



Does Board Approval Change Maintenance Responsibility?

by Gary A. Poliakoff, J.D.

Q Past columns have dealt with the very perplexing issue of whether unit windows and sliding glass doors are the maintenance responsibility of the unit owners or the association and whether damage by a casualty alters the opinion. At the time my wife and I purchased our unit, all unit balconies were open, enclosed only by movable screens. Since that time, all the units except a couple have been enclosed with glass, sometimes with approval and other times without. How does enclosing the unit balconies change your opinion? Do such enclosures, done without approval, differ than those done with approval? Does the

presence or absence of board "approval" change the outcome?
H.K., Fort Pierce

A The jury is still out on the question of whether the association or the unit owners are obligated for the cost of repairing or replacing unit windows and sliding glass doors damaged by a casualty. This is so regardless of whether the association or the unit owners are responsible for routine maintenance. The debate isn't over the question of repair when there are sufficient insurance proceeds to cover the cost; it is solely a question when there are insufficient insurance proceeds to cover the damage. The Division currently takes the position that it is a common expense. Most authorities disagree, taking the position that the shortfall must be funded by the unit sustaining the loss. The question is currently being argued in the courts and before the legislature. You add a new twist. Does it matter whether or not the glass enclosing the balcony was an improvement added by unit

owners, with or without approval? I am of the opinion that if the approval was given by the board, the enclosure would fall within the same category as any other association covered improvement. Quite frankly, given the board's failure to require those unit owners who enclosed their balconies without approval to remove same, even those improvements would fall within the association's coverage. The real question will eventually be, what position the insurance carrier takes on this matter.

Q I belong to a homeowners association. I recently got a citation for having a basketball hoop in my driveway. There are three homes that had basketball hoops in their driveways for more than six years without receiving a citation. I thought that having the hoop was acceptable because I had seen them in the neighborhood for so many years. The rules and regulations (of which I do not have a copy) state that basketball hoops must be brought in when not in use. This is not practical, as the base is 300 pounds, and it has not been enforced. What are my rights under the law in this situation?

H.A., Fort Lauderdale

A The covenants, and rules and regulations, which govern use restrictions within common interest ownership housing communities are categorized as either "Type 1" or "Type 2" use restrictions. Type 1 are those recorded in the public records where the community is located and can be somewhat unreasonable, so long as they do not violate fundamental rights and are not arbitrary or capricious. Type 2 restrictions (unrecorded rules and regulations) will be judged based upon whether they are reasonable and are related to the protection of the health, safety, and welfare of the community. So you need to ask the question, is the restriction which requires portable basketball hoops to be brought in at night a Type 1 or Type 2 restriction, and then apply the above recited standards for determining the association ability to enforce it.

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