

# Board need not share proceeds of settlement with unit owners



**HOWARD DAKOFF**  
Condo Adviser

**Q: I live in a condominium association where the board of directors recently levied a significant special assessment for repairs to the building to address developer construction deficiencies. This repair work is underway, and simultaneously the association filed suit against the developer.**

**If a financial settlement is received from the developer, does the association have an obligation to refund the settlement amount (less legal fees and other costs associated with the lawsuit) to the unit owners?**

**A:** Condominium boards have the authority to bring construction claims against a developer of the condominium property, and they also have authority to determine how to use or allocate any financial proceeds from a financial settlement with the developer or upon collection of a judgment post-trial. There is no legal requirement that the board refund to unit owners, pro rata, net proceeds of any financial settlement.

While the board could do so, it is also within the discretion of the board to transfer such amounts to the reserve funds (for future repairs of the defective components) or allocate a portion, or all, of the financial settlement to the next year's budget. Most commonly, boards transfer settlement funds to the reserve account.

**Q: I am a condominium unit owner and have requested our manage-**



GREG BAKER/GETTY-AFP

A condominium board has the power to bring construction claims against a developer of the property. Settlement proceeds in most instances are added to the reserve fund.

**ment company provide me contact information on unit owners and lessees in case of an emergency. The management company refuses to provide such information due to privacy concerns. Other management companies in the past provided this information to us.**

**A:** While the association's rules and regulations may require unit owners and occupants to provide occupancy information to the board and/or management for emergency purposes, unit owners in the association are not entitled to such information. At most, pursuant to Section 19 of the Condominium Act, unit owners are entitled to the name of unit owners, their addresses and weighted vote upon

written request stating a proper purpose.

Even if a proper purpose is stated, neither the board nor management would be required to give the unit owners' telephone numbers, email addresses or tenant information.

**Q: I live in a community association, and our board recently revised its rules and regulations. The new rules allow parking, recreation and parties in a common area driveway; however, our declaration expressly prohibits such activities in the common area driveway. Can the board do this?**

**A:** The board of a community association (or condominium association for that matter) cannot adopt rules that are ex-

pressly contradictory to the association's declaration and bylaws. Simply, the declaration and bylaws will control in the event of an inconsistency, and the rule will be unenforceable in a court of law or equity.

If a board insists on enforcing an unenforceable rule after notification the rule is unenforceable, the unit owners have the remedy of filing a declaratory lawsuit seeking invalidation of such rules. However, that option is most likely not cost-effective for individual unit owners. Of course, the unit owners could seek to elect a majority of directors to the board to only enforce rules that comply with the association's governing documents and applicable law.