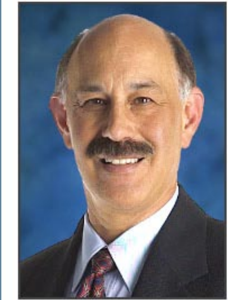

Condominium Law Q&A

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Question – We live in a subdivision that is governed by a mandatory membership homeowners association. The covenants were filed before the 2004 Homeowners Association Statute was enacted. There are no bylaws on record, and there have been no meetings. The subdivision will soon be complete with nearly 90% of the lots sold. Over half of the homes have been built and are occupied. The remainder should be completed within a year. Two months ago, a group of homeowners sent a letter to the developer requesting that he begin the transition of the homeowners association to homeowner control. While he notified our representative that he intended to cooperate, he has taken no further action. What can we do to assure timely homeowner control of the homeowners association? B.C., Deland

Answer – For planned developments operated by an homeowners association created after the year 2000, Chapter 720, Florida Statutes [Homeowners Association Act] compels the developer to turn over control to the members three (3) months after 90% of the parcels that will ultimately be operated by the homeowners association have been conveyed to the members.

Question – My 92 year old grandmother has lived for the past 30 years on the second floor of a 2-story condo. Her building has an elevator. Approximately two months ago, the elevator broke down. My grandmother has been a virtual prisoner in her apartment for the entire time, being afraid to walk up and down the concrete steps for fear of falling. The condo association has been attempting to locate a hard to replace part for the elevator, but so far, no luck. Because the elevator is 30+ years old, and parts are difficult, if not impossible, to find, most repair companies have recommended that the elevator be replaced. Most condo residents do not want to take on this expense. The population of the building has changed over the years, and most residents now are younger working people. How long is too long to wait for this elevator to be repaired? At what point does my grandmother have just cause to take her case to an outside agency and to whom would she go? L.C., Ormond Beach.

Answer – The board should bite the bullet, levy a special assessment and replace the elevator. There can be no excuse which would justify the board's dereliction of duty in such a manner as to impose such a burden upon the handicapped unit owners. The board should levy a special assessment or take out a loan, and replace the elevator. While the Division's arbitration process is not the proper vehicle for addressing your concerns, you might want to contact the State's Ombudsman's Office at 1940 N. Monroe Street, Tallahassee, FL 32399, phone: 850.922.7671, Fax: 850.921.5446, e-mail: and see if he can persuade your board to act.

Question – I purchased a condo in Stuart, Florida, in August 2002. During heavy rains and the Hurricane this past year, my windows, which are exposed to the outside, are taking in a lot of water. Our documents and our attorney say it is the responsibility of the association to repair and maintain the outside of the

condos, and since the windows are on the outside, I assume they, too, are the responsibility of the association. The general manager and board have been notified by several owners of this problem, and no action has been taken to solve the problem. In fact, nothing has been said to imply that the problem will be fixed. What should we do? Or, what can I do? J.P., Stuart

Answer – It's one thing for there to be water intrusion when the board isn't aware that there is a problem, but totally another if the board is aware there is a problem and knowingly fails or refuses to address the problem. When the latter occurs, the board/association can be held to be negligent and liable for all resulting losses to the unit, including the deductibles. Send the board a letter demanding that it hire a licensed contractor to seal the windows prior to another storm.

Question – I just finished reading your Q&A column. The first issue raised drew my interest and, if at all possible, I would like your clarification. The question related to "emergency" assessments and reserve funding. In your response to the inquiry, you stated that Florida statute mandates "reserves must establish an account for roof replacement, building painting, and pavement resurfacing…" As the treasurer of my condominium owners association, the phrase "building painting" is what caught my attention. Approximately eighteen months ago auditors told us that the IRS would not permit an exclusion from income for the establishment of a reserve for painting. Based on this advice, we ended our practice of annually funding such reserve. However, if Florida Statute requires a painting reserve, we should re-evaluate our current position. D.S.

Answer – The Florida Condominium Act does mandate [absence an annual vote of a majority of the unit owners to waive funding], the funding of a reserve account to repaint the building. I have also heard that the IRS often takes the position that reserves are "accumulated corporate surplus" subject to being taxed as same. That is, unless the board/members vote annually to credit the surplus against the following years assessments. Bottom line, there is a special section of the Internal Revenue Code set up solely for the benefit of community associations [_______], which is the section under which the association's tax returns should be filed. ■

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