



## Community Association Q&A

April 24, 2007

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**Question** – At the time I purchased my condominium unit, renting of units was permitted. I purchased with the intent of renting the unit as an investment, in the short term, with the expectation of eventually retiring into the unit. In August or September 2004, prior to the amendment to the Condominium Act which prohibits restrictions on leasing without the consent of the unit owners taking effect, the association amended the declaration of condominium to restrict rentals to a minimum term of three (3) months and a maximum of nine (9) months. This seems unfair. Is it legal?

**Answer** – Yes, prior to the enactment of the 2004 amendment to the Condominium Act (which amendment prohibits restrictions on leasing unless unit owners owning units at the time the amendment is passed consent to the amendment and to unit owners who purchase after the effective date of the amendment), assuming that the requisite approval of the members was obtained, condominiums could restrict the term of the lease, and/or prohibit leasing altogether. Once imbedded into the documents, such restrictions cannot be changed by future legislative amendments, because to do so would be a constitutionally prohibited impairment of an existing contract right.

**Question** - In a prior column you wrote that, "The condominium association is responsible for replacement of windows and sliding glass doors." I spoke to the condominium manager. He said "don't believe everything I read." Well I hope he is wrong and you are right for myself and approximately 20 others whose windows and glass doors were damaged by the recent hurricanes. Based upon what the manager told me, I turned the matter over to my personal homeowners insurer. The adjuster came to my unit and said, from the onset, the damage to the windows and sliding glass doors is the responsibility of the condominium association. It's been months since Hurricane Wilma hit, and I still have plywood covering my windows and sliding glass doors. I am at a loss as to what to do. What advice can you give me? F.N., Fort Lauderdale

**Answer** – While I do agree with what your manager said (don't believe everything you read), in this case, the manager should educate him/herself before giving wrong advice. There is absolutely no debate over the question as to whether casualty insurance policies issued after January 1, 2004, covering improvements to a condominium, must cover all improvements to the condominium [other than certain excluded improvements within the unit(s)], which include within the scope of the coverage, unit windows

and sliding glass doors. That said, let's review the conundrum many unit owners find themselves in. Many condominium declarations provide that routine maintenance of unit windows and sliding glass doors is the responsibility of the unit owners. That is, of course, at odds with the Condominium Act's mandated casualty coverage of said windows and sliding glass doors. Hurricane Wilma hits, the unit windows and doors are damaged. The association files a claim under its windstorm policy. Due to the large deductible the amount of insurance proceeds is inadequate to repair both the common elements and the components of the units. The condominium documents, more than likely provide that when the insurance proceeds are inadequate, the unit sustaining the loss must pay for the repairs. When presented with the question as to whether the statute or the condominium documents control, Florida's Division of Florida Land Sales, Condominiums and Mobile Homes, in a declaratory statement [IN RE PETITION FOR DECLARATORY STATEMENT Plaza East Association, Inc., Final Order No. BPR-2006-0239, January 13, 2006, Docket No. 2005059934, DS 2005-055] concludes that if the association is responsible for

covering an improvement [which, again, is the case of windows and sliding glass doors], then the cost of repair when the insurance proceeds are inadequate, is a common expense, assessable against all unit owners. You correctly filed a claim under your HOA policy. Your carrier denied coverage, stating that it should have been covered by the association. The association's carrier says the documents control, and denies coverage. To add insult to injury, the same carriers which denied coverage are often the only carriers writing coverage, forcing condominium associations to continue paying huge premiums for ongoing coverage. Despite same, experience has shown that when a casualty occurs, these carriers will deny coverage. That is why there are so many lawsuits pending due to claim denials and why the Florida Legislature is revisiting the language of insurance coverage under the Condominium Act. Until the matter is resolved by the courts, the obvious victims are the unit owners. I will keep you advised as the issue is debated before the Legislature and the courts. In the meantime, unit owners caught between the proverbial rock and a hard place should consult with an attorney.

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