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Associations May Now Have Broader Standing to Pursue Construction Defects Claims

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When your community needs to pursue a claim for construction defects, your community must have a stake in the outcome of the litigation – known as standing – to pursue that claim. Because both Section 718.111 and 720.303 empower an association to pursue claims for matters of common interest, an association usually has standing to pursue a claim for most construction defects.

However, despite the breadth of Sections 718.111 and 720.303, an association's standing is sometimes challenged in court by a developer that doesn't want to compensate an association for defects caused by improper construction. Fortunately, a relatively recent case called *Seaside Town Council v. Seaside Community Developer Corporation* provides a method to strengthen – and perhaps even expand – an association's standing.

In *Seaside Town Council*, nine homeowner's associations amended their declarations to permit an umbrella organization to pursue claims against the developer of the associations. When the umbrella organization sued the developer, the developer argued that the umbrella organization did not have standing to pursue the

associations' claims, and the trial court granted the developer's motion for summary judgment.

The appellate court reversed the trial court's ruling, noting that before the umbrella organization sued the developer, the homeowners in the nine homeowner's associations voted to authorize the umbrella organization to file suit. Commenting on the effect of the homeowners' votes, the appellate court explained, "The neighborhood associations had a right to assign any claims they had against SCDC under their declarations and did so again with the 2011 vote granting STC the right to sue." *Seaside Town Council, Inc. v. Seaside Community Developer Corporation*, (Fla. 1st DCA 2021). See also *Kumar Corporation v. Nopal Lines, Ltd.*, 462 So. 2d 1178, 1183 (Fla. 3rd DCA 1985) ("[W]here a plaintiff is either the real party in interest or is maintaining the action on behalf of the real party in interest, its action cannot be terminated on the ground that it lacks standing").

Although standing based on Sections 718.111 and 720.303 is broad,

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you may be able to strengthen your community's standing to pursue a claim for construction defects by holding a vote to approve litigation (even if not required by law). Before your community votes, you should consult with an experienced construction defect attorney to make sure the vote provides your community with the best chance to obtain fair compensation for defects caused by improper construction.

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David Milton is an attorney in Becker's Construction Law and Litigation Practice. He represents community associations in multi-party construction defect litigation, frequently meeting with association board members and managers to evaluate potential construction defect claims and discuss legal options and strategy. Mr. Milton guides clients through the Chapter 558 claims process as well as conducts board meetings, and special member meetings under Chapter 720, to provide information to and resolve concerns of board members and homeowners. For more information, visit beckerlawyers.com.