

Ceiling Removal: Condo Renovations or Material Alteration?

Roberto C. Blanch, Daily Business Review



An opinion issued by the Second District Court of Appeal reversed a trial court final summary judgment in favor of a condominium association's claim that a unit owner was not authorized to remove the ceiling drywall inside of their unit, arguing that its removal amounted to a material alteration of a limited common element rather than a renovation to the interior of the unit.

In the case of *Andrews v. Shipp's Landing Condominium Association*, the appellate panel reversed the lower court's summary judgment in favor of the Marco Island condominium association. The Second DCA found that the association did not conclusively establish that the removal of the drywall ceiling resulted in a violation of the association's declaration of condominium.

The association asserted that the owners did not obtain its approval before removing the ceiling drywall from the interior of the unit and demanded that the owners reinstall the drywall. In turn, the owners responded by filing a lawsuit against the association for declaratory and injunctive relief.

While the trial court record indicates that the owners requested and obtained association approval for certain alterations to the unit, it appears that the nature of the alterations were not precisely described by the owners when seeking the association approval.

Furthermore, while the appellate opinion indicates that the owners opted to remove the ceiling drywall during the performance of the previously approved alterations, it appears that the association did not provide any testimony to counter the testimony proffered on behalf of the owners interpreting that the declaration of condominium establishes that the drywall ceiling is within the unit's boundaries.

This ruling highlights some problems that are prevalent in many community associations. First, condominium association boards and managers must familiarize themselves with the provisions of their association's governing documents establishing the boundaries of the units and common elements as well as the procedures for effectuating alterations.

Association representatives should also consider standardizing the process for unit owner requests for alteration approval, should it be determined that the association's directors have the authority to grant such approval. For instance, it appears from the opinion that the association in question did not have a clear procedure or form for the requests for renovation approvals requiring detailed descriptions of the proposed alterations.

A form with detailed questions regarding all of the elements that will be renovated should be employed, and the approvals should include stipulations that only the renovations detailed in the form by the owners are being approved and no other elements may be altered without the association's prior written approval.

Additionally, while association representatives may feel compelled to periodically inspect the work that is being performed, documentation provided by the association should clearly establish that the function of these inspections is limited to verifying the extent to which the alterations are being performed in a manner consistent with the representations made by the owner and not to evaluate the adequacy and integrity of the work.

It is also imperative for associations to act promptly when seeking recourse or corrective actions against an owner if it is determined that an alteration has been made in a manner that is inconsistent with the design approved by the association. An association's failure to do so may adversely affect its ability to successfully do so in the future.

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Read more: <http://www.dailybusinessreview.com/id=1202730097146/Ceiling-Removal-Condo-Renovations-or-Material-Alteration#ixzz3do0KyQxf>

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