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Practice Area: Community Associations

This is a true story, but some minor facts have been changed. It happened a few weeks ago in New York City, but it could happen anywhere.

A condominium owner invited a friend to visit. (One newspaper later referred to the owner as “highly successful” in her profession and “well liked;” the visit as a “first date.”)

The condominium has 16 floors. (Some people think “condominium” describes apartment-style ownership in a tall building. We know that the term “condominium” does not describe the type of building; rather, it describes a form of ownership. In this form, each owner exclusively owns a unit and shares ownership in the common elements.) The young owner’s unit is on the 14th floor.

The owner and her friend went out on the balcony, through sliding glass doors off of the living room, to have a cigarette and to enjoy the summer evening.

She leaned back against the balcony railing and faced her friend. One article reported that her friend immediately urged her not lean on the railing, but it was too late. Several horizontal slats collapsed under her weight and she fell to her death. (The building is more than twenty years old and the builder-developer is protected from legal accountability by the statute of limitations.)

Initially, this was a matter for police and other emergency personnel.

The next day, amid the news trucks and shock, the City made an emergency visit to the building and temporarily “condemned” all the balconies: Signs were posted stating that access to the balconies was forbidden pending further safety review. (Did the inspectors ever inspect the balconies before this? Would it have mattered?)

Also the next day, this tragedy was a Board issue, and here is why: As is true in most Wisconsin condominiums, the balconies are “limited common elements.” That means that all the members have shared ownership in each balcony, and in the railing that collapsed, and in all the other now-condemned railings. True, only the member has the right to use the balcony outside of his or her living room. (Thus, the common element is “limited.”) And as is typical, here the member has the obligation to do minor maintenance for this balcony. But the bylaws also state that the Association is responsible to “repair and replace” the common elements, which would include the balconies and railings. Thus, responsibilities are divided.

In the uncommon law of condominiums, ownership rights and responsibilities may appear scrambled to the uninitiated. This story illustrates the point. The unit owner has the exclusive right to use the balcony, and must keep it clean. Yet it is the association which must attend to its structural elements. Labeling a part of the property as “common” or as a “unit,” and tracing the boundary between the two, does not always answer important questions, like: who can use or possess the property, who must maintain or replace it, who shall pay for its repairs, and who shall insure it.

There is no moral to this mainly-true story (except, perhaps, that the neat, “common element-unit” distinction is not always useful when dealing with building issues.) The Board did not design or build the railings. There was an occupancy permit. Absent a previous warning, the board had no insight (and likely no obligation,) to test the railings. Further, the association is not a guarantor or insurer of its members. It works within a budget and is subject to owner input and other limitations of a part-time, volunteer Board. One is only asked to do the best one can.

Insurance will handle most financial consequences of this terrible loss. Legal counsel will protect the Board. But insurance and protection from liability are last lines of defense, not first lines. Safety is always the first priority. For now, the Board will need to address this new issue, of the safety of building balconies.
