

**MYTHS, MISTAKES, CONFUSED SITUATION, AND IGNORANCE:** *The following questions fall under a term that could be called 'Myth-busters'.*

86. **Installing a New Floor:** I am the new president of a condominium association in Miami, Florida trying to find information about requirements for sound attenuation soundproofing for hard surface flooring placed inside individual apartments. I have contacted the City of Miami Building Department, but they referred me to Google and I have looked for information to no avail. Where can I find specific information regarding this subject? AL- Miami

*Of all the questions that I receive this is the one I hate. The short answer is, never approve hard flooring. There is no good answer except do not allow any hard flooring to be installed in upper floor units. Your best source for information would be a flooring company that has cork underlay or rubber insulation. Here is the reason I hate the question. Even properly installed flooring with soundproofing will transmit sounds to the unit below. That is where you start having problems. Either the upper floor owner must remove the flooring or the unit below must put up with the noise. Most buildings are constructed to the specifications of concrete flooring covered by carpet. Changing this will alter the original plans. My recommendation is to deny any change to flooring except carpet. To do otherwise, is opening up major problems and a devaluation of units. Do not allow replacement of carpet with tile or wood or other hard flooring. A unit with serious noise problems from upper floor units must sell for less value because of the noise problem.*

87. **Elevator as a Common Expense:** I live on the 1<sup>st</sup> floor of a 3-story condominium. The building houses six apartments with 2 units per story. We have an elevator that services the building. Why must my maintenance fee include a portion for the elevator service and repair? My unit and the one other unit on the 1st floor does not use the elevator and I believe that we should not have to contribute to the maintenance of it. I believe it is unfair. My fellow neighbors say that is like not paying for the cable TV portion of the maintenance because you do not watch TV. I say the difference is you choose to not watch and I can not use the elevator. Big difference, what do you think? SS- Miami Beach

*Your argument holds water like saying the roof does not protect your unit from the rain and you should not have to pay for roof repairs. The elevators are part of the common areas and all owners have a responsibility to the whole. Say the elevators did not work; do you think it would affect the value of the upper floor units? If they became lower in value, would that also affect the value of your unit? When you purchased your unit, you agreed to comply with the documents and thereby to pay a share of the common expense. What affects one unit affects all units in a condominium because you all share the common areas and the common expenses as listed in your documents.*

88. **Real Estate Taxes:** I was informed by a friend that if I purchased a home in a 55 plus community that I would no longer have to pay a school tax on my real estate tax bill. I am 80 years old and now pay over \$600.00 a year in school taxes. AA- New Port Richey

*Sorry but your friend is wrong. You will still have to pay your share of the school taxes. There are other exemptions that you may qualify to help reduce your tax exposure. I would suggest that you review your homestead exemption and talk to your county tax department or the tax appraiser.*

89. **Board's Spending Limits:** Can the board of directors of a Condominium contract for, and spend any amount of money, without getting a vote from the owners? Could they spend a million dollars and then just assess the owners? BA- Madeira Beach

*The board is responsible to maintain the common areas. If there are major repairs or replacements, there are no limits in their spending and the members must pay their share of the expenses. The key on this is to maintain. It does not mean improve, which is to add to the existing common areas such as building a room to be used as a card room. I once managed a building that had to replace a chiller and cooling tower. The total cost was \$950,000. It was a board's decision not the members' decision. Each owner was assessed over \$3,000. That was approved by the board not the members as it was the board's responsibility.*

**90. Association Receivership:** Can you advise as to what would happen to an association if the board of directors all resigned and no replacements could be found to replace them? Our management company advises us that the association would go into receivership and state would take over. RU- Miami

*Theatrically the last remaining director cannot resign because he/she would not have any director to provide a resignation letter. But we know that the last director can abandon the position thereby leaving no directors. The answer would be that any member of the association can petition the courts, not the state, to appoint a receiver. Just who do you think the courts will appoint as a receiver? Not just a person off the streets but a well qualified professional, an expensive professional. Who will pay for the court costs and for the receiver? You and the members will pay for the new expenses in addition to the necessary operational expenses that you normally pay. Not a cheap way to go. A receiver will want to make sure that the association is properly operated and would establish an adequate budget to include his/her costs. You would more than likely see your fees double or more. Since the receiver reports to the court, the members would not have any say in the operations or budget of the association. What you have is owner apathy and you need to get your neighbors more involved or they will pay the higher costs.*

**91. Energy Act:** Can you dry a sweater or shirt on your porch due to a ruling in the constitutions and bylaws. I was under the impression that an environmental law was passed that superseded any condo rules regarding the drying of clothes. TE- Tampa

*The statute that you are referring is FS 163. It does address deed restrictions that restrict clotheslines or other energy saving devices by overriding the documents and rules. However, the association can establish guidelines such as the type of clotheslines and when they can be used. As an example, a board can approve a rule that only removable drying racks can be used any week day and Saturday AM but never on Sunday or Saturday PM. As to your association, I would check to see if the board has established new rules to comply with this energy saving statute.*

**92. Occupancy Limits:** Our rules and regulations say 1 bedroom 2 people and 2 bedroom 4 people, however a man, woman, and child moved into a 1 bedroom. We told the renting agent what our rules state. We would like to know what the law says about square feet for each person. The renting agent says they can have that child in the unit because it is 5 feet over the required law. If you can not tell me square feet per person then can you give me a law or rule for me to look up? Thank you. CR-Winter Haven

*Since occupancy requirements are governed by local laws, I am unable to provide the correct answer for your specific area. I would suggest that you call the county zoning department and if you live in city limits, call the city zoning. Your situation should not be addressed to the rental agent but directly with the owner. The owner has the responsibility to comply with the association documents not the rental agent. You often read in my column that I recommend that the board seek legal advice. I do the same in this matter. What the board will be seeking from your attorney is an opinion letter on the question of occupancy. Once you have this opinion letter, it will be in the files and can be used for future similar situations so the question does not need to be reviewed each time. It will be a one time expense to prevent future occupancy violations. An opinion letter is a relatively low one time cost and can provide guidance in future situations.*

**93. Manager's License:** Our condominium has over 170 units. Does the law require that we have a licensed property manager or can anyone manage the property? RN- Naples

*Anyone can manage the condominium as long as they are not paid or compensated. FS 468 says that a person who performs management services for compensation must be licensed. Now there are two exceptions and that is an association of 50 units or less and/or does not have a budget over \$100,000. Also the Administrative Code 61B-55.002 says: A person shall not manage or hold himself out to the public as being able to manage a community association in this state unless he is licensed by the department in accordance with the provisions of this part. Should a person be hired to perform management services and not be licensed, both the association and the unlicensed manager can be fined. Some boards have attempted to engage persons to perform management tasks and just called them by another title such a secretary or supervisor. The laws are very specific and just changing a name will not exempt or protect from the laws.*

**94. Management Company Responsibilities:** Our management company has never issue a financial statement of their expenses for our condominium association. How do we request one? Another problem is that the management company took out a loan to pay the increased cost of insurance. Normally if you pay off a loan early, the interest is credited back. We asked the management company for a refund of the interest for our early payment. Is this legal? BL- Palm Harbor

*The management company is not responsible for the financial report but they may have the duty to produce them if they are directed, contracted, or have a policy to produce the reports. Your board of directors is responsible. Send a letter to the board and ask for copies of the financial report. They must supply the copies but can charge a copy cost. Do not talk or call, write a letter preferable a certified letter. No management company can borrow funds for the association. Again your board of directors would be responsible. As to refunds, the statutes require that all owners are responsible for their share and the board of directors does not have the power to discount or refund a unit's share.*

**95. Contract Labor Requirements:** I am new on the board of directors of a small trailer 55+ co-op. Please explain contract labor as it would apply in hiring services for our park. MS – Hobe Sound

*You need to make sure that any contract is legal and proper. All vendors and contractors must be licensed and insured. By insurance that means workers compensation (WC), liability and casualty. In past years, small contractors (sole proprietors) were exempt from the state statutes from acquiring specific insurance coverage such as WC. The problem was that the exemption did not protect the association if the contractor or their employee were injured. The board has a fiduciary duty to the members to protect the assets of the association and that means they should engage suitable, properly licensed, and insured contractors. By engaging cheap labor, the board is not acting in the best interest of the members.*

**96. Roads vs. Resurfacing:** Our community consists of one-story villas and two story condominium units. The villas have garages with a driveway. The condominiums have a parking area as an extension of the streets. We also have sidewalks along the streets and to each unit or building. All are part of the common elements with maintenance the responsibility of the association. We are reviewing our reserve funds and are looking for a definition of Roads from the statutes. All we find is resurfacing or paving. I spoke to a person at the Bureau of Professional Regulation and she referred me to the section in FS 718 and the Administrative Code 61B. One says paving the other says resurfacing. Can you assist us with information on what constitutes the road since our driveways and parking areas are just an extension of our roads. Can you help us to understand the difference? BB-Inverness

*In Romeo and Juliet by William Shakespeare, Juliet speaks the immortal lines that which we call a rose by any other name would smell as sweet. You are trying to make too much of words. If the paved area must be maintained, then put it in the budget and reserves as road and driveway repairs and replacement. I have a major road that I drive that they are increasing from two lanes to four lanes. Over the past few months they have been constructing the new lanes, in condominium language that would be a capital improvement. Yesterday, they opened the new lanes and closed the old road. Next week they plan to start to repair the old road. That would be called repairs and replacements. If you have to repair and/or replace the drive and parking area, include all the data in your reserves and call it what you want, resurfacing or paving. It has the same meaning.*

97. **Maintenance vs. Improvement:** Pertaining to capital improvements and maintenance, does the amount of money play a factor before the board has to go to the members for a vote? We are in need of repairing cracks in the concrete around our pool. One option is to caulk & paint, which I believe is a maintenance problem. The other option is to remove the curbing around the pool and correct the situation, which will cost a considerable amount of money. Is this a capital improvement or a maintenance job?  
EL- Homestead

*The statutes require the board to maintain the common areas. The board is responsible to approve proper budgets and approve special assessments to accomplish the repairs and maintenance. As for improvements, that would usually require a vote of the members. If the board determines that the pool deck needs replacement, then that is a repair and not an improvement. If on the other hand, say the board would like to increase the size of the deck and add new cabanas that would be an improvement. The key for understanding the difference is if repairs are made to existing common areas or is it new construction. If you add to the common area, it is a capital improvement. If you replace damaged or worn out equipment, it is repairs. The dollar value does not affect to this equation. Repairing the pool deck is not a capital improvement. It is maintaining the common areas.*

98. **President Voting:** We had a situation at a board meeting where there was a tie vote. The president then passed the gavel to the vice-president in order to vote. The vice-president refused to accept the chair because he did not want the president to vote and break the tie. What was wrong in this procedure? TC- Naples

*This is the biggest misinterpretation of the duties of the president. It is a perception that is not correct as the statutes require the president to vote on all matters. The facts are that the president as a director must vote as a director on all motions, as must all other directors present at a meeting. The only exception is if the director has a personal gain or a possible indirect gain from the decision. He does not need to turn the gavel over to someone else. When the vote is called, he votes as a director not as the president. If you feel that Robert's Rules say otherwise, then read Article 10,58 where it says if the chairperson is a member of the assemble, he is entitled to vote. Recently, I posted a podcast on my web page, [www.talkwithcam.com](http://www.talkwithcam.com), on Roberts Rules, # 041.*

99. **Hurricane Shutters:** We are a small homeowner association. Many homes have hurricane shutters. At the first report of a hurricane in each season, almost half of the homes place the shutters up at the beginning of the summer and remove them until after Halloween! We do not have restrictions concerning this situation in our documents as we are still young but some homeowners are expressing concern over the metal coverings appearance. What would be an appropriate amount of time to leave shutters up after a watch or warning has passed and does the board have authority to make these rules without registering it as an amendment to the documents? AT- St. Petersburg

*First, find out if your County or City has restrictions on shutters as many areas are covered by such codes. If they do not, then contact your attorney about making a change to your documents to restrict shutters to only be installed only during a storm threat and removed a few days after the storm has departed. Early this year, a fire in Cocoa Beach high-rise condominium resulted in fire fighters being unable to enter the unit rapidly to fight the fire. The fire department reported that the installed shutters were a major issue that hindered entry to fight the fire in the vacant unit. When the shutters were cut to enter, the room was like an oven because the shutters held in the heat. After the fire was out, the Fire Inspector recommended that during periods of no storm threat, should not be installed. He also reported that cities and counties should review codes to limit the use of shutters. My personal feeling is that shutters should only be installed when there is a direct storm threat. This position has put me in the doghouse with many snowbirds, but it does devalue unit and homes in the same complex.*

100. **Visitors at Board Meetings:** I am a condominium director and at our last meeting, the president stated that in the future only deed qualified association members will be permitted to attend board meetings. In the past, we have allowed guests to attend, but they cannot say or do anything during the meeting. Some guests are friends of owners, renters, and interested parties of the

association. The President had not discussed the change in policy with any of the directors before the meeting. Some of the directors agree with the policy while I feel that this is not a good policy. I have searched our documents and reviewed FS 718 but cannot find anything that states if guests can or cannot attend Board meetings. This seems like a one person decision without board approval. Also the board meeting minutes are posted so that anyone can read them. I do not see what harm can come by letting guests attend since everything done is open to the public. Can you reply to this policy? SA- Winter Haven

*Policies need to be addressed before the directors at a board meeting. One director or officer cannot establish a policy alone. There had to be a problem that was not addressed in your question. To establish a new policy to limit who can attend meetings just because one thinks it would be a good direction is not a proper business decision. There are situations where people not on the deed have a need and maybe a right to attend board meetings. Take for an example where a unit is owned by a son and his parents live in the unit. Have you considered owners placing the unit in a trust? What would the board do if someone arrives at a meeting with a power of attorney? You can have a unit with only a wife is on the deed and her husband is not on the deed. Do you restrict the husband from attending the meetings? There are so many variables that such a policy needs extensive research. Talk to your president and have him address the other directors at a board meeting and then have a motion presented for a vote by the directors. In short, I do not like the situation as many times visitors can offer solutions to problems that work better than the members can provide.*

**101. Husband & Wife Serving and Voting Certificate Differences:** Previously, a husband and wife have served on the board at the same time even though they only own one unit. They cite an article that you wrote that states the Florida Statute allows this. However, according to our documents there must be a certificate on file in the corporate office designating a person who is entitled to cast a vote for each unit. Our documents further state that to serve on the Board you must be the person entitled to cast a vote. This seems to me to prohibit any two individuals (husband or wife or otherwise) who own one unit together from serving at the same time. What is your opinion? RS-Naples

*Normally, if your association's documents do not say that only one person can serve on the board at any given time, then any number of persons could be elected to the board from the same unit. Each director would have a vote and act as and with the same duties as any other director. The certificate your documents is referring is called a voting certificate. It has no connection with a husband and wife serving on the board and voting on the board. It does have direct connections with who votes at annual or members meetings. The purpose of the certificate is for the owner (multiple ownership, corporate ownership, or some type of trust, etc.) to appoint one person to be the official person to vote. That person must have some ownership interest in the unit or be a corporate officer or trustee. Since any owner can be appointed that has title interest, it would appear to me that all the owners would be eligible to serve as a director. I have found that the voting certificate is the most misunderstood document in association operations. However, I must put a caveat that I would suggest that you ask the question to you attorney because this question is really a legal question to interpret your specific documents and I do not have all the specific information. I have a two page report on voting certificates and an eight page report issued on a case the State investigated a condominium for illegally using the voting certificate. If you would like the ten page report, send a SASE with two stamps to the address listed on the web page [www.talkwithcam.com](http://www.talkwithcam.com) or the address listed below.*

**Columnist's Remarks:** The column has been published for more than 28 years. First by Jack Holeman, now retired who wrote the column for 19 years. My ten years (almost) of questions and answers has been archived in annual journals. If you want any information on the purchase of the journals, contact:

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