

Crystal,

This follows up our telephone conversation of earlier today concerning your question about the propriety of an assessment to build a fund from which to pay for certain damages to the condominium units (usually caused by upper floor water heater leaks or other leaks). There are several principles that guide my thinking in this inquiry.

First of all, the North Carolina Condominium Law and your Declaration and Bylaws require the Association's insurance carrier to provide coverage for all buildings and improvements whether owned by the Association or the Unit Owner. The Unit Owners may insure their own personal property but virtually all other property within the condominium is insured by the Association. This is very difficult for many laymen to understand. There are advantages and disadvantages to this kind of insurance requirement, but I will leave that discussion for a different day.

I will say that an advantageous portion of your Bylaws, Article VIII, Paragraph 2 provides that any portion of the individual Unit Owner's Unit that is damaged and is subject to an insurance deductible amount, must be paid by the Owner of the unit damaged. We can read Paragraph 15b of the Declaration to require the Association to pay the deductible as a common expense of only those damages where common areas and facilities are damaged.

One of the most significant problems I see in this area of Condominium management now is the large number of damage claims resulting in skyrocketing premiums and cancellations of policies. If the Association assesses an assessment to use to pay for repairs and maintenance that would otherwise be insured so that it does not result in negative claims experience that will result in policy cancellation or substantial premium increases, then this is, in essence, setting up a self-insured program for the Association, which I think is actually a pretty good idea. This could serve as a useful buffer against policy cancellation and exorbitant premium increases. For the reason explained in the previous paragraph, I do not recommend that the assessment be used to pay for the deductible portion of the repairs made to a Unit Owner's Unit, unless the Unit Owner refuses to pay the deductible or it is otherwise uncollectible from the Unit Owner.

If the Association decides to pursue this plan, I would recommend that they explain the plan explicitly in their Board Meeting minutes and that the plan be explained thoroughly to the membership for better membership understanding. I suspect and recommend that the Board consider a range of repair or maintenance expense that they choose to use this fund for and apply that rule consistently. This should require some thought and analysis. It might require collaboration with an insurance professional who can give them some good advice on this subject.

Thank you for your question in this very interesting area of the law. I commend the Board of Directors for their progressive thinking in an area that has become burdensome and really requires some alternative solutions.

Please feel free to call me if I can help with this project in the future.

Henry W. Jones, Jr.

