is mandatory and, if so, what fees can be charged per unit type.

The Q&A Sheet must be updated annually and must be kept amongst the association's official records. It must be provided to a prospective purchaser of a condominium unit in connection with resales of a unit. Keeping and updating the Q&A Sheet is one area where many associations are not diligent, and are often in violation of the law.

Q: If in a two story condo, the upstairs unit leaks from a kitchen faucet and damages drywall in the first floor unit, who is responsible? Whose insurance covers the damage? **A.L. (via e-mail)**

A: When repairs to condominium property are necessary, they typically result from one of the following causes: 1) wear and tear to the building components; 2) an act of negligence or intentional misconduct that causes damage to the property; or 3) a casualty loss, which is a sudden fortuitous event which causes damage, such as a fire, hurricane or other sudden event which is not attributed to either of the first two causes of damage.

When damage is the result of wear and tear, the maintenance provisions of the Declaration of Condominium determine whether the repair is the responsibility of the association or the responsibility of the owner.

When damage is caused by negligence or intentional misconduct, typically, the liability for the repair costs is the responsibility of the person whose negligent or intentional misconduct caused the damage.

Casualty losses, on the other hand, are governed by Section 718.111(11), Florida Statutes, which delineates the Association's and the unit owners' insurance responsibilities and essentially provides that each party is responsible for repairing any item that it is required to insure after a casualty. The association is required to insure up to the bare walls, which includes the drywall, while the unit owners are responsible to insure the decorative surfaces within the bare walls, such as carpeting or wallpaper, and the unit interior, such as the cabinets, countertop, furniture, appliances, window treatments, and water heater. Water discharge incidents, particularly bursting pipes, are typically considered casualty events. Conversely, slow, continuous leaks are generally not considered a casualty event.

Q: Our condominium is currently being repainted. The work was funded from our painting reserve account. When the project is completed, there should be a considerable sum of money remaining in the painting reserve account. The board wants to use these funds to replace exterior lighting at the condominium. However, one of the

members of the board advised that we cannot use funds from the painting reserve account for the exterior light replacement. Considering the significant amount of money in the reserve account, this seems like a waste. Is she correct?

P.T. (via e-mail)

A: Your reference to a "painting reserve account" suggests that your Association uses the "straight-line" method for reserves rather than "pooled" reserves. In that case, reserve funds and any interest earned on those funds may only be used for authorized reserve expenditures. They may be used for other purposes only if approved in advance by a majority vote of the association members. Accordingly, if these funds were set aside specifically for painting, then you cannot use the excess for replacement of exterior lights. However, you may put the matter to a vote of the association members. If a majority of the members so approve, then you may utilize the excess funds in the painting reserve account for replacement of exterior lights.

Community Association Leadership Conference

The Law Firm of Becker & Poliakoff, P.A. will be holding its annual Community Association Leadership Conference on Friday, January 15, 2010. The program is open to the public, and is free of charge. The event will take place at the Barbara B. Mann Performing Arts Hall, at Edison College. The facility is located at 8099 College Parkway, S.W., Fort Myers, Florida.

Registration begins at 8:30 a.m. The program starts at 9:00 a.m. and runs to 12:30 p.m. This workshop has been approved by the Florida Regulatory Council for two manager continuing education credit hours (Two Insurance and Financial Management Credit Hours).

This year's program focuses on collection of delinquent assessments and strategies for coping with the realities of our current economic climate.

Register in advance at www.callbp.com/events.php or by calling Franklin Scott at 239-433-7707.

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.