

CONDOMINIUM CONSTRUCTION DEFECT CLASS ACTIONS

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Condominium living is a way of life in Florida and condominium associations are creatures of the Florida Statutes. A condominium association's capacity to sue or be sued is one of the enumerated rights created under Chapter 718. However, it is the condominium association class action Rule 1.221 which grants the association entitlement to pursue class action litigation on behalf of its members.

In asserting class action status, the condominium association is not required to plead the traditional class action elements supporting class designation under Rule 1.220. The relaxed pleading standard only requires an allegation that turnover from the developer has occurred and that the class action concerns the common interests of the association's members. In support of protections for condominium associations, the Florida Supreme Court has said, "The peculiar features of condominium development, ownership, and operation require the providing of procedural vehicles for handling disputes affecting condominium unit owners concerning matters of common interest". Avila South Condo Ass'n, v. Kappa Corp. 347 So.2d 599 (Fla. 1977).

The promulgation of Rule 1.221, Florida Rules of Civil Procedure and its amendment in 2008 to include homeowner's associations is such a vehicle. Simply stated, the Rule allows a condominium association, after control of the association is obtained by unit owners other than the developer, to institute, maintain, settle, or appeal actions or hearings in its name on behalf of all association members concerning matters of common interest. Specifically for condominium associations, this typically includes: (1) the common property, area, or elements; (2) the roof or structural components of a building; (3) mechanical, electrical, or plumbing elements serving a property or an improvement or building; (4) representations of the developer pertaining to any existing or proposed commonly used facility; and (5) protests of ad valorem taxes on commonly used facilities.

In the last sentence, Rule 1.221 specifically states that a condominium class action shall not be subject to the requirements of Rule 1.220, which is the traditional class action procedural rule. The reasoning is that Rule 1.221 effectively establishes, as a matter of law, that condominium unit owners constitute a class when they are properly represented by their condominium association. Such class exists without the necessity for pleading or proving the traditional elements of a class action as set out in Rule 1.220, including adequacy of representation. Unlike the typical class action, condominium association class actions do not require an evidentiary hearing to determine the class.

The Supreme Court's creation of this automatic class action recognizes the very strong public policy for protection of condominium unit owners by holding that:

The elements traditionally required to establish the efficacy of a class are inherent in a condominium association relationship making pleading and proof of such elements unnecessary and burdensome. This position is reinforced by the argument that individual association members are protected from capricious or

arbitrary class actions by the governing authority of the association through provisions of Chapter 718 ... as well as decisions which impose a fiduciary duty upon the governing body of such associations to afford due process and equal protection to its members.

In Re Rule 1.220(b) Florida Rules of Civ. P. (Petition to Modify), 353 So.2d 95 (Fla. 1977)

In addition to the automatic class action Rule, condominium class actions enjoy an “extended” statute of limitation. The running of any statute of limitations on suits filed by the condominium association, including class actions, is tolled until the control of the association is transferred from the developer to the unit owners. Section 718.124, Florida Statutes. The statute is intended to prevent a developer from retaining control over the association long enough to bar potential claims and/or causes of action which the unit owners might otherwise have been ready willing and able to pursue. After the expiration of the limitations period, the developer could then turnover the condominium to the unit owners and avoid any legal action. Section 718.124 prevents the developer from taking advantage in such a manner.

However, the tolling of the statute of limitations does not extend the statute of repose and the condominium association will need to file its claim within 10 years with the time running from the date of: (1) actual possession by the owner; (2) the issuance of a certificate of occupancy; (3) abandonment of construction if not completed; or (4) completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest. *See* Section 95.11(3)(c), Florida Statutes and Sabal Chase Homeowners Ass’n v. Walt Disney World, Co., 726 So.2d 796 (Fla. 3rd DCA 1999).

The protections afforded condominium association class actions and claims reflect the public policy to permitting owners of common property to band together in redress of defective construction. Mostly aimed preventing multiple lawsuits from many different unit owners, the authority to act on behalf of all unit owner allows the members and take advantage of their strength in numbers to seek remedy under one voice.