



Condominium Law Q&A

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Question – This letter is from 2 people. I currently own a condo in this building and the second writer 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 in 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 – Yours is a frequently asked question. It also comes up in the context of warranty litigation. Let's assume that following transition the association discovers building defects. The association levies a special assessment against the unit owners to fund the cost of engineers and legal fees and costs. Later on, the case settles, or a judgment is rendered, of which the resulting proceeds are paid to the association. Some, but not all, of the proceeds are spent on repairs to the condominium property. Must the excess be returned to the unit owners who funded the litigation, some of which are no longer unit owners? The answer to

both your question and the hypothetical question is the same, the proceeds are revenue of the association to be used at the discretion of the board to fund the cost of operation and maintenance of the condominium property. Should there be a surplus which the board elects to return to the unit owners, it is paid to those who are unit owners at the time the money is disbursed, not those who were unit owners at the time the special assessment was levied.

Question – Our board of managers has a vice president. The board hired the vice president as a paid property manager. He does not hold a CAM license. Add to that, they also have allowed him to be the maintenance man for which he is paid \$25 per hour. Repeated objections and requests for his removal from these positions, citing conflict of interest at the least, have fallen on deaf ears and been dismissed by the president of the board. We have filed complaints with the Board of Compliance in Tallahassee and they are working on this. Is there anything else we should be doing? M.M., WPB

Answer – You have done the right thing. Allow the Board of Compliance to complete its investigation.

Question – Due to a faulty fill valve in the upstairs bath, my downstairs bath and kitchen sustained water damage to the dry wall. My home insurance company said that the condo association's insurer is responsible for this repair. However, the board of directors decided not to file a claim with the condo

association's insurer. My home insurance has been awaiting a statement from the condo association, either accepting or denying liability, which will not occur if they aren't notified of the incident. 1. Can the board refuse to file a claim? 2. Can I notify the condo association's insurer, myself? 3. What recourse, if any, do I have as a unit owner? J.P., WPB

Answer – The Condominium Act is explicit as to what portions of the condominium property the association is obligated to maintain insurance coverage, and what portion the unit owner(s) are obligated to cover. Less clear is whether the board must file a claim when there is damage to a component the association is obligated to insure, or whether the association or unit owner is obligated to pay for the cost of repair when the insurance proceeds are inadequate due to a deductible or failure to file a claim. Florida's Division of Land Sales, Condominiums and Mobile Homes' position on the subject is clear and to the point, as expressed

in the *Plaza East* Declaratory Opinion. If a unit is damaged, and that damage was to a portion of the unit the association is obligated to insure, then the association is responsible for the cost of repair. The proponents of the Division's position say, "Look to the documents." If the documents say that if insurance proceeds are less than sufficient to cover the cost of the repair, the unit owner sustaining the loss is solely responsible for the cost of repair, then so be it. On January 10, 2008, an administrative law judge issue a recommended order in the *Fountains South Condominium* Case (Case No. 06-3957) in which he rejected the Division's position in the *Plaza East* Case. The net result is to say, look to your documents to determine if a shortfall in cash proceeds resulting from a casualty should be funded as a common expense, or is the sole obligation of the unit owner sustaining the damage.

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