



Condominium Law Q&A

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Question – Are there any matters that a duly elected board cannot do without prior approval of a majority the homeowners association members? H.M.

Answer – While the board, in the exercise of its fiduciary duty and business judgment, exercises broad power and authority, on questions of operation and maintenance of the shared ownership community (SOC), the scope of the board's authority is limited by both statutory law and the covenants, conditions and restrictions. For example, most covenants, conditions and restrictions limit the authority of the board to levy special assessments for material alterations or additions without the prior approval of a super majority of the unit owners. The board cannot promulgate a rule or regulation which circumvents an expressed right granted by or inferred within the documents. An example of this would be a board rule prohibiting pets when the covenants, conditions and restrictions are otherwise silent on the question. Boards cannot deny unit owners access to the books and records or the right to attend board meetings or speak to agenda items; those rights being conferred by statute for the benefit of unit owners.

Question – I hope you can answer this question for me. I live in a co-op in Fort Lauderdale, FL. When I purchased the place 6 or 7 years ago, I was under the impression that the homeowners association would be responsible for the windows in my apartment, as I only own "shares" in the association.

Last night at a board meeting, our board indicated that, currently, individual shareholders are legally responsible for the windows in their dwellings, and they would like to make changes in the bylaws and occupancy agreement to add clarity to our vaguely written documents. Does Florida law designate individual or association responsibility for windows in a coop? And, if so, does the board have legal authority to change the bylaws to indicate individual shareholder responsibility?

Answer – Without the benefit of having read the cooperative documents I cannot definitively say whether or not they contain a provision placing the burden for maintaining the unit windows on the unit owners. I can say, in a coop, that would be highly unusual, given that the cooperative association owns the entirety of the building and is generally responsible for its maintenance.

Question – Last year our condo board hired a general contractor for a new roof. The GC hired a roofing contractor and other subcontractors. About one third of the way through the job, the roofing contractor had equipment breakdown, the roof was exposed and a rainstorm hit. One million dollars of water damage was done to the building. The board then finds out the GC is not a licensed contractor, and he disappears with \$200,000+. Then the board does not inform out of town owners of damages to units and common areas. In the contract for the roof, the board of directors was to purchase a

completion bond and did not, and then to pay the rest of the outstanding bills for completion and repairs, takes out monies from other reserve accounts. Now, we have a special assessment for many things including \$250,000 to replenish reserve accounts. All insurance claims were denied; the condo's insurance and the roofing contractor's. The board chose not to file any criminal actions against the fake GC, and there are ongoing mold issues. Can unit owners file a claim against the board of directors' directors and officers liability insurance for wrongful acts of the board? K.N.

Answer – It is actually a violation of law to hire an unlicensed contractor. Furthermore, there is no doubt but that the board breached its fiduciary duty to the owners in doing so -- not requiring a performance bond, making payments to the contractor without following the construction lien law, using monies from reserve accounts without unit owner authority, and not taking other appropriate action to protect the condominium property and the unit owners. Sounds like a sustainable claim against the directors' officers and directors liability policy, as well as cause for the unit owners to remove the board and place more responsible individuals in their place.

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