



## Condominium Law Q&A

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**Question** – I own a residence in a Port Orange homeowners association. Referring to your column of August 13, 2006, you gave a clear explanation to a well-written letter concerning fines. I have two questions that require further details. My first question concerns the reference to “governing documents,” wherein the fines are provided. Do these “governing documents” that allow the levying of fines include rules and regulations adopted by the board of directors at their sole discretion, if not mentioned elsewhere in the articles of incorporation, covenants and restrictions or bylaws, etc? Further, are the “supplements” referred to in 720.301(8)(a) adoptable solely by the board? Also, if called by another name such as “violation assessments” or something to that effect, are they still “fines” in the eyes of the Florida Statutes?” That is, is there a way around the “fines” limitations by calling them something else? W.F., Daytona Beach

**Answer** – No. The term “governing documents” references, in the case of a condominium, the declaration of condominium, or the covenants, conditions and restrictions of a homeowner association regulated community, and the articles and by-laws of the association. Placing the authority to fine in the rules and regulations does not satisfy the statutory mandate that to fine, the authority for same must be in the governing documents. A rose by any other name smells as sweet. No, you cannot camouflage a fine by calling it by another name.

**Question** – Our condo association would like your advice on a couple of issues regarding the use of

assessments. After the 2004 hurricanes, our board assessed each of our owners an equal amount of money. The stated purpose of the assessment was that “All funds collected will be used to repair hurricane related damage/destruction.” Approximately 30% of the monies collected have not yet been spent or ear marked to be spent for the above-stated purpose. Some owners feel that these remaining funds should be returned to the owners, while others feel that the funds should be used for other projects. Our questions are: (1) Can the funds be used for non-hurricane related purposes, or must they legally be returned to the owners? (2) Two of our units have changed hands since the assessment was levied. If the funds should be returned to the owners, should they be refunded to the new owners or to the previous owners who paid the assessment? Thank you in advance for your advice. H.Z. – Satellite Beach

**Answer** – First, you state that following the 2004 hurricanes, the board assessed each of your owners “an equal amount of money” for the purpose of repairing parts of the condominium property damaged by the hurricanes. I assume that your declaration of condominium provides that the manner of sharing the common expenses is a fraction with each unit owner’s share being 1 portion divided by the total the number of units (1/x), as opposed to sharing based upon the square footage of a unit in relationship to the whole. That is because the same formula must be used for special assessments as that used for paying all common expenses. Second, insofar as the board levying an

assessment, two steps must be followed. First, notice of the board meeting at which the special assessment will be considered must be given to every unit owner, along with the details of the proposed special assessment. Next, following passage of the special assessment, the board must send notice to every unit owner advising that a special assessment was passed, the purpose of the special assessment and each unit owner's share of the special assessment. Funds collected for a special assessment can only be used for the purpose for which it was collected. That said, the Act is contradictory. It says unused funds should be returned to the unit owners, or can be kept and used for general revenue purposes. The net effect is that if the funds generate a surplus, they will reduce the

following year's assessments. The funds cannot be used for capital projects which otherwise would require the prior approval of the unit owners. Assuming that the funds are returned to the unit owners, or credited against the following year's assessments, the proceeds are paid to or credited to the unit owner in possession of the unit at the time the funds are returned/ credited, not the unit owner who paid same. Not to confuse the issue, while board's frequently cover budget shortfalls through the device of a "special assessment, the right to levy a special assessment must be contained within the condominium documents; otherwise, the only way additional monies can be assessed and collected is through an amendment of the budget.

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