

- MAINTENANCE AND REPAIRS:** *This is a primary duty of the board. It involves inspections, reports, evaluations, and review of solutions. The board needs a proper budget with funds to maintain the common areas. When a board fails to maintain the common areas, property values drop and the board can be guilty of a breach of their fiduciary duties.*

66. Our condo board imposed a special assessment in order to repair, replace and remove certain landscaping. The work has not started and the dead landscape is an eyesore. Our heated pool has not been heated for the past three winter breaks because they do not maintain the heaters properly. It seems as if the pool heaters always manage to be broken when our snow birds as well as our children come for the holidays! They have just voted a 15% increase in our monthly maintenance, having no clear answers as to why. Finally, they did not pay the premium on the insurance policy, causing a new buyer to cancel the closing date on their purchase when the title company discovered that the property had no insurance! What remedy do you suggest? What legal recourse do we have to get things repaired and maintained properly? EL- North Miami Beach

You are failing in your responsibilities to demand that the board act properly to maintain the buildings and grounds. Do not look at the board members as landlords. You have the rights, the duty and the responsibility to monitor the actions of the board. You have the duty to serve on the board and committees and encourage your neighbors to serve. You have the right to expect that the board to maintain the common areas. At the same time you have the duty to pay your fair share of the maintenance fees required to maintain the common areas. Your remedy is to become more involved either by serving or communicating the problems and solutions to the board. Since your pool heater is unreliable, get out and find a solution and present it to the board. Remember this: most board members do not have the experience to operate the association and the common areas. They are members that have volunteered for a reason. You have the duty to vote for the best candidate and understand what the candidate's main reason is to serve.

67. A director of my condominium association informed me that he will be entering my unit and all other units in our phase using an emergency pass key. He will be replacing the Flappers in the water closets in our phase. There has been some high water usage in some of our buildings although not my building. I informed him unless there is an emergency he does not have the legal right or my permission to enter my condo. He insisted that as a director he does because he feels this is an emergency. I maintain my condominium unit very well and have just serviced all the water fixtures. I thanked him for his effort and concern and asked for the emergency key to my unit. Can he legally enter my condo under these circumstances without my permission? YK- Naples

The association has the right to access your unit during reasonable hours for maintenance, repair, or replacement of elements or fixtures that the association is responsible to maintain. The section can be found in FS 718.111. Your documents should also contain specific instructions and rights for the inspections and repairs. In short, you must allow the board to inspect and replace defective toilet parts. If you are home it is one matter. If the inspection takes place during a time when you are not present, then I suggest that the inspection team consist of two or more persons for security reasons when entry is made. The fact is that a preventive program to replace the toilet float may save up to 20% water usage. I recommend that all owners and associations schedule a change of parts every year as standard procedures. A program of annual inspections and replacements will pay for itself in water savings.

68. I have taken over the maintenance and cleaning for a condominium. Many things have been improved little by little as I have put in lots of effort. But it has been a nightmare for me because of acts of vandalism. The board is aware of the problem. Almost every time I fix something, some of the owners are damaging or sabotaging my work. Most of the owners are not aware of the problems because nobody knows or sees the damage. Shall I keep fixing doors, locks, etc. for ever and ever and keep expending more and more money on these double and triple repairs, or there are other solutions you may suggest to control this situation? FI- Miami

At the next board meeting, ask if you can make a report on the vandalism. Make the owners aware of the problems and cost to repair the damage. Ask for help from the owners. Tell them that it is their money. Also, have the board make a motion that anyone found vandalizing will be reported to the police. Next time you have any damage, make a report to the police. Have these reports posted on the bulletin board for the members to read. Turn up the heat on the persons vandalizing and let them know that they will be held accountable for the damage.

69. Can you give me some advice regarding a gated community board that has only one goal, to lower the dues? The community is not maintained, common areas are bad, flowers are not planted, shrubs and trees are dying and others. The board does not enforce the CC & R because they are afraid of legal fees. One answer is to get a new board. Do you have any other suggestions?
MI- Miami

You must try to communicate to the board that they have a fiduciary duty to the members. That duty is a statutory requirement that the directors maintain the common areas and the association. When they fail to maintain the common areas, they are in violation and sit in jeopardy of being sued or having the State take disciplinary actions. The primary evidence is the lowering of property values. You, as an owner, have a right to expect that your property values are maintained or increased. There is a direct correlation between property values and association maintenance. There is no such thing as a cheap maintenance fee. You get what you pay for or what you do not pay for in the higher or lower fees.

70. In my townhome, I experienced a roof leak last year. I had water stains on my ceiling. The board sent the handyman to patch the roof and after the ceiling dried, I painted the stain. Shortly after, the roof leaked again and again I had a stain. Again the roof was repaired that seemed to fix the problems. I painted the ceiling again. Last week during a heavy rain, I was flooded even worse than before. Since the board has neglected their duties, should the association pay for painting my townhome? KO- Orlando

In most cases, the association is not responsible for damage to your personal property. Since the ceiling paint is personal property, you will have the responsibility to repaint the stain and replace any damaged furniture. It may not seem fair that the association does not have any responsibility for your loss but they do not have any control over acts of God. If the board neglected to attempt to correct the roof leak, then they could more than likely be held accountable for neglect. About the only thing the board is guilty of, since they did attempt to make repairs, is poor judgment by using the handyman, a nonqualified roofer. Any recourse to collect your losses would be found in the courts. You may want to discuss the matter with your insurance agent about filling a claim.

71. Squirrels made a hole in my soffit screen and were using my townhome attic. Animal control came and solved the problem. Animal control found several holes in my neighbors soffit and showed me where several squirrels were going in and out of their attic as well. I have brought it to the neighbor's attention, and it appears they have no intention of doing anything about it. Animal control has told me that they will eventually have a large number of squirrels in their attic; they could become more aggressive and begin gnawing their way into adjoining attics. If the neighbor continues to ignore this situation, does the board have the authority to step in? BL- Clearwater

A lot would depend on your documents. Some boards would have the power to obligate the owners to make repairs and if they did not then enter on the property and fix the problem and charge the owner. Some documents are weak and do not allow the board to become involved in such repairs. About your only recourse is to send the neighbor a letter putting them on notice of the problem and hope that they take care of the problem. I suggest that you place small containers of ammonia or moth balls in your attic to help deter the squirrels. Sometimes the pet stores will carry a spray to discourage animals. You will need to continue to spray or place the chemicals periodically, but it may stop the animals from using your attic.

72. My condominium unit is on the ground floor on the end. When the sewer lines plug up all the waste backs up into my bathroom and into my kitchen. This has happened four times in the past two years. Every time the plumber found the trouble it was away from my unit. The problem was caused by roots. The association paid for the plumbing but I had to clean up the mess. The tree that they thought was the problem has been removed. Two weeks ago it happened again. What is my recourse? RO- Largo

It appears that the association is trying to correct the problem. I suggest that a backflow valve be installed at your unit. It is a simple installation that will keep sewer backup from coming into your unit. Discuss the matter with the association and your plumber. While it will not stop the root problem for other units, it will eliminate your problem. Meanwhile, the association may need to have the entire sewer line replaced. That is a very expensive repair.

73. We live on the third floor of a three-story condominium. For the past several years, we have been plagued by noxious odors which enter our unit through the shaft that connects with our electric range. Maintenance people from our complex have looked at this problem, but are unable to provide answers that would remove these smells. The latest representative of our maintenance department tells us that this is the first time this has been reported, but that a range fan in the unit on the ground floor was very dirty and would require cleaning. Since the unit immediately below us has been unoccupied for years, except for an occasional visit by the owner, it seems as though the first floor is at the root of the problem. Our association documents do not specifically mention responsibility for clearing this shaft, or duct, we are not quite sure of our next step. Have you ever heard of this type of situation? We are simply interested in the direction which we should take. CR- Clearwater

Many times documents do not specifically name or address component parts such as venting ducts. However, other sections address general areas of the building which may include the duct repair and maintenance and ventilation systems. If necessary, the association may need to ask the association's attorney on the exact interpretation of the documents to determine the responsibility. As to the cause and cure of the odor problem, that may take a specialized professional. When your building was designed, an engineer was needed to provide specifications of the venting system. Over the years, grease, dirt, smoke, and lint may have clogged the pipe. If the vent has a roof top fan, you may need to verify that the fan is properly operating. Many large buildings with roof ventilation systems may find that the fans need to be replaced after a few years of operation. From the information you have provided I would say that there could be three causes. The first is a poorly designed vent system, a worn out fan, or a dirty duct or a combination of the three. To determine financial responsibility for expenses to repair the ventilation system, you must review your specific documents.

73. Our board has passed a special assessment in the amount of \$7,000 per unit to repair the balconies in our condominium. Do they have the right or does it take a vote of the members? Our documents say that an improvement to the common area requires a vote of the members. GO- Clearwater

The first concept that you must understand is that repairs to the balconies is not an improvement to the property. It is a repair to restore the common areas. The second concept is that you must understand that the board has a duty to maintain the common areas. This can be found in FS 718.112. Third part of this situation is who then must make the decision to repair the deterioration or pay for the injury if someone is hurt because of the neglect? Being a board member is not an easy job. You must spend your neighbors' money. For that you get belittled and shunned by your neighbors. In this case, your board is making the correct decision. They have the duty and the responsibility to maintain the common areas and to do so they must assess each member to pay for the repairs.

74. I am a condominium unit owner who has rented the apartment. The tenant noticed that when it rains the bedroom gets flooded with rain water. I have reported this to the condo president and it appears that nothing is being done to fix the problem. My tenant is afraid that her furniture will be ruined. I was told by the condo president that it is not a roof related problem. If it is not the roof then it has to be checked. Where do I go for answers and who is responsible? JO- Miami

Water penetration problems often are a mystery. You must be an investigator to find the source of the water. If the roof has been checked, then it must be some other cause. Some other sources for water are the pipes that supply water, both hot and cold, and the sewer lines. If you say it only appears during a rain, then it must be associated with the weather and the higher humidity. This would be a clue, such as the air conditioning system's evaporator. Maybe the pan that sits under the evaporator or the drain line has become clogged and cannot remove the condensed water. You will find that the pan and drain line should be checked quite often. As to who is responsible, it would depend on your documents and the type of air conditioning system. I would have an air conditioning specialist or the maintenance man check the air conditioning system and the drip pan for the condenser along with the drain pipe.

75. Our condominium has carpet in the halls except on the penthouse floor. They have marble in their halls. The board would like to replace carpet in the other halls with marble. There are several owners who do not want to spend the money for marble and insist on replacing the carpet. We have the funds available and a special assessment is not necessary. Should we force the board to replace the carpets instead of the marble? Also, could you give us an average estimate of the percentage of accidents involving marble floors versus carpets? Would this cause our insurance to increase? LO- Surfside

Changing carpet to marble may be considered a material alteration of the common elements. I would review your documents to determine if this requires a vote of the members. In addition, you should have the board review any proposed changes with the association's attorney to determine if it is in fact a material alteration and include a review of the contracts for the work. As for increase in insurance, this is a question you should pose to your insurance agent. More slip and falls do occur on slick tile and marble floors than on carpet. While there are some marble surfaces that can be used to reduce the accidents, in general marble becomes slick when wet or casual shoes are worn. I would review your situation as to water and moisture problems that could cause problems. Maybe you have air conditioning vents where moisture will drip or windows that let in moist air that will condense on the surface. Do you have problems with people coming in out of the rain with dripping umbrellas and coats? You will have longer life and better looking floors if you install marble or tile. Upkeep and cleaning will be less but in the future, you will need to have the surface recoated or polished. Marble and tile initially cost more than carpet but last many years longer and therefore the annual average cost is much lower.