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Assessment Unequal but Legal

Question: Our condominium was constructed in 2008. We have eight units with approximately 2,450 square feet and one unit (a penthouse) on the top floor with 11,000 square feet. We all pay the same assessments, because the builder was planning on living in the 11,000 square foot penthouse, and he wrote the bylaws for the condominium.

He also wrote himself a clause in the bylaws that says that changing the payment structure would require a 90% vote. We can't reach 90% unless the penthouse owner votes for it, and so it will never change.

The penthouse owner has 1/3 of the building and pays 1/9 of the cost. This is particularly hurtful since our insurance for reconstructing the building is now \$54,000, and it will cost another \$140,000 to repaint the building. He should be paying 1/3 of these costs since he owns 1/3 of the condominium. Is this legal or can it be changed without the penthouse vote?

Dear R.B.,

The Condominium Act, at Section 718.104, Fla. Stat., provides that, for condominiums built after April 1, 1992, the undivided share of ownership of the common elements and common surplus of the condominium (and, consequently, the share of the budget) must either be based on the square footage of the unit or divided on an equal basis. Yours is divided on an equal basis, with the same amount shared by each unit regardless of size. You knew this when you purchased your unit, because the percentage of ownership and assessments is listed in the declaration of condominium, which is a public record.

While your declaration suggests that this amount cannot be changed without a 90% vote, in fact, it would really require a 100% vote; because the Condominium Act, at Section 718.110, Fla. Stat., provides that no amendment may change the "proportion or percentage by which the unit owner shares the common expenses of the condominium" unless the affected owner consents to the change. Of course, that is never going to happen.