



Condominium Law Q&A

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Question – In an article early in 2005, you mentioned that a homeowners association has no right, by statutory law, to put a lien on homeowners' properties. I just read an article in the January 1, 2006 Daytona Beach News-Journal stating that homeowners associations do have the right to lien a property. Would you please clarify this conundrum and state the applicable Florida Statutes which apply to liens by homeowners associations? E.P.F., Port Orange

Answer – While I do not specifically recall the column you reference, I would have never said that a homeowners association does not have a right to place a lien on a homeowner's property for non-payment of assessments, provided that the authority to do so is contained within the covenants, conditions and restrictions. What I would have said is that a lien cannot be placed on the property to secure payment of a fine, and if the property is homesteaded, it would be difficult, if not impossible, to foreclose for other than exempted improvements performed for the betterment of the property.

Question – In a recent column, you wrote a very interesting article about condos and hurricane recovery. In it, you wrote about the decision to "rebuild or terminate" the condominiums. What does "terminate" mean in this context? Does it mean that the condo site is abandoned? What do the condo owners receive, if anything? What do the individual condo unit owners receive from their own insurance companies? What do they receive from the

condo association's insurance company? In addition, I've often wondered what happens when a storm rearranges the coastline, and what was formerly a home (or condo) site is now under water permanently. Does the owner just lose the value of the property, or does his insurance company reimburse him? B.B., Merritt Island

Answer – Excellent questions. To place "termination" of a condominium in context, one must first understand that a condominium is a statutory form of property ownership which was created to recognize the creation of ownership within air rights which traditionally were deemed to be within the providence of the single family homeowner. Then, when a developer makes the decision that the multi-family housing development it is building will consist of units stacked on top of each other, the real property on which the condominium is constructed will be submitted to condominium ownership. This is done through the vehicle of a "Declaration of Condominium." If you open your condominium declaration, you will find in the very first paragraph a statement that the lands described in the exhibits are "hereby submitted" to condominium ownership. When the declaration of condominium is filed in the public records of the county where the property is located, it immediately divides into two components, the units [portion of the property subject to ownership by the unit owners, i.e., the apartments] and the common elements [portion of the property owned in common by the unit owners]. When a condominium is terminated, the

reverse happens. The condominium regime ends and the unit owners are deemed to be tenants in common in the ownership of the entirety of the property, based upon the same share of ownership they possessed when the condominium existed. Upon termination, the association is given statutory authority to wind-up the affairs of the condominium, sell the land and distribute the proceeds. Termination can occur either voluntary or involuntary. Voluntary termination is when the required number of unit owners vote to terminate the condominium. Involuntary termination occurs when a casualty destroys the condominium, or a major portion of it, and the unit owners vote not to reconstruct. Involuntary termination also occurs when

condominium documents provide for termination if, for example, the building is damaged by more than 50% and is “uninhabitable.” I am also seeing an increase in termination of older condominiums where the value of the land for new development exceeds the value of the individual units. Responding to your question as to what happens when the coastline changes, the answer is that, for some, it is a very positive thing in that where once there was no beach, they now have one. For others, the land becomes submerged, which places them under the jurisdiction of the Army Corp of Engineers, which must grant permission before the home can be rebuilt, and only then, under the new coastal set-back and height restrictions. ■

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