“Association Usually Responsible for Structural Maintenance,” News-Press

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By: Joseph E. Adams

Q: The foundation under my condominium’s sliding glass door has heaved which prevents me from opening the doors. My condominium manager says that I am responsible for taking out the slider door frame and grinding down the foundation cement. Am I responsible? (P.D., via e-mail)

A: You have described an issue which may be a symptom of a more significant structural issue. An engineer should review the situation. The association usually has the maintenance responsibility for the foundation and structural components of the condominium building. This will be addressed in the declaration of condominium. In general, these areas are usually described as “common elements.”

Section 718.113(1) of the Florida Condominium Act requires the association to maintain, repair and replace the common elements. The statute contains an exception for “limited common elements,” which are those portions of the common elements reserved for the use of a particular unit, or group of units, as specified in the declaration. The statute permits the declaration to delegate maintenance responsibility for limited common elements to the benefitting unit owner(s), or to the association but at the sole expense of the benefitting owner(s). This latter method is sometimes called the “limited common expense” approach.

Declarations will also typically address “incidental damages.” In many cases, while the foundation/slab is usually an association responsibility, sliding glass doors are an owner responsibility under many (probably most) declarations. The incidental damage provision of the declaration will dictate whether the association is responsible for cost and reinstallation of the door if necessary to do the structural work, or replacement of it if it cannot be reinstalled.

Q: Our condominium roofs were damaged by Hurricane Irma. A claim was filed against the insurance company. Residents recently learned that the board president entered into a contract with a roofing company. At last month’s board meeting, I asked the board president to see the contract with the roofing company. He said he would not share it as it was “confidential.” I asked if the roof replacement would be put out to bid, and he said no. Shouldn’t there be a bid? How can I get a copy of the roofing contract? (J.M., via e mail)

A: Section 718.3026 of the Florida Condominium Act generally requires, subject to certain exceptions, that contracts whose cost exceeds 5 percent of the total

annual budget of the association, including reserves, be competitively bid. The association is not required to accept the lowest bid.

Section 718.111(12) of the Florida Condominium Act provides that contracts for work to performed are considered “official records,” and must be maintained by the association for at least 7 years. Official records are open to inspection by any association member. The records of the association must be made available for inspection by a unit owner within 10 working days of receipt of a written request.

The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with the law. A unit owner who is denied access to official records is entitled to the actual damages or statutory damages if it is determined that the association willfully failed to comply with the law.

Statutory damages are set at $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request.

The failure to permit records inspection also entitles any person prevailing in an enforcement action to recover reasonable attorneys’ fees from the person in control of the records who directly or indirectly, and knowingly denied access to the records. The Division of Florida Condominiums, Timeshares, and Mobile Homes is also authorized to levy fines for records access violations.

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