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Amato Bocchino - Condominiums and common area construction defects - There may be less time to act than you think

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Construction defects in the common areas of a condominium building can result in cracks, leaks, flooding and so on. The condominium association, whether in the form of a corporation, condominium trust or unincorporated association of unit owners, must address those defects on behalf of the unit owners. If the association must file a lawsuit against the condominium developer, general contractor, architect or other construction professionals involved in the design and construction of the condominium building, then the association generally has only three years to do so. Otherwise, its claims will be time-barred under the applicable statute of limitations and the unit owners will have little recourse against the responsible parties.

The Association's Duty To Protect The Common Areas

A condominium building is made up of the condominium units and the common areas. The unit owners own their respective units and their pro rata share of the common areas. The association, however, manages the common areas for the benefit of the unit owners. In that regard, the association owes a duty to the unit owners to manage and maintain the common areas for their benefit and to hold those responsible for any construction defects in the common areas. In fact, only the association has the right to bring lawsuits against the construction professionals who caused the defects in the common areas even though it is the unit owners who own the common areas.

Three-Year Statute Of Limitations

Construction defects arise from someone's negligence. The negligence can be that of the general contractor who failed to construct the building according to industry standards, that of the architect who failed to properly design the building, that of the subcontractors who failed to follow the construction specifications, and so on. In most cases there is a three year statute of limitation to file lawsuits against these construction professionals, which begins to run when the construction defects are first discovered or "should have been discovered." That means that if a lawsuit is not filed within that three year period, the claims will be time-barred and the unit owners are without recourse against those parties.

A problem typically arises when a construction defect is deemed to exist and the three year statute of limitations clock starts to tick, but nobody realizes it. The often litigated issues include whether and at what point in time the association "should have discovered" that, for example, the roof system was improperly installed after having received complaints of ceiling leaks from the top floor unit owners for months or even years. These issues are made worse in larger condominiums with more

unit owners in which communications between unit owners and association members are not quick or clear.

Get Organized

What can a condominium association do to assure itself that it is not missing any deadlines for filing a lawsuit against the parties that are responsible for the construction defects? An association or its management company should keep records of the unit owners' complaints of leaks, drafts, floods, cracking, peeling of paints and finishes, etc. These records should note when the problems were first observed, where within the buildings they are being observed, how frequently, and under what circumstances. If any pattern appears, the association should identify the original association members and the original management company and look through whatever documentation they generated (prior meeting minutes and votes, invoices for repair work performed, etc.) to determine when the problems first arose and who was involved in the design, construction and management of the building. At that point, the association should be in a better position to determine if it might have a construction defect to resolve.

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