

June 16, 2020

## To All Laguna Homeowners

### Homeowners May Not Opt Out of Having Their Windows and Sliding Glass Doors Replaced

At its May 13, 2020 meeting the Board responded to questions that had been raised regarding whether it would be possible for homeowners to opt out of having windows and sliding glass doors replaced. Based on the advice and counsel of our attorney and our insurance broker, the Board concluded it would not be feasible based on the following rationale:

- Florida law requires every property insurance policy issued or renewed on or after January 1, 2009, to provide primary coverage for all portions of the condominium property as originally installed. Our windows and sliding glass doors are parts of the condominium property as originally installed by the Developer. As such, the Association is required to insure these components - which we did.
- The law further requires that any portion of the condominium property that must be insured by the Association against property loss, and which is damaged by an insurable event like hurricane Irma, shall be reconstructed, repaired, or replaced as necessary by the Association as a common expense. This is true whether we received sufficient funds from insurance to do so or not.
- As homeowners are aware, the Association received expert reports from GCI and Moisture Intrusion Solutions/NTS which served as the basis for the appraisal umpire's award stating that most, if not all, of our windows and sliders were damaged and should be replaced. Because of these reports, and their acceptance by our insurance carrier, we do not believe we can legally allow unit owners to opt-out of replacement because of the owner's belief that his/her windows and/or sliders did not sustain damage or because they felt the installation process would be too great an inconvenience. Ultimately, as indicated above, it is the Association's responsibility to repair or replace these components and we could be held liable for not doing so.
- We did not believe it made sense to attempt replacement of 75-80% of our windows and sliding glass doors and leave dealing with the rest to homeowners. As a result, we asked for, and got, enough money to replace all our windows and sliding glass doors.
- Even if we were to allow owners to opt out of replacing their windows and sliding glass doors, homeowners would be obligated to disclose to any future buyer of their unit any release used to document their decision and the circumstances which gave rise to it. Not only would that be likely to dampen their sale opportunity, but it would also expose the Association to future liability from the new owner because of the circumstances described above.
- Given the facts related to our claim settlement, which would need to be disclosed to any potential new property insurance carrier, not replacing some windows and sliding glass doors would also expose the Association to not being able to secure

property insurance for the Association. That is a risk we were not prepared to take.

For all of the reasons explained, the Board concluded that homeowners should not be allowed to opt out of having their windows and sliding glass doors replaced. That decision was made at the meeting. We believe this position is not only our only legally defensible position but is also in the best interests of all unit owners in the Association.

## **The Laguna Board**