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### **Unit Alterations and Board approval**

By Eric F. Frizzell, Esq., Buckalew Frizzell & Crevina LLP

A homeowner considering a home improvement project normally is concerned with obtaining architectural plans, a reputable contractor, and all necessary municipal permits. While those steps may be sufficient for a single family homeowner, condominium unit owners often face additional issues. The New Jersey Condominium Act prohibits unit owners from performing any additions or alterations to a condominium association's common elements "except through the association and its officers," or from taking action in a unit that "would jeopardize the soundness or safety of any part of the condominium property ... or affect the common elements without the unanimous consent of all unit owners who might be affected thereby."

Moreover, many condominium associations' master deeds require a unit owner to obtain approval from the association's board of directors before performing any construction in a unit, especially structural alterations. New Jersey courts have upheld the legality of such constraints. An association's master deed, or a board policy, may impose other conditions, such as mandating that the unit owner comply with all applicable codes; provide the board with a copy of all necessary municipal permits; pay for the association's engineer to review the proposed alterations in order to assure they will not compromise the structural integrity of the building; install replacement windows or doors of only a specified style and color; provide proof that the owner's contractor possesses all proper insurances and includes the association as an additional named insured; indemnify the association for any damage claims relating to the work; perform the work only during stated hours; and assure daily removal of all construction debris from the common areas. Some associations require a unit owner to sign a formal agreement incorporating the terms of the board's approval.

Even relatively minor changes to a unit may raise issues. Many high-rise associations require owners to install carpeting and padding on floors, or to satisfy more specific sound transmission classification standards for all flooring. Some associations ban music and television speakers being mounted on a wall between units, and require them to be elevated from the floor by an acoustical platform.

Accordingly, an owner who wants to perform construction to his unit should review the association's governing documents for all applicable requirements and ask the board and property manager to identify any other conditions. To avoid misunderstandings, all communications between the owner and association/manager should be in writing. The owner's contract with his contractor should include all pertinent obligations imposed by the association.

The failure of a unit owner to obtain required board approval can have serious consequences. In one New Jersey case, an owner replaced her unit's milled aluminum

slotted windows with white vinyl double hung windows, without seeking the board approval mandated by the association's governing documents. The association sued the unit owner, and the court granted an injunction ordering the owner to remove the windows. The court also noted that the owner's claimed lack of actual notice of the approval requirements did not excuse non-compliance, because they were contained in the master deed recorded in the county registry – "ignorance of the law" was not an excuse.

In another New Jersey case, a purchaser bought two adjacent units in a high-rise building with the intention of combining them into one apartment. The units shared a balcony separated by a permanent partition that was part of the building's original construction. Although the unit owner obtained the board's approval to remove interior walls between the units, he failed to request permission before removing the balcony partition. The association sued, and the court ordered the unit owner to restore the partition – and to pay the association over \$10,000.00 in attorneys' fees.

An association's power over alterations is not, however, unlimited. In another case, an owner changed his unit's HVAC system, without board approval, by placing on his unit's balcony two small compressors and drilling two small holes to run wires through window frames, a common element. In the ensuing lawsuit between the association and unit owner, a New Jersey appellate court stated that the Condominium Act and the association's governing documents made clear that "modifications of common elements and limited common elements having no substantial impact on the condominium property as a whole or on the rights and expectations of all other unit owners" could not be prohibited by the board. The court cited additional factors that a board could analyze in considering a unit owner's request for approval of an alteration, including whether the modifications would affect the building's overall mechanical systems or present any kind of visual or auditory annoyance to anyone. The court found that if the impact on the common elements was "a wholly insignificant and *de minimus* impingement," the board could not deny permission for the requested alteration.

Accordingly, condominium unit owners should confirm all requirements with the association's board and property manager, and obtain any necessary approval, before starting any alterations to a unit - failing to do so can prove quite costly.