

BASULTO ROBBINS & ASSOCIATES, LLP

Community Association Lawyers

14160 N.W. 77TH COURT, SUITE 22

MIAMI LAKES, FLORIDA 33016

PHONE (305) 722-8900 FACSIMILE (305) 722-8901

WWW.BRLAWYERS.COM



VIA ELECTRONIC MAIL

jcperalta@burleighhousecondos.com

October 17, 2016

Burleigh House Condominium Association, Inc.

7135 Collins Avenue

Miami Beach, Florida 33141-

Attn: Jean Carlos Peralta, LCAM

Re: Attorney Opinion Letter – Material Alteration (window and door vote) - Chapter 718,
Florida Statutes

Dear Board of Directors:

This opinion is furnished to you for the purpose of advising Burleigh House Condominium Association, Inc. (the "Association") of the results of the recently concluded material alteration vote (for replacement of existing windows with hurricane impact, removal of the 'knee wall', and repainting of the building exterior).

I hereby certify that I am an Board Certified Real Estate Attorney in good standing with the Florida Bar, and I base this attorney opinion letter upon a thorough review of the Declaration of Condominium, and amendments thereto, *Florida Statutes*, *Florida Administrative Code*, existing case law, declaratory statements from the Division of Land Sales, Mobile Homes and Condominiums, and arbitration orders from the Division of Land Sales Mobile Homes and Condominiums through October 17, 2016 and a total of two hundred and seventy seven (277) material alteration votes.

Based upon an examination of the above-referenced items, I find the following:

§718.113(2)(a), *Florida Statutes*, states, "Except as otherwise provided in this section, there shall be no material alteration or substantial additions to the common elements or to real property which is association property, except in a manner provided in the declaration as originally recorded or as amended under the procedures provided therein. If the declaration as originally recorded or as amended under the procedures provided therein does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the

alterations or additions. This paragraph is intended to clarify existing law and applies to associations existing on October 1, 2008.”

According to Article V, Section 1, Subsection b of the Declaration of Condominium (as amended by amendment recorded in Official Records Book 8494, Page 902, of the Public Records of Miami-Dade County, Florida), “Alteration and Improvement. After the completion of the improvements included in the common elements which are contemplated in this Declaration, there shall be no alteration nor further improvements of common elements without prior approval, in writing, by record owners of majority of all apartment and shop unit owners. The cost of such alteration or improvement shall be a common expense and so assessed.”

Thus the threshold for passage of a vote for material alteration is a mere majority. Burleigh House Condominium Association, Inc. is a mixed use condominium consisting of three hundred and sixty (360) residential units and eleven (11) commercial units. Two (2) condominium units are owned by the condominium association – Unit 334 and Unit 525 – and are deducted from the total voting interests.¹ Thus, one hundred and eighty-five (185) affirmative votes would be required to effectuate a material alteration of the condominium.

Burleigh House Condominium Association, Inc. was able to obtain a total of two hundred and seventy-seven (277) ballots both in favor and against the material alteration.² Prior to the disqualification of any ballots, there are two hundred and fifteen (215) ballots in favor of the material alteration, seventy-one (71) ballots against the material alteration, and one (1) ballot in which it cannot be determined the will of the Unit owner.

Review of the ballots only yielded the following discrepancies:

‘Yes’ Votes:

- 532 – Ballot executed by non-owner
- 615 – Ballot executed by non-owner (actually owns Unit 416)
- 621 – Unable to ascertain if executed by officer/director (Delaware LLC)
- 635 – Unable to ascertain if executed by officer/director (Panama Sociedad Anonima)
- 732 – Ballot executed by non-owner (individual not listed on Sunbiz)
- 824 – Ballot executed by non-owner (individual not listed on Sunbiz)
- 901 – Ballot executed by non-owner
- 924 – Ballot executed by non-owner (individual not listed on Sunbiz)
- 934 – Ballot executed by non-owner under power of attorney (POA not attached)
- 1022 – Ballot executed by non-owner (individual not listed on Sunbiz)

¹ §718.112(2)(b)(2), *Florida Statutes*

² The commercial unit owner who owns eleven (11) commercial units cast one vote, which is valid for all eleven (11) units owned.

1206 – Ballot executed by non-owner (individual not trustee of trust)
1422 – Ballot executed by non-owner
1726 – Unable to ascertain if executed by officer/director (Delaware LLC)
1806 – Ballot executed by non-owner (individual not listed on Sunbiz)
1832 – Ballot executed by non-owner (individual not listed on Sunbiz)
PH33 – Ballot executed by non-owner under power of attorney (POA not attached)
Total 16 votes

‘No’ Votes:

1016 – Ballot executed by non-owner
1731 – Unable to ascertain if executed by officer/director (Delaware LLC)
1734 – Ballot executed by non-owner under power of attorney (POA not attached)
Total 3 votes

‘Unable to Ascertain’ Vote:

1512 – Ballot is incomplete and unable to ascertain will of the voter.
Total 1 vote

Even in the event of deduction of all of the irregular ballots, Burleigh House Condominium Association, Inc. would be left with one hundred ninety-nine (199) written consents in favor of the material alteration, sixty-eight (68) written consents against the material alteration, which would be sufficient for the Association to make the designated material alterations to the common elements.

This opinion is provided for the sole purpose of assisting Burleigh House Condominium Association, Inc., in determining its obligations pursuant to the material alteration vote and without prior written consent, may not be relied upon by any person or entity whatsoever, other than Burleigh House Condominium Association, Inc., their agents, successors and/or assigns.

Should you have any further questions or concerns, please do not hesitate to contact me at the below referenced telephone number or via my cellular phone at (954) 592-7131. Thank you in advance for your consideration with regards to this matter.

Sincerely yours,

Russell M. Robbins, Esq.

RMR/II