

CONNECTED TOWNHOMES ADMINISTERED BY FLORIDA HOAs

 News Alan E. Tannenbaum September 20, 2021

ARGUMENT FOR AMENDING THE CCRs EARLY ON TO MAXIMIZE THE HOA's MAINTENANCE, REPAIR, AND CLAIM AUTHORITY

For decades after condos were first developed in Florida in the '60s, developers desiring to build and sell connected townhomes (duplexes, triplexes, quadruplexes, etc) declared the buildings to condominium. Under the condominium regime, typically components of connected townhomes serving more than one unit (structural elements, walls, windows, roofs, and mechanical, electrical, and plumbing elements) were declared as common elements subject to the condo association's maintenance and repair responsibility.

Condo development in Florida, of course, carries with it some detriments for developers. First, broad non-waivable warranties of construction quality benefitting unit purchasers are imposed. Second, condo developers must jump through substantial hoops in getting documentation approved by the State. Third, condo association operation during the period of developer control is highly regulated, and the regulations are enforced by a state agency with jurisdiction over condo developers and developer-controlled condo associations. Fourth, statutes of limitation on claims do not begin to run until the transition of the condo association to unit owner control.

Deed-restricted HOA communities in Florida, on the other hand, are not subject to The Florida Condominium Act. There are no statutory warranties imposed on developers. There is no requirement to submit documentation to the State. There are only limited statutory requirements for HOA operation during developer control, and there is no regulating state agency. Finally, there is no statutory provision extending the accrual of statutes of limitation until turnover of an HOA to lot owner control.

Knowing the complexities and risks of developing condos in Florida, a couple of decades back some ingenious developer came up with the idea of developing connected townhomes under an HOA regime. Since then, many communities around Florida have been developed as deed-restricted HOAs containing solely connected townhomes or connected townhomes as part of a mixed single-family home/connected townhome community.

Connected Townhomes Under an HOA Scheme – The Maintenance and Repair Dilemma

With a condo, common elements are owned by all of the unit owners as joint tenants, with the common elements maintained and repaired by the condo association. A fellow owner far afield from your building owns as much of the roof on your building as you do. In an HOA with connected townhomes, no portion of the connected townhomes is jointly owned. Each townhome owner owns their townhome in fee simple. Consequently, with a fourplex, even though the townhomes are physically connected, there are only four owners each owning solely their townhome, which includes interior and exterior components (structural elements, walls, windows, roofs, and mechanical, electrical, and plumbing elements). The owner of a townhome across the street from you owns no part of your connected townhome.

The recorded Covenants, Conditions, and Restrictions (CCRs) of an HOA community *may* provide the HOA some degree of maintenance and repair responsibility over its connected townhomes. There is no statutory requirement, however, that the CCRs for an HOA community require the HOA to have any maintenance and repair responsibility for the connected townhomes. What has occurred as a result is that developer lawyers have drafted HOA documents that are across the board as far as HOA maintenance and repair responsibility over connected townhomes, from no responsibility, to some responsibility, to extensive responsibility.

Where the CCRs provide little or no, or simply incomplete, HOA maintenance and repair responsibility for the common elements of connected townhomes, the connected owners are left to fend for themselves. When one side of a duplex is settling because of a foundation deficiency or sinkhole, which may impact both units, there is no mechanism for sharing the repair decisions or expense, other than seeking court relief, if the duplex owners cannot agree. What if second floor or roof framing deficiencies in a fourplex are causing roof issues or exterior stucco cracking. You likely will not be able to fix the problem with each owner addressing just the framing of their particular townhome. How are they even going to agree on how the cost of having an engineer analyze the problem is to be split? What if there is disagreement on how to repair a problem that affects more than one townhome?

Investigating Defects and Deficiencies

Under HOA CCRs, HOAs are restricted to spending HOA funds strictly on Association responsibilities. If an HOA's maintenance and repair responsibility per the CCRs is limited to the painting of the exterior walls of connected townhomes, and the stucco is cracking, arguably the stucco cracking is not within the HOA's maintenance and repair purview, and thus HOA funds are not appropriately spent on investigating

the stucco cracking. The same limitation would apply to foundation and framing deficiencies, common piping and mechanical component deficiencies, termite infestation, and any manner of serious construction and design defects that could affect connected townhomes.

With the HOA being restricted in its ability to investigate common defects and deficiencies, the owners of the connected townhomes are again left to fend for themselves as far as investigating the cause of the building issues, a situation ripe for confusion and conflict.

Pursuing Responsible Parties for Defects and Deficiencies

HOA standing to pursue responsible parties for defects and deficiencies in connected townhomes is governed by the following rule of procedure adopted by The Florida Supreme Court:

Rule 1.221 - HOMEOWNERS' ASSOCIATIONS AND CONDOMINIUM ASSOCIATIONS

A homeowners' . . . association, after control of such association, is obtained by homeowners. . . . other than the developer, may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all association members concerning matters of common interest to the members, including, but not limited to:

. . . **(2)** the roof or structural components of a building, or other improvements (in the case of homeowners' associations, *being specifically limited to those improvements for which the association is responsible*); **(3)** mechanical, electrical, or plumbing elements serving a property or an improvement or building (in the case of homeowners' associations, *being specifically limited to those elements for which the association is responsible*) . . .

Simply put, if the CCRs don't provide for HOA responsibility for maintaining a component of connected townhomes, the HOA cannot pursue responsible parties for the cost of correcting the defects and deficiencies in such component. The stucco can be cracking on the second floor of all the connected townhomes in the community caused by framing deficiencies, but unless the HOA has repair responsibility for the framing and stucco, it lacks standing to pursue responsible parties for the cost of repair.

Without HOA standing to pursue responsible parties, townhome owners are again left to fend for themselves. Could six owners of a sixplex join together in a suit to tackle common defects in their connected townhomes? Possibly, but how would they agree on sharing the cost of pursuit? Then, if a recovery is realized, how would they agree on undertaking necessary repairs, especially if the cost of the repair was greater than the net recovery?

Economy of Scale in Undertaking Maintenance and Repairs

Our firm represented a duplex community with identical shingle roofs. In the first decent windstorm after construction was completed, several shingles were dislodged or blew off across the community. Under the CCRs, the HOA had no maintenance and repair responsibility for the roofs. The Board resisted the idea of proposing an amendment to the CCRs to provide HOA responsibility for duplex roof repairs or replacement.

Without the amendment of the CCRs, each pair of duplex owners was on their own as far as contracting with roofers to replace their defective roofs. It is no mystery within the roofing field that if a roofing contractor bids on the replacement of a single duplex roof in a community that the cost of those reroofs would be significantly greater per duplex than if the same roofing contractor was asked to bid the reroof of 150 duplexes.

An HOA has significantly greater buying power than owners operating alone. Furthermore, the HOA, with professional management, supported by an engineer and construction lawyer, is in a much better position to assure that the work is done correctly and on time, with manufacturer's warranties being delivered at the end of the job.

Protecting the Aesthetics of the Community

With the HOA administering repairs to the exterior of connected townhomes, the HOA is in the position to protect the aesthetics of the community as originally conceived. Retaining one repair contractor to conduct repairs on connected townhomes across the community allows for aesthetics to be preserved.

With owners hiring their own contractors to undertake stucco repairs, window replacement, roof repairs and replacement, etc., it would be very difficult over the long term to preserve the aesthetics of the community, with no doubt a concomitant negative impact on townhome values.

Safety Concerns

With contractors hired by the HOA to undertake exterior repairs and maintenance on connected townhomes, there is a much better opportunity to protect persons and property from damage resulting from repair efforts than if individual townhome owners are inviting contractors to the community on a piecemeal basis. This is especially true where the setback between sets of connected townhomes is very tight.

The Solution

Amend the CCRs in your connected townhome community to expand the HOA's maintenance and repair responsibility to cover all of the townhome exteriors, and the common structural, mechanical, plumbing, and electrical elements of the connected townhomes. That will cure the maintenance and repair dilemma, provide economy of scale in undertaking investigation and repair, allow for the efficient and effective pursuit of responsible parties, preserve the aesthetics of the community, protect property values, and reduce risk.

What if only a portion of the community is comprised of connected townhomes? Wouldn't the amendment unfairly burden the owners of single-family homes? The solution is to amend the documents so that only the owners of the connected townhomes are burdened by the assessments necessary to repair and maintain the townhomes and to pursue relief for any defects and deficiencies therein. But what if the HOA already had maintenance and repair obligations for the roofs? Should only the expansion of the maintenance and repair responsibility be borne by the townhome owners, or all of it?

The insurance requirements in the CCRs would likely also need to be amended so that common components of the connected townhomes are insured under the Association's property and liability coverages.

What about the expansion of an HOA's maintenance and repair responsibility to cover the exterior walls, roofs, and structural components of the single-family homes in the community? If the homes are identical in configuration and construction, this could make sense for all the reasons expressed in this article. If there is a common defect and deficiency affecting all the homes, amending the documents to expand HOA maintenance and repair responsibility could make for efficient claim pursuit.

Conclusion

There were problems easily anticipatable in Florida when developers chose for their convenience to develop connected townhomes and make them all or part of a deed-restricted HOA community rather than a condominium. There has been no statutory solution proposed to correct the anomalies created. Document amendment, however, can overcome the bulk of the ills. This could even be considered for single-family homes where the homes are consistent in configuration and construction. Consult your general counsel to get the amendments customized properly for your community. Beware of time constraints for claim pursuit which may dictate expedited action on amendment passage.

Like 14

Share



Share

Tweet

About the author






Alan E. Tannenbaum



Alan E. Tannenbaum, Board Certified in Construction Law, is the Managing Partner of Tannenbaum Scro Lemole & Kleinberg's construction and litigation sections. Mr. Tannenbaum received his undergraduate degree with honors from the University of Miami in 1975 and his juris doctorate from Florida State University in 1978.

Author's recent posts

More posts from author

- | | | |
|---|--|--------------------|
|  | Delayed HOA Turnovers - Can the Lot Owners Force Turnover? | December 6, 2021 |
|  | HOA & COA Guide to Multi-Family Re-Roofing Project | September 14, 2021 |
|  | The laws every Florida condo owner needs to know | July 2, 2021 |

Sarasota

Main Office

1990 Main Street
Suite 725
Sarasota, FL 34236

Map & Directions

941-316-0111
888-883-9441
941-316-0515 Fax

Orlando

Branch Office

BY APPOINTMENT ONLY

214 S. Lucerne Circle East
Orlando, FL 32801

Map & Directions

888-883-9441

Clearwater

Branch Office

BY APPOINTMENT ONLY

4600 140th Avenue North

Suite 180

Clearwater, FL 33762

Map & Directions

888-883-9441

Fort Myers

Branch Office

BY APPOINTMENT ONLY

1415 Dean Street

Suite 100

Fort Myers, FL 33901

Map & Directions

888-883-9441

Privacy Policy



Tannenbaum Scro © 2021 | All Rights Reserved | [Website by Think Donson](#)