

A publication of:  
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## WELCOME ABOARD



While our firm practices in several areas of the law, such as commercial litigation, real estate and construction, the majority of the practice is devoted to the representation of condominium and homeowner associations. We are proud to announce the addition of the following associations to our list of clientele: Superior Gardens HOA in **Opa Locka**, Misty Bay at Silver Lakes HOA in **Pembroke Pines**, Porto Fino Gardens Condominium in **Deerfield Beach**, April Mist Condominium in **Hallandale**, Keystone Towers Condominium in **Miami**, Riverview Place Condominium in **Miami Beach**, Andor Plaza and Beverly Arms Condominium in **North Miami Beach**, Country Point Estates HOA in **Coral Springs**, JR Condominium in **Hialeah**, Cypress Bend IV and Suzanne Plaza Condominium in **Fort Lauderdale**. We can assure you that we appreciate the business and confidence placed in our firm.

## FIXING UP AFTER WILMA

(By: Andrew C. Demos, Esq.)



Insufficient funds are not an excuse for an association failing to make necessary repairs. Over nine months have passed since Hurricane Wilma, and this firm still receives complaints, almost daily, from unit owners who live in a condominium building or a unit that suffers from leaks, mold or other damage. Florida Statutes 718.118 and 718.303 specifically authorize unit owners to file lawsuits against the association to compel necessary repairs to the common elements. The association should also be aware that should a unit owner prevail in court, it will be responsible for the unit owner's court costs and legal fees.

## SPECIAL ASSESSMENTS

(By: Eric M. Glazer, Esq.)



With several hurricanes pounding South Florida last year, nearly every association was forced to pass at least one special assessment in order to meet the association's financial obligations. Surprisingly, the Florida Statutes say very little about the method of passing special assessments. The law simply states that non emergency meetings to pass a special assessment must be noticed 14 days in advance, with notice being posted and hand/delivered or mailed to each unit owner. In addition, the funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon completion of such specific purpose or purposes, any excess funds are considered common surplus, and at the discretion of the board, may either be returned to the unit owners or applied as a credit toward future assessments. Also, there is no requirement under Florida law that special assessment funds be segregated from routine assessments.

## CANCELING DEVELOPER CONTRACTS

(By: Scott R. Shapiro, Esquire)



Once the unit owners have assumed control of the association from the developer, an association is not necessarily bound by the developer's prior agreements with others for the operation, maintenance or management of the condominium. Florida Statute 718.302 allows for the cancellation of these pre-turnover contracts by a 75% vote of the voting interests in the condominium.

## ACCELERATING ASSESSMENTS

(By: Ralph C. Ruocco, Esq.)



Sales are slow, interest rates are up, and this firm is finding that foreclosures are on the rise. Indeed, often times, the condominium is faced with repeat offenders

who fall behind in payment of their monthly assessments more than once in a budget year. In an effort to assist associations in collecting assessments from these persons, Florida Statute 718.112 provides that an association may accelerate the assessments of an owner who is delinquent in payment of common expenses. These "accelerated assessments" become due and payable on the day the claim of lien is filed and include amounts due for the remainder of the budget year. The association should either apply the acceleration to all delinquent unit owners or none of the delinquent owners in order to prevent the unit owner defense of selective enforcement.

## RESOLVING HURRICANE CLAIMS

(By Louis Goetz, Sr. Litigation Paralegal)



The State of Florida Dept. of Financial Services has implemented a program that allows homeowners' and condominium associations to mediate disputes with

their insurance companies regarding damage claims as a result of the tropical storms and hurricanes that have hit Florida over the past two years. The program is available only to associations and not individual unit owners and is solely for physical damage claims. Participating in the program is free to the association and can be started by filling out a Commercial Residential Mediation Request Form that is available by contacting the Department or going to [www.fldfs.com](http://www.fldfs.com). The State will appoint a mediator to preside over the dispute and hopefully help the parties reach a settlement. The State will also provide a representative to assist at the mediation if any of the parties request one. The rules of the program are spelled out in Rule 69J-2.002 of the Florida Administrative Code. The rules are somewhat comprehensive and a mediation settlement will act as a release regarding the claims raised by the association; therefore, we recommend an attorney assist with the mediation process. Contact our office or the Department for more details.

## RECALL: THE BOARD'S DUTIES

(By: Meredith Spira, Esq.)

In light of recent special assessments due to the hurricanes or failure of past Boards to make necessary repairs, many disgruntled unit owners are trying to recall their Board members. Once the Board is served with the written recall ballots, it must have a duly noticed Board meeting within five business days. At this meeting, the Board either certifies or rejects the recall. If the Board rejects the recall, the Board must take detailed minutes of the meeting and include the specific reason for the rejection of each recall ballot. If the Board decides to reject the recall, it must file a Petition for Arbitration within five business days from the date of the Board meeting. Prior to the Board meeting, the Board should review the ballots to make sure each one complies with the Florida Administrative Code provisions and make sure the actual unit owner signed the ballot and not a renter or other non-unit owner. The Board should also keep voting certificates on file for units owned by more than one person or by a corporation, so that it can determine whether the voting member signed the ballot. Finally, the Board must make sure the signatures are genuine and can compare same to signatures already on file.

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The primary practice of our firm is representation of condominium and homeowner associations in the South Florida area. The firm has represented hundreds of associations since its inception in 1994, regarding all facets of association law. In addition, the firm has litigated and/or arbitrated hundreds of association cases in the state courts as well as before the Division of Florida Land Sales, Condominiums and Mobile Homes, Arbitration Section.

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