



## Condominium Law Q&A

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**Question** – I live in a 6 unit condominium. I am currently on the board. Some units have windows that need to be replaced. I know windows are the responsibility of the homeowner. The old style awning windows no longer meet the Code in Palm Beach County. Replacement windows matching the old windows are not available. The style must change. The problem is the outside of the building should be uniform, but not every unit needs new windows. Any suggestions? A.M., Jupiter

**Answer** – Many associations have dealt with this very same issue in one or two ways. First, with membership approval of a material alteration, have the Association contract for replacement of every window, assessing the cost as a common expense or, under a worst case scenario, billing individual units in accordance with the actual cost to replace their windows. In the alternative, the association can approve windows which are acceptable and allow the unit owners who want to start replacements to do so. Now, here is an interesting twist to the situation. I know of one association which did the latter, and a number of unit owners did in fact replace their outdated windows with modern approved ones. Along comes a hurricane, which did substantial damage to most units, and in particular, those with the old awning windows. The association, following the mandates of the Division, which at the time had determined that the association is responsible for repair or replacement of all improvements for which it had an insurance responsibility, replaces all the damaged awning windows with new modern ones, assessing the cost as a common expense. That did

not make the owners, who had already paid to replace their own windows, very happy. The remedy I suggested was to assume 100% of the replacement cost and credit those owners who had already paid for them.

**Question** – We are a condominium complex of 250 units within 22 buildings, divided among 11 associations. The community was severely damaged by Hurricanes Frances and Jeanne. Nine of the associations signed contracts with a restoration company, providing that in exchange for its restoration of the buildings, all of the insurance proceeds would be paid to it. Up to now, the association has paid the contractor in accordance with the agreement, notwithstanding the fact that it has used low cost materials and unskilled laborers to perform the work. Are we obligated to pay over to the contractor all of the insurance proceeds in accordance with the agreement, notwithstanding the fact that the quality of the repairs and the scope of the work are not up to expectations? J.L., Fort Pierce

**Answer** – The first thing I wish to point out is that, here it is nearly 3 years after the storms of 2004 and 2005 and still 20% or more of the questions I receive relate to post hurricane recovery and problems associated with same. It shows the importance of pre-disaster recovery to minimize damages and to expedite the recovery process. Following Hurricane Andrew, the Florida Courts voided, as unenforceable, restoration contracts, which failed to specify the full scope of work to be performed and

assigned all insurance proceeds to the contractor. Notwithstanding that fact, in the aftermath of storms, restoration companies swarm across the devastated areas and boards of directors in a state of shock blindly sign one page “contracts,” assigning the association insurance proceeds over to the contractor, with little or no recourse when the work isn’t performed up to code or with good workmanship. Board’s must resist the temptation to react in such a haphazard way. The only action required to be taken in the immediate aftermath of a

storm is mitigation of the damages, drying-in, drying out and securing the premises. Thereafter, the board should retain independent consultants to prepare the scope of work required and obtain, to the extent possible, comprehensive bids. There are a number of very reliable and reputable restoration companies, but even their contracts should be reviewed and revised to better protect the interests of the association and the unit owners, and to comply with Florida law.

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