



Condominium Law Q&A

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Question – I own a unit in a 39 unit condominium. The association's insurance did not cover the losses we sustained as a result of the hurricanes in 2004 and 2005; largely due to the windstorm deductible. There was significant damage to several units, minimal damage to others, with some escaping altogether. The deductible was based upon a percentage of "total insured value," with a 3% windstorm deductible. I was under the impression that, in determining whether there is coverage, one must look at the value of the units, with the deductible being applied on a per unit basis, not on the whole. If this is not correct, is there a policy that we can get per unit so that we do not have to continue to pay insurance every year, only to be denied coverage when we sustain losses from a storm" W.V., Hobe Sound.

Answer – The Condominium Act mandates that insurance coverage obtained and maintained by the Association be for "full insurable value" or "replacement cost," allowing for reasonable deductibles. There is an ongoing debate over what to do about the shortfall when the insurance proceeds are inadequate due to the lack of coverage for uninsurable components, or deductibles; should the shortfall be assessed against all unit owners as a common expense, or borne by the unit owner(s) sustaining the loss? Florida's Division of Florida Land Sales, Condominiums and Mobile Homes recently issued a Declaratory opinion [In re Petition for Declaratory Statement, Plaza East Association, Inc., DS 2005-055] in which it opined that the

State Law which mandates that certain insurable improvements be covered for a casualty loss by the Association makes it incumbent upon the Association to assess the cost of repairs, even those to individual units, as a common expense, assessable against all unit owners. Most authorities disagree, contending that the Declaration of Condominium must be referenced, and when it imposes the burden on the unit owner suffering the loss, that unit owner must bear the burden of the loss. Until this question is resolved by the courts, the best advice I can give to all unit owners is to be certain that the individual units carry as a rider to their HO-6 policies, "Law and Ordinance" coverage [covers up-grades required by changing building codes] and "Loss Assessment" coverage [covers a special assessment, up to the agreed amount, levied against the unit to cover the cost of repairs when the insurance proceeds are inadequate]. Please note that Loss Assessment coverage can only be obtained for covered building components. Accordingly, you cannot obtain coverage for a special assessment, for example, levied to replace landscaping for which there was no coverage.

Question – The declaration of condominium of the condominium I manage specifically states that the windows are the sole responsibility of the unit owner. The unit owners are responsible for the glass, frames, repair, and replacement, etc. of the windows. My question is this, who's responsibility is sheetrock repair/replacement, if the unit owner's

window frames are 30 years old and have eroded to the degree that there are actually holes in the frames of the windows, which do not close properly, so that when it rains sufficiently hard, the water leaks down the inside of the wall (sheetrock) damaging the sheetrock. In cases of extreme wind driven rain, the unit can become very wet and water can even travel to a unit below. Then, if the association is responsible, can the association force the change in windows by the unit owner at his/her expense? F.B., New Smyrna Beach

Answer – Assuming the need for repair or replacement is maintenance due to normal wear and tear not caused by a casualty [hurricane, fire, flood,

etc.], then the unit owner would be responsible for the repair and/or replacement of the deteriorated window and frame. While it would be easier, if the declaration of condominium contains a provision allowing the association to enter the unit and make the necessary repair(s), assuming the unit owner fails to do so, if the lack of repair or replacement of the windows is causing damage to the unit, other units, or the common elements, then the association does have the irrevocable right to enter the unit, make the necessary repairs, and charge the cost to the unit owner. If the window and/or the window frame is damaged by a casualty, then it is the association's hazard carrier which must insure the cost of repair above the agreed deductible. ■

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Mr. Poliakoff is co-author of [Florida Condominium Law and Practice](#), [The Florida Bar Continuing Legal Education](#), 1982, and author of a national treatise, [The Law of Condominium Operations](#), West Group, 1988. Mr. Poliakoff can be contacted by emailing gpoliakoff@becker-poliakoff.com.