



Condominium Law Q&A

August 21, 2007

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Question – It is my understanding that recent changes to the Homeowners Act restrict the ability of a Homeowners Association to lien and foreclose delinquent unit owners? Please clarify. C.O., West Palm Beach

Answer – Effective July 1, 2007, amendments passed during the 2007 Legislative Session changed the procedure which must be followed by homeowners associations when collecting delinquent assessments. Pursuant to the new law, an association may not file a claim of lien against a parcel owner for unpaid assessments until 45 days written notice for past due assessments has been given by the homeowners association. In addition, the homeowners association must provide an additional 45 day notice of its intent to foreclose the claim of lien, prior to filing a foreclosure lawsuit. While affording homeowners additional protection, the amended Act also imposes additional liabilities and burdens. Most important among these is the language added to the Act, which provides that a parcel owner is liable for all assessments, including joint and several liability with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This imposes upon all home buyers the need to ensure that the seller has paid all of their association obligations, both maintenance and special assessments, prior to closing. Mortgagees are also burdened by the amendments to the Act, in that they too are liable for paying to the homeowners association all unpaid assessments that

were due at the time of transfer of title. The lender's lobby is already scurrying to repeal that amendment. Payments made are applied first to any interest accrued, then to any administrative late fees, then to any reasonable attorney's fees, and then to the delinquent assessment. Restrictive endorsements placed on checks, such as "payment in full," are voided.

Question – This letter is from 2 people, 1 currently owns a condo in this building and the second sold his condo 9 months ago. The building sustained considerable damage from the 2 hurricanes in 2004 that hit Florida. After the insurance settlement, approximately \$150,000.00 was left over. Each owner was assessed \$5000.00 to start hurricane reconstruction. The current board used \$90,000.00 of the \$150,000.00 to buy down the flood insurance premium in 2007. Since this money was not used for hurricane damage caused in 2004, we feel it should have been divided between the owners that paid the original \$5000.00 assessment. Is it legal to use the money for the payment of the flood insurance in 2007, or should it have been returned to the original owners who paid the \$5000.00 assessment in the first place in 2004? T.D., F.W., Vero Beach

Answer – Your inquiry highlights a universal truth about disputes arising from casualties/hurricanes, namely, they take years to fully resolve. The courts and the Division have both held that it is totally

within the discretion of the board, in the exercise of its business judgment, as to how insurance proceeds are used. That said, some condominium documents expressly state the manner in which the proceeds must be used, normally requiring that the common elements be restored, and then the balance of the proceeds be apportioned among the units sustaining damage. The ongoing debate is over the question of whether the association or the unit owner(s) is responsible for the short fall, when the proceeds are inadequate to restore that portion of the unit for which the association has the responsibility for obtaining and maintaining the insurance. That question is currently in the courts. Any excess

insurance proceeds can be placed in the general revenues or returned to the unit owners. If returned to the unit owners, it is paid to those who are unit owners at the time the distribution is made, and they might not necessarily be the same unit owners as those who paid the special assessment levied after the storm. That is why selling unit owners, who paid large special assessments in the aftermath of a casualty, need to address the question of who gets the insurance proceeds in their purchase and sale agreement, providing that what is agreed to survives the closing.

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