



## Condominium Law Q&A

March 17, 2008

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**Question** – If a homeowners association’s covenants, conditions and restrictions have expired under MRTA, does the association still have the authority to file a lien on a homeowner’s property for failing to pay dues levied after the expiration, and if they have been informed in writing that the covenants, conditions and restrictions have expired under MRTA and proceed to file a lien, are they violating Florida Statutes or exposing themselves to liability? M.B. Tampa

**Answer** – No. In situations where covenants, conditions and restrictions have been extinguished by operation of MRTA, the association does not have the right to levy assessments, file liens or foreclose a unit for failure to pay common expenses. It also lacks the authority to enforce the covenants, conditions and restrictions. Accordingly, in cases where the covenants, conditions and restrictions have expired due to the failure to timely extend the covenants, what needs to be done is a reinstatement in accordance with law.

**Question** – As a 15 year ex-president of a condominium I have been continually questioned on the issue of normal maintenance repair of our sliding glass doors. Our documents state that the owners are responsible for the repair and maintenance of these windows. It also says the condominium is responsible for the insurance coverage of these windows and thus responsible for casualty losses. My confusion is that I’m told the new state law states the condominium is now responsible for the maintenance. Is this the case, and can we make a

case that there is some routine lubrication and care the owner should do to these windows? If they don’t do this routine care, is the condominium still responsible for replacing frozen rollers, etc.? Is there a chance the legislature will correct this mistake? B.Z. Fort Lauderdale

**Answer** – There is no State law mandating that an association be responsible for the routine maintenance of windows and sliding glass doors; the condominium documents control. What you are confusing is the provision within the Condominium Act which provides that the association’s casualty insurance cover unit windows and sliding glass doors. Accordingly, in the event of a casualty, the cost of repair or replacement of the damaged windows and doors would be covered by the insurance proceeds, that is, assuming that the deductible isn’t so high that there aren’t sufficient proceeds for said purpose. The real debate is over the question of what happens when the insurance proceeds are inadequate -- is the cost of repair or replacement of the windows and sliding glass doors a common expense, or the obligation of the unit owner sustaining the loss? This question is currently being debated by the Florida Legislature. Until it is resolved, I am of the opinion that the condominium documents will control.

**Question** – At the time my mother passed away, she was living in a condominium which assessed her for a bulk cable fee. Mother had a hearing problem and did not have cable; it was never hooked up. My

question, is this cable fee legal? G.M., Fort Lauderdale

**Answer** – While condominium associations are vested with the authority to enter into bulk cable agreements, those agreements must allow hearing and sight impaired individuals living alone, and those receiving supplemental security income under Title XVI of the Social Security Act or food stamps,

as administered by the Department of Children and Family Services, to opt out of the obligation. Now that your mother has passed away, a new question is raised, namely, does the right to opt out extend to the heirs who are not residing in the unit. While I know of no decision on this, my gut reaction is probably not. Since the cable is a common expense, the cost is an obligation of every unit owner, other than those who can legally opt out.

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