



# CONDOMINIUM LITIGATION



THESE AREN'T THE BOARD MEMBERS YOU'RE LOOKING FOR

(HOW CONDOMINIUM LITIGATION IS LIKE STAR WARS)

It is a period of heavy litigation. Unit owners, striking from their condominiums, have won their first victory against the condominium association.

During the lawsuit, the owners managed to obtain documents critical to the condominium association's ultimate weapon, the association's general counsel, a firm willing to bill hundreds of thousands of dollars on the most insignificant dispute.

Pursued by the association's general counsel, rational members of the board of directors race toward a reasonable settlement of their dispute, the only hope that can save the condominium and restore peace to this community ...

## The Players:

The Galactic Senate – The Board of Directors. Will they embrace peace and compromise, or will they bend to the will of the evil emperor and his dark lords?



**JAR JAR BINKS**

NOT EVERYONE GETS TO BE A JEDI WHEN  
THEY GROW UP.

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AND NOW YOUNG JEDI

You will die.

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**The Emperor – The corrupt president of the board of directors. He treats the association like his personal fiefdom, and does not hesitate to send his dark lords to do his evil bidding.**

**The Dark Lords of the Sith – General Counsel. ‘Nuff said.**



**SITH  
HAPPENS**



The Jedi Council – The insurance claims handlers.  
The council oversees the struggle between the light and the dark, forever vigilant lest we lose sight of the line between ourselves and those we find unacceptably evil.



The Jedi Knights – Insurance  
counsel. Yes, we're Jedi knights.





# CONDOMINIUM LITIGATION

Conceptually, a condominium association is perfectly equipped to allow people to come together in group living to work toward a common goal of promoting the health, safety, quality of life, and property values in a community.

Of course, while the purpose and intention of condominium living is positive; it is also subject to all of the ills that plague civil society.

## DEVELOPMENT AND TURNOVER

### Condominium Formation

The Condominium Act provides significant safeguards to protect owners from the inception of the community.

Prior to turnover the developer is required to maintain adequate property insurance based on the replacement cost of the property to be insured as determined by an independent insurance appraisal or update of a prior appraisal.

Prior to turnover, the developer-controlled association may not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all non-developer voting interests, voting in person or by limited proxy at a duly called meeting of the association.

The unit owners also benefit from protections afforded against unfair and unreasonable contracts that the developer may enter into prior to turnover. “Any grant or reservation made by a declaration, lease, or other document, and any contract” made by the developer-controlled association “that provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium shall be fair and reasonable.”



## Turnover:

- (a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;
- (b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;
- (c) When all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business;
- (d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business;
- (e) When the developer files a petition seeking protection in bankruptcy;
- (f) When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members; or
- (g) Seven years after recordation of the declaration of condominium; or, in the case of an association that may ultimately operate more than one condominium, 7 years after recordation of the declaration for the first condominium it operates; or, in the case of an association operating a phase condominium created pursuant to s. 718.403, 7 years after recordation of the declaration creating the initial phase, whichever occurs first.

## GOVERNING DOCUMENTS

The community association's governing documents establish the association regime by setting forth the rights and obligations of the owners and the association.

A community association's governing documents include the recorded declaration of condominium or the recorded declaration of covenants; the articles of incorporation; bylaws; and any all duly adopted and recorded amendments, supplements, and recorded exhibits thereto.





## **BOARD OF DIRECTORS**

Members of a community association's board of directors are typically elected volunteers who give their time to help operate and manage the corporate affairs of the association.

### **Duties/ Business Judgment Rule**

The Condominium Act states, "The officers and directors of the association have a fiduciary relationship to the unit owners." Actions for breach of fiduciary duty against community association directors are subject to a four-year statute of limitations.

The Condominium Act explains the fiduciary duty held by members of the board in further detail by specifically referring to the Florida Not For Profit Corporation Act, Chapter 617.

The Florida Not For Profit Corporation Act articulates specific standards for directors. Directors shall discharge their duties (1) In good faith; (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) In a manner they reasonably believe to be in the corporation's best interests.



## Business Judgment Rule

If members of the board act within their authority and reasonably use their best business judgment, Florida courts will shield them from personal liability.

The rule that protects corporate directors from personal liability is known as the business judgment rule.

## ALTERNATIVE DISPUTE RESOLUTION

Early settlement of condominium disputes is critical. The Condominium Act provides for prevailing party fees for all disputes within the purview of the Act. Therefore it is critical that these disputes are settled early before the fees begin to drive the case.



Prior to the institution of court litigation, a party to a dispute shall petition the division for nonbinding arbitration. “Dispute” includes any disagreement between two or more parties that involves:

(a) The authority of the board of directors, under the Condominium Act or association document to:

1. Require any owner to take any action, or not to take any action, involving that owner’s unit or the appurtenances thereto.
2. Alter or add to a common area or element.

(b) The failure of a governing body, when required by the Condominium Act or an association document, to:

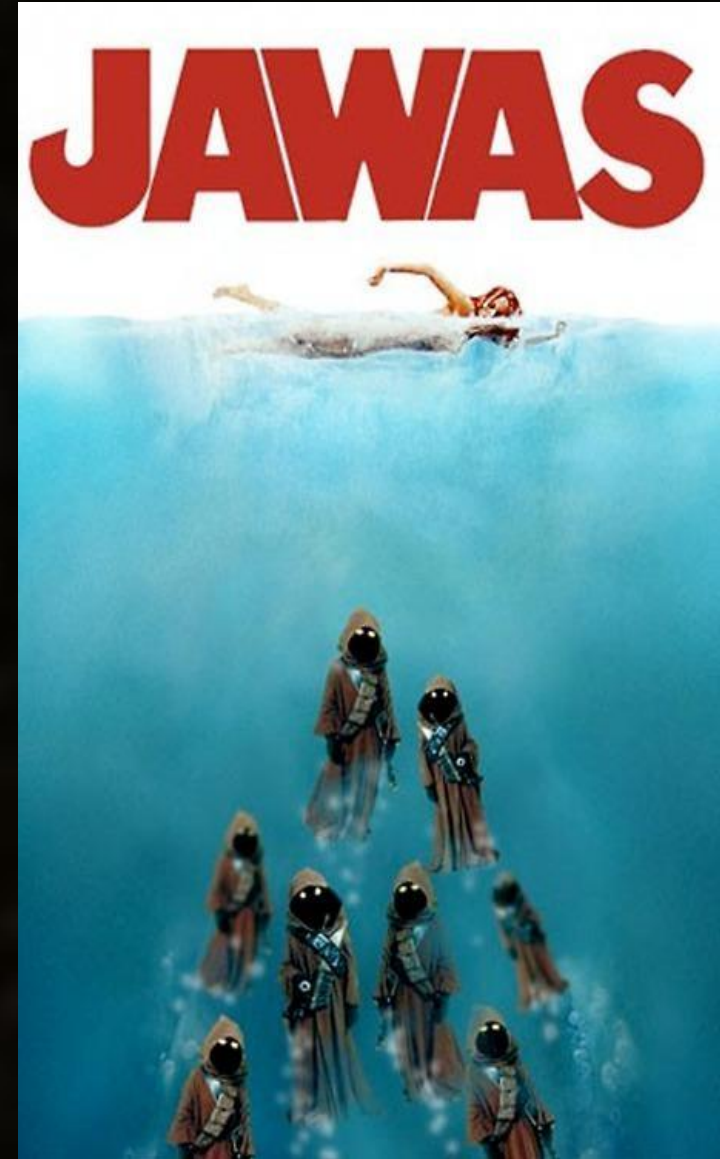
1. Properly conduct elections.
2. Give adequate notice of meetings or other actions.
3. Properly conduct meetings.
4. Allow inspection of books and records.



## TYPICAL CLAIMS

### Breach of Fiduciary Duty/ Individual Liability

In *Munder v. Circle One Condominium*, a condominium association sued the developer in both his corporate and individual capacity for failing to maintain insurance for the association and pay for it. In discussing corporate law and the business judgment rule, the court states that directors and officers are not liable for corporate acts by reason of their official relation to the corporation. The court acknowledges, however, that this immunity is subject to an exception when the director or officer commits an act of fraud, self-dealing, unjust enrichment, or betrayal of trust.



## Assessments

An owner's obligation to pay assessments is "conditional solely on whether the unit owner holds title" and whether the assessment conforms with the governing documents and Florida Statutes.

There is no statutory basis, and no argument based in case law to suggest that an owner may withhold payment of assessments because he or she dislikes the actions of the board of directors, or believes they have been negligent in the operation of the community. This is true even if the expense is due to an unauthorized act of the board of directors. *Ocean Trail Unit Owners Ass'n v. Mead*, 650 So. 2d 4, 7 (Fla. 1994).

While an owner may not forego payment of assessments because of the association's negligence in the operation of the community, the assessment itself must be valid. If an owner denies that the association properly levied the assessment, the association bears the burden of proving the validity of the assessment.

As stated by the court in *Berg v. Bridle Path Homeowners Ass'n*, “a homeowners association is obligated to show that it has properly levied the assessment in accordance with the community's declaration of restrictive covenants and by-laws when the defendant challenges the lack of compliance “specifically and with particularity.”



## Slander of Title

In the context of community associations, slander of title claims often arise in response to an association's efforts to foreclose on a claim of lien filed against a member's property. A plaintiff sets forth a claim for slander of title by establishing the malicious publication of a falsehood concerning title which impairs the marketability of property.





# REGRET

"THOSE WERE THE DROIDS I WAS LOOKING FOR"