



Condominium Law Q&A

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Question: The Board of Directors of our condo association believes that any utility, including hot and cold water piping, waste piping, vent and A/C condensate piping, and electrical wiring, that serves only one condo unit is the sole responsibility of that unit owner, whether or not the utility line is within the unit's boundaries. The board believes further that where a utility joins another line resulting in that line serving two or more units, at that point the responsibility shifts to the association. Assuming the board is correct in their belief, does it matter if that utility line is exposed or concealed in a wall within the unit's boundaries, above a suspended ceiling, in a sink or lav base cabinet, between floor joists, beneath a concrete floor, in an attic space, in a pipe chase, or in a closet?

Answer: Sounds like your board has it right. Maintenance responsibility for a utility that serves only a single unit is the responsibility of the unit it serves. Where a utility line serves more than one unit, even if the line is buried in the wall of a unit, it becomes the maintenance responsibility of the association.

Question: I am a regular reader of your column. A question has recently come up that I think might be of interest to other readers. As you know, many condo associations are having a difficult time due to record defaults and foreclosures in the current economic climate. We are all grateful for the recently enhanced liability of mortgage holders for past-due assessments when they take title in a foreclosure sale. However, the issue then becomes

what about any remaining deficiency over and above the mortgage holder's liability? One can always get a judgment against the defaulting owner, record it, and hope that the judgment debt is not discharged in the bankruptcy and that the owner acquires some assets to go after during the life of the judgment lien. What I have not been able to determine, however, is whether a new owner who takes title from the lender escapes joint and several liability for the deficiency under F.S. 718.116(1)(1) and, if so why. Has that been litigated?

Answer: I think we would all be grateful if lenders would in fact actively foreclose on a delinquent unit owner, but they do not for a number of reasons. First, the number of foreclosures in Florida has overwhelmed the system causing excessive delays. A recent report from the Supreme Court of Florida noted that there were over 600,000 foreclosures pending. Second, when a lender forecloses, it generally holds its judgment until it has a buyer ready to close, because it knows if it takes title it becomes a unit owner and, like all unit owners, is responsible for budgeted maintenance but also special assessments for capital projects and deferred maintenance and casualty losses. Lenders are granted a safe harbor by Florida law. If they foreclose, their obligation for payment of past due assessments is limited to one year's assessment or 1% of the original mortgage amount, whichever is the lesser. A buyer from a first mortgagee who has foreclosed a unit buys free and clear from past due obligations. On the other hand, the purchaser from a delinquent unit owner is jointly and severally liable

for all monies owed. That is why it is essential that prospective purchasers obtain an estoppel certificate advising of all monies owed. If possible, try and find out if there are any proposed capital projects

which might necessitate a special assessment, the number of unit owners who are delinquent, and of any pending litigation.

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