

Who Replaces Condominium Building Windows?

December 23, 2018

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Q: The windows in my condominium unit need to be replaced. My condominium association is stating that windows are my responsibility. Because the windows are part of the exterior building, doesn't Florida law require the association to replace the windows? (S.R, via e-mail)

A: The Florida Condominium Act does not specifically address whether the association or the individual unit owners are responsible to maintain, repair, and replace windows. Section 718.113(1) of the Act states that the association is responsible to maintain the common elements. However, the statute goes on to state that the declaration can require that limited common elements be maintained by the individual unit owner benefited by the limited common element.

Therefore, whether the windows are the responsibility of the association or the individual unit owners will depend on whether the windows are part of the units or part of the common elements (and if a limited common element) and how the declaration assigns the maintenance responsibility. In my experience, it is fairly common to see the maintenance responsibility for windows and sliding glass doors placed upon unit owners rather than the association.

It is also important to note that the responsibility to insure windows and sliding glass door rests with the association as a matter of state law and cannot be altered through the condominium documents. Likewise, if the windows or sliders are damaged by an "insurable event," such as a hurricane, the association is likewise responsible for repair or replacement of the windows as a "repair after casualty" at the expense of all owners, unless the association has "opted out" of that statute or if the statute is deemed inapplicable for constitutional reasons.

When the declaration requires the unit owners to maintain, repair, and replace

windows, the current version of the statute also contains a procedure for the association, after majority vote of the owners, to install impact glass on a charge-back basis to the owners. Owners with compliant hurricane protection are excused from the assessment through credits. This provision of the statute is rather ambiguous and presents many technical legal issues, so a competent attorney should be consulted if this procedure is undertaken.

Q: A question has arisen in my condominium association concerning who has the authority to adopt the budget, the board of directors or the members. Can you clarify this for us? (D.A., via e mail)

A: As with many community association legal issues, the answer will be depend on the language of your condominium documents. The Florida Condominium Act does not specifically address the issue.

The statute states that board meetings where a budget is to be considered has to be noticed at least 14 days in advance by posting and mail or hand-delivery, and a copy of the proposed budget must be provided with the mailed/delivered notice. E-mail notice can also be used for those who owners who consent in writing.

Accordingly, the statute seems to contemplate that the board will approve the budget. In fact, the statute outlines a process by which the owners have the right to propose and adopt an alternative budget, when the budget adopted by the board requires assessments against the unit owners, which exceed 115% of the assessments preceding fiscal year.

However, it is not uncommon, particularly in older condominium documents, to see a requirement that the owners also approve the budget. In my opinion, such a provision is not at odds with the statute and would be enforceable. However, I do not believe such clauses are desirable for a variety of reasons.

It is also important to remember that even where the board has the authority to adopt the budget, the board does not have any discretion when it comes to reserves. Unless the owners have voted to waive or reduce the funding of reserves, any budget adopted by the board must include fully funded reserves.

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