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## BUSINESS LAW GROUP

### **Information Regarding Accessing Units for Inspection of Damages and Emergency Remediation**

Associations can require access to units after a casualty in order to inspect the damage and to perform reconstruction and repair to those building components that it is obligated to reconstruct and repair. Please note, F.S. 718.111(5), grants the association broad rights of access to the units during reasonable hours, when necessary for the maintenance, repair, or replacement of common elements, or for the portions of the unit maintained by the association under the declaration, as well as to prevent damage to the common elements or to a unit or units. Please be mindful of F.S. 718.111(11)3(f), which provides guidance regarding the necessary condo insurance policy requirements.

For additional information regarding accessing units for repairs, please read below:

After Tropical Storm Nicole makes landfall, it is likely that several condo and associations will need to access units to repair, dry out or replace common elements or limited common elements, sometimes even on an emergency basis. Even though the majority of owners will cooperate and allow the Association or its agents access to perform necessary repairs, some owners may be more difficult and even refuse to allow the Association access into their units to perform repairs.

In those instances, condo Association's must utilize their emergency statutory emergency powers granted pursuant to Florida Statute §718.111(5)(a) which states, "The association has the irrevocable right of access to each unit 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 association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit." The law is well established in Florida, condominium associations have the irrevocable right of access to each unit during reasonable hours when it is necessary for the maintenance, repair or replacement of the common elements, limited common elements, or any portion of the unit that the association is required to maintain, as well as to prevent damage to common elements.

It is a basic principle of condominium law that, by choosing to live in a condominium, individual unit owners give up certain freedoms and accept certain restrictions upon rights which could be expected in separate, privately-owned property. *Woodside Village Condo. Ass'n, Inc. v. Jahren*, 806 So. 2d 452 (Fla. 2002); *Hidden Harbour Estates, Inc. v. Norman*, 309 So. 2d 180 (Fla. 4th DCA 1975). The statute provides two broad purposes for access: for maintenance or to prevent damage. *Cypress Isle at the Polo Club Condo. Ass'n, Inc. v. Shelton*, Arb Case No. 98-4090 (July 22, 1998).

Use of the word “irrevocable” emphasizes the legislative intent that the right of access cannot be limited by governing documents of a condominium or by a negotiated condition in the sale of units. Access will be allowed even when a unit owner has given a written warning that the association should not enter a unit. See *Hidgon v. Seaspray Condo. Ass’n, Inc.*, Arb. Case No. 96-0430, Final Order (March 24, 1998). The interest of a unit owner to protect his or her property behind the locked door of his or her unit must yield to the need for the Association to protect condominium property. An association’s Declaration of Condominium puts unit owners on notice that condominium property also lies behind the locked door to his or her unit, including walls, pipes, wires, conduits and utility lines.

Generally, issues of the timing of the entry and notification to the owners are a function of good business judgment, prudence, and civility. That being said, Florida Statute §718.1265(1)(j) does provide condominium associations with emergency power to “mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including, but not limited to, mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the condominium property, even if the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.”

Whenever possible, the association and property management should contact the unit owner in advance of using their right to access the unit and attempt to coordinate such access with the unit owner. However, in cases involving property damage of an emergency nature, the association would be able to use the key to access the unit even without advance notice to the owner. Associations should review their governing documents to determine if there are any additional rights afforded to the Association in relation to accessing units and/or performing necessary repairs within units.

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