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## MEMORANDUM

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**TO:** Condominium Association Clients  
of Becker & Poliakoff, P.A.

**FROM:** Kenneth S. Direktor

**DATE:** February 19, 2008

**RE:** An Important Decision Regarding Repair After Casualty

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Since 2006, the Division of Florida Land Sales consistently ruled that casualty repairs to portions of the condominium covered by the Association's casualty insurance must be paid for by the Association regardless of any contrary language in the Declaration. The cost of repairs due to wear and tear is still governed by your Declaration. Many experts disagreed with the Division on the allocation of casualty repair costs and argued that the Declaration should control, but the Division threatened Associations that refused to comply with fines and other penalties, so many chose to comply in order to avoid the expense and risk.

A few Associations chose to challenge the Division. One case is pending on appeal. The other case involved Fountains South, which was damaged by Hurricane Wilma. Fountains South refused to pay for repairs to balcony screens and asserted that the condominium documents did not require Fountains South to repair the screens. The owner complained to the Division, which investigated the dispute. The Division concluded that the screens were covered by the Association's casualty insurance, and directed Fountains South to pay for the repairs claiming that this allocation is required by the Condominium Act. The case was recently tried before Administrative Law Judge John Van Laningham. On January 10, 2008, the Judge issued a Recommended Order.

Judge Van Laningham completely rejected the Division's position, and stated that responsibility for casualty repairs or reconstruction (as any other repairs) to the unit or the limited common elements is governed by the condominium documents. He also rejected the Division's argument that the deductible is a cost of insurance, which must be shared by all owners. In other words, the Judge ruled that Florida law does not require the Association to perform casualty repairs as a common expense. Judge Van Laningham ordered the Division to rescind the notice issued to Fountains South and also stated that the Division could not lawfully impose its interpretation of the Statute which Judge Van Laningham clearly rejected. The Judge also ruled that the Division did not pass a rule on the allocation of casualty repair expenses and probably could not under the current law.

A copy of Judge Van Laningham's Recommended Order in this case rejecting the Division's position and the Plaza East decision (which sets forth the Division's position) can be read by accessing our CALL website, in the CALL Archive section under the "Important Cases"