



Condominium Law Q&A

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Question – My husband and I purchased a condominium unit in a small 14 unit building 3 years ago. Our unit is 1 of 2 penthouse units. The window in the master suite is a unique window that expands the bedroom wall in both units. It is one single window but encompasses both units. From what we have been told, the window has been a problem almost since the building was built in the mid 80's. Both of our units have suffered water damage prior to our purchasing and since. We were not told of the water intrusion problem prior to purchase. We were told by the association president that many years ago, a contractor had looked at the window and stated that the window was never seated properly and felt the entire window unit needed to be removed and reinstalled. This was never done. It states in our condominium documents that windows are the responsibility of the unit owners. However, in this case, since the window is a single unit, neither can replace or repair the window unit unless both unit owners are willing and financially able to do so. Since this window is not "owned" by a single unit and cannot be replaced or repaired without both unit owners' participation, how can this be the responsibility of the unit owners? The problem with the window is not broken glass, the problem is a structural issue. P.L., Titusville

Answer – Florida law mandates that the seller of residential real estate advise buyer of both patent (visible) and latent (hidden) defects in the property being sold. If the person you bought your unit from

knew of the problem and failed to advise you. You might still have a claim against the seller. That said, there is a difference between the routine maintenance of improvements and the implied warranty that the building initially be built with good workmanship and the fixtures and other improvements, be fit for the intended purpose. To that extent, an argument can be made that the Association is responsible for repairing the window. If all else fails, it would make sense for the two units sharing the window to repair it, in order to avoid complications which might result from leasing it in its current state. An insurer could deny coverage, claiming that the cause of water damage was a known defect which you failed to mitigate.

Question – Our condominium board president has resigned several times in the recent past. This leaves our board without a president, as none of the other board members want to be the president. Can a board operate without a president, or vice-president, treasurer, and secretary? Our recent notices have been signed by "the board." Also, do we as owners have the right to look at the condo's "checkbook" to see where the condo's money goes? A.A., Pompano Beach

Answer – Quite frankly, the inability to find a sufficient number of individuals willing to volunteer their time to serve on the boards of this nation's 300,000 community associations [There are an estimated 25,000 in Florida.] is a growing concern;

given that for the common interest ownership housing concept to work, co-owners must be willing to serve on the boards. It is particularly acute in senior retirement communities where the normal aging process often renders many owners unable to handle the physical and mental stress of board service. Then, too, at the opposite end of the spectrum, young homeowners are often preoccupied with raising their families and starting their careers. The problem is compounded by a lack of understanding of the purpose of the "board." Many wrongly assume that the board is responsible for handling the day to day oversight of management. In fact, the board is principally a policy making body. While the officers are charged with the responsibility for carrying out the day to day duties of their respective offices, management and

operation should be left to professionals and, properly handled, should not be a burden on board members. Turning to the specific question asked, to function, a corporation, at a minimum, must have a president and secretary. The association's bylaws will dictate other officers required, as well as the minimum number of directors. Every community association should maintain officers and directors liability coverage and agree to indemnify those who volunteer their services on the board, as officers, and as members of committees. There is an old expression that "leadership abhors a vacuum." Hopefully, some will step up to the plate at your community.

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