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or replacement of existing improvements in the condominium.

Sometimes the subtle distinction between a repair or replacement and a material alteration or substantial addition presents the board with a difficult dilemma. Changes in maintenance responsibilities,⁵⁵⁸ installation of a new seawall or other modifications to preserve existing improvements,⁵⁵⁹ or replacement of a community television antenna with commercial cable television service may fall into either classification. When faced with such a dilemma requiring the board to reach a legal conclusion between the two categories, the board should seek the advice of the association's attorney.

The declaration of condominium describes in detail the full extent of the condominium property and its improvements. The improvements are described in both the text and on the plot plan and survey attached to the declaration. Any attempt to materially alter or modify any of these improvements or to make additions to them may also require a document amendment. If a document or plot plan amendment is required, it must be adopted by the same membership vote required for approval of the material alterations.

9.14 Installation of Hurricane Shutters. The installation, replacement and maintenance of hurricane shutters in accordance with specifications approved by the board of administration is not considered to be a material alteration or substantial addition under the Condominium Act. The Act specifically authorizes the installation and upkeep of hurricane shutters by a unit owner without a vote by the association membership, and any provisions requiring a vote of the members are preempted by the law.⁵⁶⁰

The board of administration is required to adopt specifications to govern the installation of hurricane shutters by a unit owner, including their color, style and other factors which the board deems relevant. All specifications must comply with applicable building codes, and the board may not refuse to approve the installation or replacement of any shutters conforming to the specifications.

⁵⁵⁸ *Hillsboro Light Towers, Inc. v. Sherrill*, 474 So.2d 1219 (Fla. 4th DCA 1985).

⁵⁵⁹ *Ralph v. Envoy Point Condominium Ass'n, Inc.*, 455 So.2d 454, 455 (Fla. 2nd DCA 1984); *Cottrell v. Thornton*, 449 So.2d 1291 (Fla. 2nd DCA 1984); and *Tiffany Plaza Condominium Ass'n, Inc. v. Spencer*, 416 So.2d 823 (Fla. 2nd DCA 1982).

⁵⁶⁰ § 718.113 (5), F.S.

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minium property as a whole.⁶⁹⁰ Each owner is separately responsible for payment of taxes and special assessments that come due against the condominium parcel which he or she owns, and failure to pay the obligation results in a tax lien only upon the delinquent parcel and not upon the other portions of the condominium property.

11.10 Maintenance and Upkeep of the Property. Traditionally, the normal maintenance responsibilities of the condominium association are defined and identified in the declaration of condominium as a direct result of the descriptions of the units and the common elements. While maintenance responsibilities for the common elements belong to the condominium association by statute, maintenance responsibilities for the unit belong to the condominium unit owner together with the responsibility for those improvements that are designated as part of the unit or as part of the unit owner's responsibility by the declaration of condominium. Such items may include doors, windows, air conditioning, and heating systems, or other similar improvements that are designated as a part of the unit or for the exclusive use by a particular unit owner.⁶⁹¹

An owner is responsible for damage that is intentionally or negligently caused to the condominium property by the unit owner. The owner of a condominium parcel may not neglect his or her maintenance responsibility in a way that would adversely affect the safety or the soundness of the common elements or any portion of the condominium property that is to be maintained by the association.⁶⁹² In limited circumstances, the owners of a condominium unit may take reasonable steps to protect their unit and its furnishings from further damage when the condominium property is in a state of disrepair. The reasonable steps may include alterations to the condominium property on a temporary basis.⁶⁹³

11.11 Alterations to the Condominium Property. A unit owner may not make any alterations or additions to the common elements or the limited common elements except in the manner permitted by the declaration of condominium. Further, no unit owner may make any alter-

⁶⁹⁰ § 718.120, F.S.

⁶⁹¹ § 718.106 (2)(b) and § 718.113 (1), F.S.

⁶⁹² § 718.113 (3), F.S.

⁶⁹³ *Schmeck v. Sea Oats Condominium, Ass'n, Inc.*, 441 So.2d 1092, 1096 (Fla. 5th DCA 1983).

C.

ation to the unit itself which would result in a change to or infringement upon the common elements or which would adversely affect the safety or soundness of the common elements or any portion of the condominium property which is to be maintained by the association.⁶⁹⁴ Unauthorized additions, modifications, or alterations are subject to removal and the condominium property being restored to its original condition and appearance at the expense of the unit owner.

When the declaration of condominium allows a unit owner to make alterations to the condominium property, the conditions for making the alterations or modifications must be specifically complied with by the owner.⁶⁹⁵ If approval of the board of administration is required before the alterations are permitted, the approval cannot be unreasonably withheld. (Sec 9.13). When the approval for unit alterations has been received from the board, other unit owners may not object to the alterations.

The failure of the board of administration or the management company to respond to a request by a unit owner to make alterations to the condominium property is not the same as giving consent for the alterations. The lack of response does not operate as an estoppel or as a waiver of the condominium association's right to object once the actual work is started by the unit owner.⁶⁹⁶

The installation of hurricane shutters is a right of every unit owner, and the board is required to provide appropriate specifications to govern their installation. (See 9.14). Any owner may display one (1) portable, removable United States flag in a respectful manner regardless of any provision in the declaration of condominium or rule of the association. An owner may also display a service flag of the Army, Navy, Air Force, Marine Corps or Coast Guard on Armed Services Day, Memorial Day, Flag Day, Independence Day, and Veterans Day. The service flag may not exceed four and one-half (4 1/2) feet by six and one-half (6 1/2) feet in size.⁶⁹⁷

⁶⁹⁴ § 718.113 (2) and (3), F.S.; *Schmidt v. Sherrill*, 442 So.2d 963 (Fla. 4th DCA 1983).

⁶⁹⁵ § 718.113 (2), F.S.; *Fountains of Palm Beach Condominium, Inc. v. Farkas*, 355 So.2d 163 (Fla. 4th DCA 1978).

⁶⁹⁶ *Id.*

⁶⁹⁷ § 718.113 (4), F.S.

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such permission are not binding on the owner-controlled board of administration. The owner-controlled board of administration may enforce stricter standards from the condominium documents so long as they are not arbitrary or selective in their implementation. Many times a developer ignores the standards altogether. In such cases the board must reestablish the standards of architectural integrity for the condominium after the owners assume control.⁸²¹

Unauthorized modifications or alterations have resulted in the removal of jealousy window enclosures,⁸²² storm shutters,⁸²³ balcony enclosures,⁸²⁴ terrace railings, patios,⁸²⁵ roof shingles,⁸²⁶ and the mandated restoration of original color and appearance. The failure of the board of administration to respond to a request is not the same as receiving affirmative permission.⁸²⁷ Timely and consistent enforcement may be successfully maintained by either the board or by another unit owner against the unauthorized or nonconforming architectural changes to the condominium property. Any owner desiring to make a change or alteration must follow the required procedures and must obtain proper permission. Failure to do so may be an expensive mistake if the change must be undone.

When an alteration or improvement occurs as part of a repair to the common elements or is necessary to protect the common elements from further damage, the alteration or improvement may be made without seeking normal approvals required for material modifications or alterations.⁸²⁸ Under such circumstances each owner must contribute the

⁸²¹ *Ladner v. Plaza Del Prado Condominium Ass'n, Inc.*, supra note 19.

⁸²² *Sterling Village Condominium, Inc. v. Breitenbach*, supra note 5.

⁸²³ *Schmeck v. Sea Oats Condominium Ass'n, Inc.*, 441 So.2d 1092 (Fla. 5th DCA 1983).

⁸²⁴ *Schmidt v. Sherrill*, 442 So.2d 983 (Fla. 4th DCA 1983).

⁸²⁵ *Fountains of Palm Beach Condominium, Inc. No. 5 v. Farkas*, 355 So.2d 163 (Fla. 4th DCA 1978).

⁸²⁶ *George v. Beach Club Villas Condominium Ass'n*, 833 So.2d 816 (Fla. 3rd DCA 2002).

⁸²⁷ *Id.*

⁸²⁸ *Ralph v. Envoy Point Condominium Ass'n, Inc.*, 455 So.2d 454, 455 (Fla. 2nd DCA 1984); *Cottrell v. Thornton*, 449 So.2d 1291 (Fla. 2nd DCA 1984); and *Tiffany Plaza Condominium Ass'n, Inc. v. Spencer*, 416 So.2d 823 (Fla. 2nd DCA 1982).

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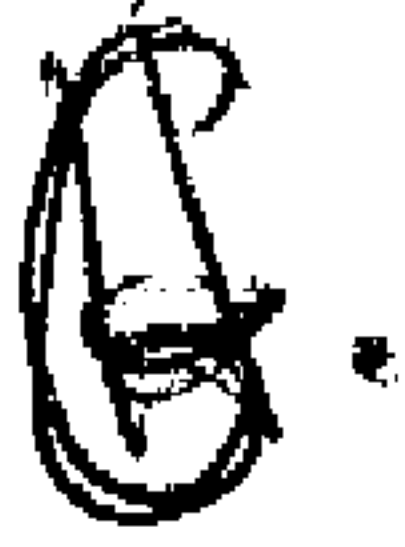
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- E. The coverings and appearance of windows and doors, whether by draperies, shades or other materials visible from the exterior of the unit, shall be subject to the Rules and Regulations of the Association.
- F. Common hallways, stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner. Porches, walkways, stairways, and lanais shall be used only for the purposes intended, and they shall not be used for hanging or drying clothing, for outdoor cooking of any kind, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.
- G. If a unit owner makes any modifications, installations or additions to the interior or exterior of the unit or limited common elements, the unit owner and his successors in title shall be financially responsible for the maintenance, repair and replacement of the modifications, installations or additions.

11.3 Appliance Maintenance Contracts. If there shall become available to the Association a program of contract maintenance or replacement for kitchen appliances within units and/or air-conditioning compressors and/or air handlers serving individual units, which the Association determines is to the benefit of the owners to consider, then the Association may present said contract to a meeting of the members in which a majority of the voting interests are present in person or by proxy and the Association may enter into contracts for such services on behalf of all unit owners. The cost of such contractual undertakings shall be a common expense.

11.4 Alteration to Units and Limited Common Elements by Unit Owners. No owner shall make or cause the making of any structural modifications or alterations to his unit or its appurtenant limited common elements without first obtaining the written consent of the Association, which consent shall be denied if the Board of Directors determines that the proposed modifications or alterations might adversely affect, or in any manner be detrimental to the Condominium in part or whole. If any unit owner requests approval of an alteration or modification involving the removal of any interior partition wall, the Association may permit such removal if the removal would not materially affect or interfere with the utility services constituting common elements, if any, located therein. No owner shall cause any of the limited common elements appurtenant to his unit to be enclosed or cause any changes to be made outside of the unit, including painting or other decoration, or the installation of any electrical wiring, television antennas, appliances or air conditioning units which may protrude through the walls of the Condominium or in any manner change the exterior appearance of any portion of the Condominium, without the prior written consent of the Board of Directors. Any glass, screen, curtain, blind, shutter

OR: 2349 PG: 3241



or awning which may be installed on any porch or balcony is subject to regulation by the Board of Directors. No person shall add to or remove the landscaping of the common elements without prior Board approval.

11.5 Alterations and Additions to Common Elements By Association. The protection, maintenance, repair, and replacement of the common elements is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no alteration of, or substantial additions to, the common elements which result in a material expense or a material change in the common elements without prior approval of at least a majority of the voting interests. However, if work reasonably necessary to protect, insure, maintain, repair or replace the common elements also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is required.

11.6 Enforcement of Maintenance. If after reasonable notice the owner of a unit fails to maintain the unit or its appurtenant limited common elements as required above, the Association may institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation.

11.7 Negligence; Damage Caused by Condition in Unit. Each unit owner shall be liable for the expenses of any maintenance, repair or replacement of common elements, other units or personal property made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or lessees. Each unit owner has a duty to maintain his unit, any limited common element appurtenant to the unit (except those limited common elements required to be maintained by the Association as provided in Section 8 above) and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other units, the common elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from the owner's failure to perform this duty causes damage to other units, the common elements, Association property or property within other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable actions to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the owner.

11.8 Association's Access to Units. The Association has an irrevocable right of access to the units during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the

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