

David Arthur Walters< miamimirror@gmail.com>

Miami Beach Floor Permits Update

Construction Services

To: miamimirror@gmail.com

Sun, Sep 1, 2013 at 4:56 PM

Mr. Walters,

Google: flooring permit affidavit Miami Beach

You are looking for Flooring Permit Affidavit-06-17-13 PDF

This document is showing that the building department now wants soundproofing underlayment specs, and a copy of the flooring contract. As far as I know no manufacturer's specs are in any older flooring permits. What a devastating blow to condominium property values if this were ever to become common knowledge.

I hope the city doesn't retaliate against you. You have a perfect story for national media to pick up.



Flooring Permit Affidavit

All commercial properties, including condominium units, are required to obtain a permit for flooring (tile, wood, marble). To obtain a permit for flooring please provide the following documents to the permit counter.

- 1) Permit Application
- 2) Flooring Permit Affidavit
- 3) Copy of the soundproofing manufacturer's literature with assembly value that complies with the Florida Building Code highlighted
- 4) Floor Plan indicating the area of work
- 5) Copy of Contract/Agreement between client and contractor

No review will be required for flooring permits with the exception of terraces, porches, lobbies and other public spaces.

FLOORING PERMIT AFFIDAVIT

Plan # _____

Address of Property _____

Product/Material _____

I, _____, the qualifying agent # _____ for _____
(Name) (Contractor License Number) (Company Name)

hereby certify that all requirements of the Florida Building Code, Chapter 12, Section 1207 – Sound Transmission, have been met for the above mentioned location.

1207.2 Air-borne sound. Walls, partitions and floor/ceiling assemblies separating *dwelling units* from each other or from public or service areas shall have a sound transmission class (STC) of not less than 50 (45 if field tested) for air-borne noise when tested in accordance with ASTM E 90. Penetrations or openings in construction assemblies for piping; electrical devices; recessed cabinets; bathtubs; soffits; or heating, ventilating or exhaust ducts shall be sealed, lined, insulated or otherwise treated to maintain the required ratings. This requirement shall not apply to *dwelling unit* entrance doors; however, such doors shall be tight fitting to the frame and sill.

1207.3 Structure-borne sound. Floor/ceiling assemblies between *dwelling units* or between a *dwelling unit* and a public or service area within the structure shall have an impact insulation class (IIC) rating of not less than 50 (45 if field tested) when tested in accordance with ASTM E 492.

Signature: _____

Print Qualifier Name: _____

State of Florida, County of Miami-Dade
Sworn to and subscribed before me this _____, Day of _____, 20_____

By _____

(SEAL) _____

Personally known or Produced Identification

Type of Identification _____

Attach:

-Copy of soundproofing manufacturer's literature with assembly value that complies with the Florida Building Code highlighted

-Floor Plan indicating the area of work

-Copy of Contract/Agreement between client and contractor

MIAMI MIRROR - TRUE REFLECTIONS

September 04, 2013

Jimmy Morales, City Manager
CITY OF MIAMI BEACH
Miami Beach, Florida

Subject: Noisy Floors

Mr. Morales:

I received a message from one of my anonymous sources yesterday, a source whose detailed knowledge of noisy floors led me to believe that he is a contractor or someone who works for the Building Department. He said he hopes that the city does not retaliate against me for having a perfect story for national media coverage. I doubt if it is that perfect, but I have been contacted by reporters.

The gentleman whose identity in the attached file is "Construction Services" remains anonymous for fear of retaliation against himself and/or other local residents. Communications from two other local residents is in the file, and their names have been redacted to protect them from retaliation.

As a matter of fact, over the last few years I have been contacted by many people who asked me to look into certain issues for them because they feared retaliation if they identified themselves to public officials. There were so many of them that I wrote an article entitled 'What Miami Beach Residents Fear The Most.' Namely: Retaliation. I expressed my opinion at the time that the fear was groundless. However, I am inclined to change my mind in the light of recent events, which I hope will be brought to a satisfactory conclusion for everyone concerned with your assistance.

You once referred to the opinion of a Greek philosopher: I believe he was Aristotle. Perhaps you may recall from your study of Greek history the Oration of Demosthenes on the Crown, wherein he defends against Aeschines' malicious prosecution, which was intended to deny him a perfunctory honor.

I recall that Demosthenes said it was easy to defame someone because people enjoy hearing calumny. On the other hand, an audience does not like to hear self-praise. Therefore it is difficult to effectively defend against libels. I would add that it is especially difficult when the libeler accuses you of libel and has the overwhelming advantage of a license to practice law, and you do not have \$250,000 to hire attorneys.

I assure you that I am not an enemy of our sunny city nor am I an enemy of its attorney. I am an author who occasionally practices journalism for what I believe are good causes: to inform, to expose dangers, and so on, for the sake of improvement. That task is made extremely difficult when a public official threatens to sue me for asking questions and/or recording his responses and giving my fair opinion thereon.

The file attached on noisy floors represents a little bit of my journalistic work. I believe that I should be entitled to a tiny bit of credit for my investigation including communications with the Building Department, and publication of my findings on noisy floors and what can be done about them. Construction Services alerted me that my efforts have led to some improvement in

MIAMI MIRROR - TRUE REFLECTIONS

procedure at the Building Department in respect to permitting of soundproofing underlying floors, called "underlays." I understand that now includes the use of an affidavit to certify that minimum specifications are met.

I have no doubt whatsoever that city officials will deny that I had anything to do with the improvement, that my effort was merely coincidental, but you may consider my intentions, which were good, contrary to the statements circulated by your legal department. And I have no doubt whatsoever that the city attorney would respond in a customarily insulting manner to this assertion, and with sovereign impunity, so I will not bother sending him a copy.

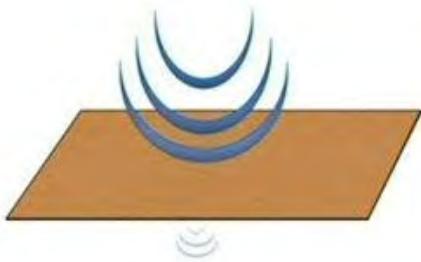
As for retaliation for exposing noisy floors, which Construction Services believes may become a very noisy issue when the truth is out, apparently the city and its officials have nothing to fear inasmuch as the city and its officials have sovereign immunity for the consequences of their negligence, at least according to the city attorney; and he may very well be right if lawyers remain terrorized by the irrational but authoritative decision in *Trianon Park Condominium v The City of Hialeah* (1985).

As for the noise, one solution is to be more respectful of others. Of course people have different levels of toleration, and cultures have something to do with that. What I believe is noise is urban music to the ears of some people who are being deafened by it. A neighbor of mine from Cuba says Cubans are the noisiest of all people. A friend from Bangkok disagrees. New Yorkers are proud of their noise, or so some say.

Of course adequate soundproofing along with noise ordinances can help prevent clashes and even mayhem and murder over the definition of noise. Affluent people try to shield themselves from nuisances by moving into luxury condo apartments on Miami Beach. Will they be disappointed?

Sincerely,

David Arthur Walters



A 10-Decibel Reduction of Sound Transmission Equates To A 50% Reduction Of Audible Noise!

Soundproofing Floors - Are noisy Miami Beach condos and apartments up to Code?

David Arthur Walters<miamimirror@gmail.com>

Sat, Oct 6, 2012 at 10:13 AM

To: "Scott, Stephen" <stephenscott@miamibeachfl.gov>

Cc: "Gonzalez, Antonio" <AntonioGonzalez@miamibeachfl.gov>

October 6, 2012

Stephen Scott, Director

BUILDING DEPARTMENT'

City of Miami Beach

RE: Soundproofing Floors – Is Miami Beach up to Code?

Mr. Scott:

I beg your pardon for disturbing you with what seems to be a touchy subject in the real estate industry, something that people tend to make a great deal of noise about when disturbed: inadequate soundproofing in their apartments and condos. The fault is in part attributed to flooring underlayment, the insulating material laid between the subfloor and the finished floor of linoleum, asphalt tile, etc.

Both old and new buildings are the source of complaints. Miami Beach has thousands of units in older buildings which once had carpeting, which has a high acoustic impact rating, but the floors are now finished with tile, which has little or no impact rating. And flooring in new building is also allegedly approved with substandard underlayment. The result is stressful to occupants. Indeed, as I write this, I can hear the television and conversations in the apartment below mine, and my chair is vibrating with the floor, yet my landlord insists that the new flooring he installed awhile back was up to code.

Please correct me if I am mistaken, but I believe that City of Miami Beach inspectors are doing visual inspections of floor underlays instead of looking at underlayment test reports provided by manufacturers. As everyone responsible should very well know, such reports are provided by manufacturers to show that their product will meet building code and condominium requirements. Without looking at the manufacturers' test reports, and knowing baseline rating of the bare subfloor, and whether or not the ceiling below is insulated or not, no one can know what underlayment to install on a floor. Finally, the hard surface flooring must not touch the walls or baseboard otherwise vibrations will pass into the wall structure and connected units.

Chapter 12 of the 2004 Florida Building Code states that flooring must have an impact insulation rating (IIC) of 50. Yet it appears that most Miami Beach floor permits and inspection reports do not indicate exactly what product is being used as an underlayment, but only state the general term, meaningless by itself, 'soundproofing.' The 2001 Florida Building Code did not specify floor soundproofing, but the city was collecting permit fees and inspecting floors anyway. I was told that the city did make a local amendment to the 2001 Code in respect to underlays; however, inspections since then were allegedly a mere courtesy, a casual policy that would certainly be discourteous to the person who lives below or next to a botched installation.

A botched floor installation would then apparently become a private matter due to the official neglect of the code, with the city attorney insisting as usual that the city is not liable for its negligence in permitting and inspections. Now according to the information I have received, the condominium boards are not enforcing their own rules in allowing botched installations to exist. The older, 1960s buildings only had tile in the kitchen and bath areas and were carpeted elsewhere. If the real estate listings are examined for buildings recently converted to condominiums, for instance the Mirador, dozens of units for sale no longer have carpeting: they are fully tiled. If a building like the Mirador has an 8-inch concrete slab with no underlayment under a tile floor, I believe it would have an Impact Insulation Class of around 32, which is an atrocious rating.

At least the *City of Miami* attempts to enforce the building code in respect to flooring underlayment, as can be seen from its October 2011 'Instructions for Flooring Permits' and 'Flooring Permit Affidavit' forms. I would like to say that the *City of Miami Beach* does likewise or will begin doing so if it does not as is alleged. Therefore I ask that you brief me on the present practice, letting me know if improvements are in order if my understanding of the matter is correct.

Very truly yours,
David Arthur Walters
Cc Antonio Gonzalez

CITY OF MIAMI

Instructions for Flooring Permits

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- 1) City of Miami building permit application
- 2) Flooring Permit Affidavit
- 3) Copy of manufacturer's literature
- 4) Sample of Product attached to the Flooring Permit Affidavit

5) Copy of Contract/Agreement between client and contractor
No review will be required for flooring permits. Rev. 10/2011

FLOORING PERMIT AFFIDAVIT CITY OF MIAMI

Plan # _____

Address of Property _____

Product/Material _____

I, _____, the qualifying agent # _____ for
(Contractor License Number)

_____, hereby certify that all requirements of Chapter 12, Section 1207 – Sound
(Company Name)

Transmission of the Florida Building Code, have been met for the above mentioned location.

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Signature: _____

Print Qualifier Name: _____

State of Florida, County of Miami-Dade

Sworn to and subscribed before me this

____ Day of _____, 20 ____.

By _____

(SEAL) _____

Attach Sample of Product,

Personally known or Produced Identification Manufacturer's Literature,

Type of Identification _____ Copy of Contract/Agreement



[Sound Answers Flooring Discussion.pdf](#)

446K



Instructions for Flooring Permits

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No review will be required for flooring permits.



FLOORING PERMIT AFFIDAVIT

Plan # _____

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State of Florida, County of Miami-Dade

Sworn to and subscribed before me this

____ Day of _____, 20 ____.

By _____

(SEAL) _____

Personally known or Produced Identification

Type of Identification _____

Attach Sample of Product,

Manufacturer's Literature,

Copy of Contract/Agreement

Gonzalez, Antonio<AntonioGonzalez@miamibeachfl.gov>
To: David Arthur Walters <miamimirror@gmail.com>
Cc: "Scott, Stephen" <StephenScott@miamibeachfl.gov>

Fri, Oct 12, 2012 at 7:24 PM

Mr. Walters: The current practice in the City of Miami Beach covers both the product specifications review and inspections to ensure that the code requirements are met. When the permit application along with the product specifications for the flooring are submitted, there is a review and an approval of the permit if it meets the code requirements. After the permit is issued and the installation begins, the contractor calls for an in –progress inspection where the soundproofing is inspected and approved if it matches the specifications previously approved by the plans examiner. Subsequently, a final inspection may be approved after the finished flooring is completed. Please note that the transmittance of sound is affected by many factors including the frequency of the sound being produced, the sound insulation type, finished floor surface materials, the complete floor-ceiling assembly, possible sound paths through the structure other than the floor-ceiling assembly, etc. Regards,

MIAMIBEACH

Tony Gonzalez, *Operations Manager*
BUILDING DEPARTMENT
1700 Convention Center Drive, 2nd Floor; Miami Beach, FL 33139
Tel: 305-673-7610 x6716 /Fax: 786-394-4091 www.miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community

16 October 2012

Antonio Gonzalez,
Operations Manager
BUILDING DEPARTMENT
City of Miami Beach

Re: Best Practices – Soundproof Floor Underlays

Mr. Gonzalez:

Thank you very much for your 23 October response to my questions about flooring underlayment, whether the material approved in practice by the Building Department and applied by contractors is always up to the building code standard of 50 Impact Insulation Class or Sound Transmission Class according to field testing by inspectors, whether manufacturers' specifications and samples of the soundproofing material are submitted with applications for permits, and whether affidavits are submitted by contractors certifying that the relevant code requirements for soundproofing have been met.

Your general response looks good on paper, as a statement of policy, but it does not specifically address whether or not the above best practices are being carried out for all flooring permits, and I have been given reason to doubt it.

It appears to me from what little I have learned about the subject that it is difficult to obtain ratings of the materials themselves. Furthermore, building officials probably do not know the specific characteristics of the physical structure where the flooring is installed, which, as you have pointed out, would influence the impact of sound waves no matter what insulating material is used. Therefore a field test for every floor installed would be required to ascertain the practical result.

You may assuage some of my doubts by examining a flooring permit I have pulled from the fishbowl, B1104986, for flooring installed at Continuum 2602. It appears that the permit was approved on the day of application, so everything must have been in perfect order and the special acceleration fee paid. Neither permit nor application shows what type of soundproofing material would be used and what its specifications were. I see no mention of a sample submitted. The Clerk did not include the plans submitted, so perhaps they mention the type of material at least, e.g. recycled rubber? Neither did I receive a copy of the inspector's report to see exactly what type of material he approved, which might have been different from the kind first intended, and indicating whether or not he conducted a field test before approval.

Although I have not researched the case law, I am aware of some arbitration and litigation over complaints about inadequate soundproofing of floors in condominium buildings. The jury is still out on the question of whether our modern ears have become more sensitive to noise or if we have just become a noisier race. But one thing is for sure, the race is growing increasingly litigious. I fear that noise may drive people mad enough to even name the city if there is some cause to believe we are negligent in our building permitting and inspection process, even though

the city attorney has said that the city is never liable for same. I believe we should do the best we can to protect everyone concerned, first of all, those whom the building codes are written to protect, and that we should at the very least have a definite record in every case that we have done our very best. And perhaps go further than the best practices noted above, to getting some sort of waiver from owners, contractors, and condominium associations.

Please let me know your thoughts on the points I have raised.

Sincerely,

David Arthur Walters

Construction Services @ Comcast.net Sun, Oct 14, 2012 at 11:32 AM
To: David Arthur Walters <miamimirror@gmail.com>

I went to the building department records department months ago and requested several floor permit records in a specific building. No underlayment manufacturers test data was in those records, although those records did fall within the 2001 Florida Building Code Twilight Zone years.

I've been trying to compile a list of all manufactures test data and I've been unsuccessful on most. Most underlayment manufacturers don't readily post their laboratory test results. I have no clue how these tile installers are getting their manufacturer data when I cannot. Q.E.P. Co., Inc. which sells a cork product out of Home Depot as so far stated they do not have test data for their 1/4" cork product on a concrete slab without a suspended ceiling below. I will ask them again.

In some cases where the contractor has covered the underlayment before getting the underlayment inspection I'm seeing that the inspectors requested a letter from the condo board before they would approve and final the permit. I don't know how a condo board letter could certify a floor as meeting code without a acoustic engineer doing a field test.

B0903067 1330 West Ave. Approved on 7/23/2009 Inspector's Comment "letter from condo for sound proofing provided"
B0505773 1020 Meridian Ave. Approved 1/9/2006 "condo letter for soundproofing provided".

B1204085 1200 West Ave. Failed on 9/26/2012 "JB-NEED N.O.C. Wrong Soundproofing product used". How did they use the wroing product if the product was already approved by the building department?

A manufacturers representative told me that they have now way of knowing what underlayment I need unless I had the baseline figures for the slab that their product was going on. I don't believe any condo boards or the building department know what the baseline figures are for these buildings they are offering permits for. Essentially everybody is guessing. Millions in permit fees and it's possible nothing was done correctly.

"Furthermore, far too few local building inspection departments insist that field test be conducted to validate that the appropriate sound isolation measures have been actually met, before a certificate of occupancy is issued, certifying the dwelling is in compliance with the building code."

http://www.acousticalsurfaces.com/soundproofing_tips/html/noisy_neighbors.htm

I believe all these new buildings and condo conversions were never tested prior to the certificate of occupancy. I believe the Continuum North Tower will not have any record of a test result even though it is a brand new highrise that would have to meet modern codes. I wish somebody would prove me wrong in all this.

From **Construction Services** Mon, Oct 15, 2012 at 12:21 PM
To: David Arthur Walters <miamimirror@gmail.com>

Condos cover the problem up by claiming they were not responsible for the floors, the units were originally built with tile, old building and old construction and that some people are sensitive to noise. All hidden internally within the buildings.

In order to get a floor tested by an acoustic engineer you would have to have the cooperation of the owner. If they don't let the engineer in the unit they are not going to be able to test the floor.

The building department violations section can write a violation. As you know violations in Miami Beach have a way of getting voided out. The legal fees the condo faces to get a floor replaced once it is installed are huge. Nobody wants to acknowledge this problem. Dirty secret in the condo world.

From **Construction Services @ Comcast.com** Tue, Oct 16, 2012 at 10:31 AM
To: David Arthur Walters <miamimirror@gmail.com>

I would love to give you the location and paperwork on the building I lived in, but I'm afraid the new tenant will probably receive retaliatory noise if I the building is mentioned. The building I lived in had many complaints throughout the years. Instead of fixing the issue the board tells everybody to call the police or code. Even though I was complaining about noise I had the police called on my unit three times.

Several years ago a renter and board member both complained of noise. The renter was thrown out but wrote a very good complaint for the court. He complained of deliberate harassment by board members. The form of harassment was noise.

I wonder if this renter was making a lot of noise or the floor was done wrong? Unit 602 doesn't have any permits records.

Yelp is showing noise complaints for Opera Towers in Miami. Real estate listings are already showing a unit with carpet removed and red paint on the floor. This building is only several years old.

Condos are regulated by F.S 718. Very little regulation.

“Guide to Airborne, Impact and Structure Borne Noise Control in Multifamily Dwellings,” published by the U.S. Department of Housing and Urban Development (HUD) in the 1960s shows that we went backwards in controlling noise. The federal government was concerned about this because they are insuring the loans on many of these multifamily units. If they only knew about Miami Beach.

Resident B Sat, Nov 10, 2012 at 8:22 PM

To: "miamimirror@gmail.com" <miamimirror@gmail.com>

David, I have read some of your blog articles and I would like to ask if you have any referrals related to legal counsel in Miami Beach that is familiar with the civil complaint issues related to "noisy neighbors". I am well versed in the STC requirements and find myself in a personal situation that will require civil litigation in order to blend together a non permitted / botched floor installation of an adjacent neighbor. I have filed the necessary city complaints. Had the city out to inspect and have been left with a report noting my only recourse is to sue my neighbor and association. Looking for any information related to finding an experienced legal team or adviser. Thank You Resident B

David Arthur Walters< miamimirror@gmail.com> Sun, Nov 11, 2012 at 10:23 AM

To: Resident B

I shall get back to you asap. I am presently drafting a learned paper "Sovereign Immunity - The Cultivation of Negligence by The City of Miami Beach." Officials may be negligent across the board with impunity. Jose Smith states the city is not liable per common law.

Resident B

Sun, Nov 11, 2012 at 10:58 AM

To: David Arthur Walters <miamimirror@gmail.com>

Thank you. I have done quite a bit of research on this issue and while many will shy away from the challenge - between the neighbor - the City - and costs - I have made a commitment to follow this issue to a resolution. So please when you get a chance any insight would be helpful. I am looking for legal representation that you may be aware that has experience in this arena.

Thank You

David Arthur Walters< miamimirror@gmail.com> Mon, Nov 12, 2012 at 2:56 PM

To Resident B

I have noticed a couple cases between owners and owners and associations on the subject but lawyers have far superior legal research tools. I shall keep my eye open for a good lawyer in that area. I have an anonymous source who is knowledgeable and if you wish I shall send your email address to him if he is not you He is aggravated by the lack of compliance.

Resident B Mon, Nov 26, 2012 at 8:34 PM

To: David Arthur Walters <miamimirror@gmail.com>

Yes and thank you for keeping me in mind. Any referrals would be helpful. I have reached out to 5 firms and have not found the proper representation as of yet - many say they are interested but few have the background or experience. It's amazing that this is such a taboo issue given the laws that are on the books.

David Arthur Walters< miamimirror@gmail.com> Tue, Nov 27, 2012 at 10:10 AM

To: Resident B

I know of two heavyweights who know construction law like the back of their hands. I shall send your info to them in case they know someone whom you may contact for a preliminary discussion of your issues. David



David Arthur Walters< miamimirror@gmail.com>

Soundproof floor in Miami Beach Conominium

From **Resident A**

Fri, Jan 4, 2013 at 7:26 PM

To: "miamimirror@gmail.com" <miamimirror@gmail.com>

Dear Mr. Walters:

I was reading your article of October 16, 2012 and found to be interesting to know that someone like you has "hit the nail on the head "with this nightmare I applaud you for taking interest on this issue; however, there is another area that needs to be investigated, namely, the role that the Condominium Association or the Board of Directors plays.

My understating is that most of the Condo associations in Miami Beach have Rules & Regulations with regard to soundproof floor, i.e., the owner of the unit must present to the association the City permit the type of approved floor insulation the contractor insurance and other documents and that is great providing that the City determines the correct floor insulation. But the problem is when the owner does not follow the rule & regulations and the association does not enforce the Miami Beach building Code nor the association rules & regulation

My wife and I we live in a Miami Beach Condominium since we bought in 1991 for the first 4 years we had no problem of floor noise with the upstairs neighbor because the bedrooms had carpets. From 1994 to 2005 the upstairs unit was sold and began the remodeling including changing the bedrooms floors from carpet to wood floors then it began the floor noise, although the noises were evident when the owner came to their unit from oversea where they reside. It (was) during these periods that we started complain about the floor noise to the association with no results we knew that the association did not had the supporting documentation for the remodeling nor for the changing of the floor. On 2005 again the unit was sold and again some remodeling was done including the floor by changing the wood floor to marble floor. It had been seven years of hell especially on my wife because she suffer headache if she does not get enough sleep. These new neighbors are inconsiderate since they walk laud ,move furniture, hammering and drill noises at late night (10-11 pm)and early morning (1-3 am) and we believe they do this on purpose because we are constant complaining to the association, we have sent mails & email to board & managers with no response or the say we look in to it.

Finally we were so fed up that we went to the Miami Code Enforcement and when we explain our problem they told us they do not handle this floor noise problem

when there are two owners involved, and the association was responsible for solving the problem.

Recently, I went to see the president of the association as a follow up of a letter that we sent her office; she understood our problem and promised to help us so far we got some request from the Mgr. of the association that the upstairs neighbor had agreed a noise proof test without indicating how, who, & when the test will be performed. We are of the opinion, since we know that the association does not have the permits or the approvals for the floor changes they just keep postponing, and they do not have the guts to impose monetary fines to the upstairs owner.

We went to see a lawyer to see if we can file a lawsuit to both the association and the upstairs owners he indicated the initial cost would around \$1400.00 with a \$5000.00 retainer. We cannot even have a monetary lawsuit; we lose everywhere. As to the test we did decline to the association since we know the floor does not have insulation, no we trust who will performed the test and who could the expert in floor noise? (sic)

Mr. Walters, we hope that you can give us some guidance or know an attorney that can be reasonable with his fee. Thank you

Resident A

Sent from my iPad

David Arthur Walters< miamimirror@gmail.com>

Sat, Jan 5, 2013 at 12:04
PM

To: Resident A

Cc: "Becker, Alan" <abecker@becker-poliakoff.com>,
<ATannenbaum@tannenbaumscro.com> <ATannenbaum@tannenbaumscro.com>

Dear Resident A:

Thank you for stepping forward on this issue as several others have done. The first gentleman who directed my attention to the lack of enforcement of sound reduction codes was very well versed on the issue but preferred to remain anonymous.

I have heard that the lack of remedies for the violations has even resulted in "sound wars" in some buildings. I myself have toyed with the idea of forming an LLC called Noise Busters LLC to deal with the noise issues.

This particular issue in my opinion is due to a widespread neglect of building codes in general, especially in Miami Dade County. Just this Christmas an interior designer who does business throughout the state expressed to me his dismay with the

inconvenience, negligence, and arrogance of City of Miami Beach and the City of Miami Building Departments, saying that "doing business down here is like doing business in a foreign country."

But outrage over the negligence is seldom publicly expressed by professionals and businesses because they fear retaliatory consequences. And, as everyone in the industry including building inspectors and their municipalities seem to know, the government is immune as per judicial legislation in 1985, *Trianon Park Condominiums v the City of Hialeah*, a landmark decision that condoned and serves to cultivate negligence. As for condominium associations, their lawyers seem to be adept at wiggling them out of liability on one ground or another. I would not be surprised if some day an association lawyer argues sovereign immunity for condominium associations on grounds that they are quasi-governmental entities.

The great majority of people, although familiar with noise problems, have never heard of soundproofing codes - which are really sound reduction codes - nor are they familiar with the negligence of building department officials in respect to the codes in general. Sometimes something awful happens that makes the news. Sometimes the FBI arrests an official for taking pecuniary advantage of his sovereign "discretion." The relatively few victims who have had painful consequences are, as you well know, must raise retainers for lawyers, and lawyers with expertise in this field, many of whom work for the sizeable entities that one might want to hold liable, do not come cheap.

I have addressed the Florida Bar on sovereign immunity, in the hope that the Bar, as a matter of principle, may urge an amendment of the statute appertaining to that subject. That the Florida Bar would take a stand on the principle is unlikely, but not impossible.

Perhaps if enough people like you come forward, an expert attorney might represent injured parties in the public interest or take enough cases of the same kind to gain efficiency and spread the fees around. One attorney with expertise on the general subject who came to my attention is Alan Becker. He along with Alan Tannenbaum was on the losing side of the *Trianon Park* decision, but they won the case all the way up to the Florida Supreme Court. I understand that Mr. Becker helped write Florida's condominium law.

Mr. Becker or Mr. Tannenbaum may be able to suggest or recommend some course of action, or refer you and others to particular attorneys or firms who may be able to work around the fee hurdle, so I shall take the liberty of sending this email exchange along to them.

Best regards,

David Arthur Walters

Resident A

Sun, Jan 6, 2013 at 5:00 PM

To: miamimirror@gmail.com

Cc: abecker@becker-poliakoff.com, atannenbaum@tannenbaumscro.com

Dear Mr. Walters:

Thank you for quick response and I am glad to know that several others had step forward on this issue of lack of enforcement of sound proof codes.

I definitely agreed with you if we had enough people to come forward and with the expertise of Mr. Alan Becker and Mr. Alan Tannenbaum we could gain efficiency and spread the fees.

Presently, I am retired and I can offer my time for any research or investigation work that may be required to support any efforts in your part or the attorneys for the benefit of the public interest.

Best regards

Resident A

Sun, Oct 21, 2012 at 10:48 AM

Construction Services

To: David Arthur Walters <miamimirror@gmail.com>

A gigantic fraud in which the building department profits nicely. They assign responsibility over to the owner and the condo board. Then the condo board covers up the problem when they get complaints. Most the cheap rental advertisements I've seen are bait and switch. In the old days you could find yourself a nice quiet rental building with tile in the bathroom and linoleum in the kitchen

Mon, Oct 22, 2012 at 11:15 AM

David Arthur Walters< miamimirror@gmail.com>
To: Construction Services

Trying to line up a legal liability perspective in this note to attorney: I am a journalist researching a story on inadequate underlayments i.e. those that are not up to code, in the City of Miami Beach and have received information that the City of Miami Beach Building Department, although it states a policy that it causes owners and their contractors to comply, in practice does not cause them to do so. It appears to me that the City does not even bother to protect itself against suits. City Attorney Jose Smith's response in regards to private construction is that the City is NEVER liable for its negligence and other faults in permitting and inspections. I would deeply appreciate a theoretical perspective from an attorney on this subject. Thank you, David Arthur Walters

Question 2. Henri Dubuc of Lauderhill enjoys his condo complex, except for one big headache: He hears every step his upstairs neighbors take, starting at 5:30 a.m. "The lady wears high heels," Dubuc said. "She puts them on as soon as she gets up. The kitchen chairs also make awful noise." Community rules require sound-proofed flooring, and Dubuc suspects his neighbors are not compliant. Can a board force an owner with non-compliant flooring to repair and replace? Or do owners have to file lawsuits to force each other to be compliant?

Boards generally have the burden to bring legal action against non-compliant owners, because they have a fiduciary duty to all unit owners to uniformly enforce the restrictions set forth in community governing documents. If there is a restriction on flooring materials, and an owner installs a non-compliant floor, the board should pursue the violation. And no matter what an association does, every unit owner has the right to pursue his or her own enforcement of a nuisance condition by a neighbor

. When the situation only involves two residents, this is the method of enforcement that should be used.

dvasquez@tribune.com, 954-356-4219 or 561-243-6686.

NAPLESNEWS.COMBy AISLING SWIFT

- Naples Daily News*
- Posted March 29, 2009 at 4:35 p.m.*

NAPLES —Elaine Price had lived in her condo at The Fountains in Naples for nearly three decades — and everything was quiet until 2005.

That's when upstairs neighbors Mirco and GordanaCoric ripped out the carpeting and installed laminate wood floors in their Charlemagne Boulevard condo in East Naples — all without the required prior written approval of the condominium association.

"When they told me I should just move to a nursing home, that did it," 79-year-old Price said of the Corics' response to her complaints. "It was an unbelievable insult."

"I was so good to the little children and Mirco and his wife, but look what it got me," Price said this month. "It sounded like a bowling alley."

So Price sued in July 2006. And after a non-jury trial in Collier Circuit Court in October 2007, she lost. To make matters worse, the judge ordered her to pay the Corics' legal fees — more than \$8,000.

Since the original verdict, the Corics moved back to Sweden after their condo was foreclosed on, and the condominium association placed a lien on their condo for unpaid association fees at the 55-plus senior community off Rattlesnake Hammock Road near the Riviera Golf Club.

But in December, Price was vindicated.

The Second District Court of Appeal overturned the verdict, ruling that the judge abused her discretion by allowing a new defense the day of trial — the Corics obtained a retroactive approval by the condo board of directors just days earlier. The court also overturned a ruling requiring Price to pay the Corics' legal fees, about \$8,000.

Now, her attorney, Raymond Bass of Naples, will ask that the Corics be required to pay Price's legal fees, including the costs of the appeal — nearly \$20,000.

On March 17, Price returned to court for a hearing before the same judge to determine how the noise situation would be resolved.

Collier Circuit Judge Cynthia Pivacek heard arguments from Bass, who asked her to order the Corics to remove the flooring and reinstall the carpeting and padding. But the Corics' attorney, Bradley Bryant of Naples, urged the judge to deny their request, pointing out that the board retroactively approved the floor and underlayment.

Bryant lost that argument, and Pivacek agreed Price's peace and quiet must be restored.

"The court would require that the wood flooring be replaced with padding and carpeting or put sufficient padding and carpeting above the floor to be insulated," Pivacek ruled before choosing the latter. "I'm going to pick the least intrusive, with the hopes that solves it."

Afterward, Price was elated. She'd feared someone would buy the foreclosed condo and she'd be dealing with noise again.

"I took the broomstick and pounded on the ceiling, it sounded so loud," Price said of her life after 2005, when she lived with footsteps and three children loudly running around overhead.

She only sued the Corics, not the homeowner association. "I didn't want to have the board involved because they would have two attorneys against me," she explained.

Bass called the Dec. 17 District Court of Appeal ruling precedent-setting. "The important thing about this case is it reinforces for other boards that they act as representatives of all the unit owners and everybody has to play by the rules," Bass said.

Although lawsuits involving condominiums can be filed under various areas of the law, there is a section for just "condominium association cases." Those in Collier County have dealt with everything from a homeowner association suing to evict a homeowner's new live-in sex-offender boyfriend to noise complaints and even a lawsuit against an association president who wanted a water view, so he cut a hole and installed a window without approval.

After the March 17 hearing, the Corics' attorney called their decision to install laminate floors only a "technical violation of the condo documents."

"Mr. Coric went above and beyond what was required in the documents," Bryant said. "He actually took the homeowner association president to Home Depot to pick the floors and floor underlayment to make sure the proper underlayment was installed."

"He used foam and cork," Bryant said. "It's the best thing possible. ... How many people take the president of the homeowner association to the home improvement

store to make sure it's the best flooring and underlayment?"

Bass called it a violation of the homeowner documents, noting that there's no real proof of what underlayment was installed. "I argued that the president had no more authority to ratify this than the groundskeeper," Bass said.

County code requires foam, Bass said, and most associations require cork underlayment upstairs, so homeowners must choose the highest form of soundproofing.

"I've been on both sides of these cases and the documents are different for each condominium association," Bass said. "Cases like this are awful because they're so full of emotion. You're dealing with someone's home."

- - -

Condominium law is a growing area, but Price's lawsuit is among only a few precedent-setting cases involving noise in Florida condos.

They run the gamut from banging feet on terrazzo floors, a Great Pyrenees dog that barked constantly, a loud helicopter, noisy air conditioners, and even loud children at play in a senior citizen community.

"The urbanization of this country, requiring substantial portions of our population to live closer together, coupled with the desire for varying types of family units and recreational activities, have brought about new concepts in living accommodations," Florida's Supreme Court ruled in 1979 in *White Egret Condominium Inc. vs. Marvin Franklin*, a case involving children in a senior community. "The desires and demands of each category are different."

"Senior citizen units are ... designed to provide the quiet atmosphere that most of our senior citizens desire," the court said, when it ruled that condo rules can't be applied in an arbitrary or discriminatory way.

In 2001, the Fifth District Court of Appeal ruled that a lower court went too far in ordering Harry and Hedrina Katz of St. Johns County to get rid of a Great Pyrenees dog that their neighbors, Joseph and Lisa Knecht, alleged was barking constantly outside.

"Some barking must be expected from dogs," the appeals court ruled, noting that the Katzes should be given an opportunity to find a remedy. "If keeping the dog indoors or bringing the dog indoors when it starts barking will cure the problem, the injunction should go no further."

Herman and Sylvia Baum of Miami weren't counting sheep after the owners of

Coronado Condominiums ripped out the “unsightly carpeting” and rubber soundproofing in a lobby above their condo.

The building's owners installed an uninsulated terrazzo floor in the 30-foot entryway that led to the elevators — and the elderly couple could hear everyone who entered, especially those who wore noisy clogs.

“The noise has been horrendous and has made my life a living hell,” Baum testified at trial in Dade County. “I can count the steps as they come in the door. ... I lie in bed and count the steps.”

Her husband said they couldn't sleep at night or take a quiet nap. “Oh, we're becoming both nervous wrecks, absolutely nervous wrecks,” Herman Baum testified.

They lost their lawsuit. But in 1979, the Third District Court of Appeal overturned the ruling in their noise abatement case and sent it back for trial.

For Murray A. Candib of Miami, it was the loud whirring of his neighbor's helicopter above him that made living in his 23rd-floor Palm Bay Towers Condominium noisy. Still, the trial court ruled it wasn't a legal nuisance, although testimony showed Roy J. Carver installed floor covering that wasn't insulated or soundproofed to prevent excessive noise.

The Third District Court of Appeal disagreed in 1977, calling it a legal nuisance and reversing that ruling and sending the case back so Candib could have a trial to collect damages.

Wilson F. Roudebush said it was a loud air conditioner that made his Pinellas County condo uninhabitable and forced him and his wife to leave. But the court ruled against him, pointing out that his condo was worth far more than when he purchased it. The court ruled there was no proof that the couple's sensitivity to noise wasn't “hypersensitivity.”

“The personal satisfaction test is not enough,” the Pinellas judge ruled.

But in 1977, the Second District Court of Appeal reversed the ruling, agreeing any “reasonable person” would find that noise a continuing nuisance.

Life in a condo means close quarters and rules that must be abided by. In 1975, an appeals court judge summed up that lack of freedom:

“It appears to us that inherent in the condominium concept is the principle that to promote the health, happiness, and peace of mind, the majority of the unit owners, since they are living in such close proximity and using facilities in common ... must give up a certain degree of freedom of choice that (they) might otherwise enjoy in

[PRODUCT LISTING >](#)

SOUND ANSWERS

Where And When Is Acoustic Sound Underlay Required? Acoustic underlay is specified by Architects for sound insulation in condominiums, hospitals, schools, hotels, and office buildings. IIC and STC sound control standards were developed to regulate the amount of noise allowed to penetrate through common walls and floors within dwellings. **Impact Insulation**

Class (IIC) addresses noise generated by physical objects impacting a floor/wall surface such as footsteps, dropped objects, cabinet doors banging etc. The **Sound Transmission Class** (STC), covers airborne noise transmissions such a voice, music etc. Today Condo Associations and Municipalities use these standards for regulating sound control within multi-housing developments and high rise condominiums etc.



How Does Sound Insulation-Underlay Work? Sound control underlay is used for impact sound insulation, meaning the material is required to deaden sound by absorbing impacts from footsteps and furniture. The sound control underlay works by insulating the underlying sub floor from floor surface impacts, effectively stopping resulting structure born sound transmission at the source.



Under the IIC/STC rating system, the higher the number rating assigned to sound insulation, the better. In other words; rooms become increasingly quiet as the number increases. In contrast, a poorly insulated wood frame sub floor assembly may rate as low as IIC/STC-35 dB (decibels) or less. Most Condo Associations and Municipalities have adopted the International Building Code or Universal Building Code minimum rating of IIC-STC-50. Some luxury properties and

municipalities have higher requirements.

IIC-STC Rating Scale		
IIC-STC 70		Virtually Sound Proof No complaints of nuisance noise.
IIC-STC 60		Superior Sound Proofing Minimal complaints. May still hear nuisance noise.
IIC-STC 50		International Building Code Loud speech not audible. Impact-vibration noise significantly reduced
IIC-STC 44		Sound Proofing Below Code Loud speech and impact-vibration noise is audible.
IIC-STC 39		No Sound Proofing Loud speech and impact-vibration noise is clearly audible.

How Do I

Calculate The Soundproofing Requirement For IIC 50 (minimum to comply with the International or Universal Building Codes):

- Assumed 6" concrete slab baseline rating of IIC 27
- Assumed 8" concrete slab baseline rating of IIC 32

In order to achieve a minimum rating of 50 IIC, assuming Tile as the floor finish - the formula works like this:

Slab of concrete IIC ____ + Soundproofing Δ ____ IIC = 50 IIC

Δ IIC = The amount of sound reduction of the soundproofing product by itself. You should be able to add a couple decibels of sound value with wood, resilient flooring or carpet.

If You Have 6" concrete slab:

Assuming a low average value for 6" concrete (IIC 27) - you will need a soundproofing product with a minimum Δ 23 IIC to comply with the building code IIC 50.

6" Concrete IIC 27 + Soundproofing Δ 23 IIC = IIC 50.

You need to specify: Sound Insulation with a Δ IIC 23 rating when using Tile - other floor finishes may add to the value.

If You Have 8" concrete slab:

An 8" concrete slab with a baseline IIC 32 value will require a soundproofing product with a minimum Δ 18 IIC to comply with the building code IIC 50.

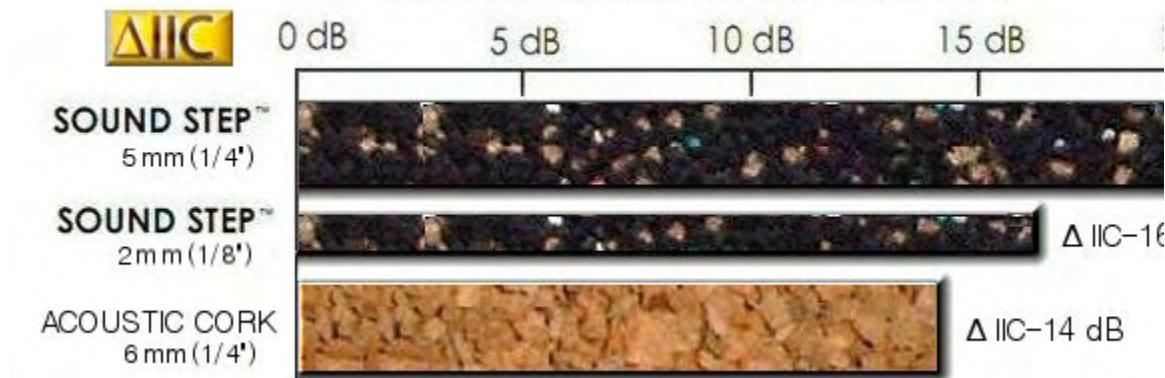
8" Concrete IIC 32 + Soundproofing Δ 18 IIC = IIC 50.

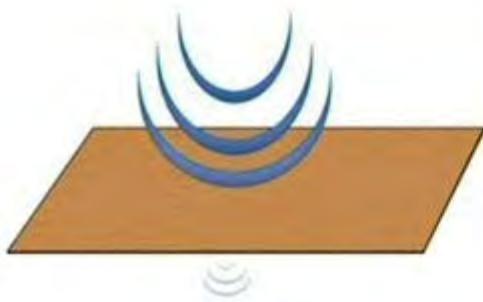
You need to specify: Sound Insulation with a Δ IIC 18 rating or better with Tile - other floor finishes may add to the value.

Why Test With Ceramic Tile? Ceramic Tile is the worst case scenario and normally doesn't add IIC value assuming conventional tile and setting materials are used.

Below is an example of the 'Delta Test' applied to 6mm (1/4") thick acoustic cork underlay: Note: The 'Delta Rating' (Δ IIC 14dB) is the sound insulation value attributable to the underlay-tile combination - less the baseline value of the sub floor. In other words, the concrete sub floor must be tested first in order to accurately deduct it's 'baseline' acoustic value. Filtering out variables is important for accurate product evaluation as every decibel contributes significantly to the sound insulation value.

ASTM E2179 'DELTA TEST' WITH TILE





A 10-Decibel Reduction of Sound Equates To A 50% Reduction Of Air

I Have Wood Frame Construction, Is This Information Valid For My Evaluation Purposes? Yes - however, because wood frame construction is light-weight compared to concrete, thicker-heavier sound control underlayment is recommended to build up sub floor mass in order to insulate against structure borne sound.

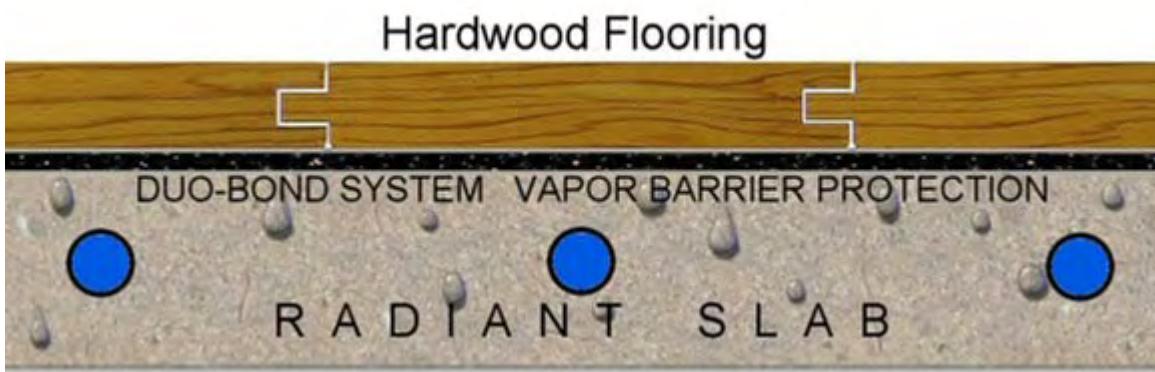
What is SOUND STEP Made From? SOUND STEP is a composition of recycled rubber granules from car tire rubber and 'color-flecs' composed of EDPM rubber recovered from flooring production waste along with recycled cork. The composite granules are cold bonded and heat cured with a high quality urethane binder. The use of recycled products such as car tires diverts huge amounts of waste from landfills which is beneficial for the environment and reduces overall demand for petroleum. Sound tests show that recycled rubber suppresses a wider range of sound frequencies VS cork, particularly low-frequency nuisance noise like heavy footsteps. Unlike acoustic cork, SOUND STEP remains flexible for life and will not rot, mold or mildew when exposed to high moisture conditions.



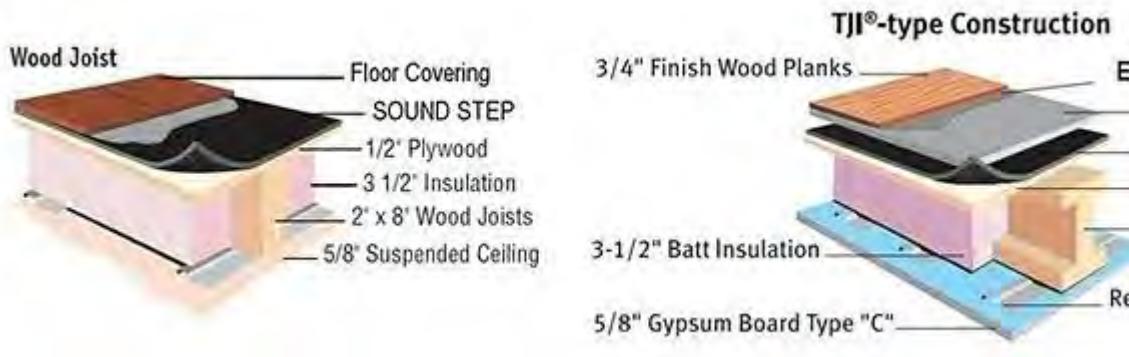
What types of flooring can be installed on SOUND STEP? One of the unique advantages of specifying SOUND STEP is the sheer versatility of the product. While most products specified for sound control are limited or designed expressly for a specific product application (such as floating floor underlay), SOUND STEP will support ceramic tile (direct bond applications) in light commercial areas as tested by the Tile Council of North America. When installing wood flooring by a method other than free-floating, Sound Step is glued direct to the sub floor with a rubber flooring adhesive such as Eco-Grip 3. Unlike acoustic cork, SOUND STEP is impervious to the elements so it can be used as underlay or flooring for many applications such as sports floors (surface and or substrate), deck-patio covering, marine decks etc. Like cork, SOUND STEP recycled rubber is specifically engineered to cushion and absorb surface impacts.



SOUND STEP Has A Semi-Porous Surface So What about Sub Floor Moisture Vapor? While SOUND STEP is impervious to moisture, certain decorative floor coverings like wood and PVC sheet and tile, have a specified moisture vapor transmission exposure limit. The upper end limit for most manufacturers is 3lbs. per 1,000 square feet per 24 hours (as measured by the Calcium Chloride Test). If moisture vapor transmissions exceed 3lbs., the sub floor must be receive a vapor retarding treatment or 'barrier' to reduce vapor transmissions into the compliant range. **Eco-Grip 3 Adhesive** (used to adhere SOUND STEP products and other flooring materials) can reduce vapor transmissions from a maximum allowable limit of 12lbs.(as measured prior to application), to the 3lb. or less compliant range when applied as directed (as measured after application).



Why are there different thicknesses of recycled rubber and cork underlay? Sub floor assemblies must have sound absorbing materials added to meet IIC-STC requirements. SOUND STEP Acoustic Underlays are applied directly beneath floor coverings and or applied as a 'base mat' beneath pour-able self-leveling underlayment materials such as gypsum-concrete. Depending on the sound rating required, thicker, heavier acoustic underlayment may be required to meet specific IIC- STC requirements.



Are There Any Limitations With Your Product Over Radiant Heated Sub Floors? There are no limitations other than those imposed by manufacturers of wood and resilient floor coverings. SOUND STEP has a very nominal BTU rating - less than 1/2 BTU per 2mm of thickness, so from the stand point of efficiency of operation, it contributes significantly less thermal resistance than wood flooring or carpet. For wood or resilient floors installed on slabs with embedded radiant heatings systems, the approach is the same as any potentially damp concrete slab. For more information on radiant heat installations, see our [Installation and Technical Resources Page](#).

How Can SOUND STEP Products Contribute To LEED Credits? **SOUND STEP Flooring Products** can contribute 2 additional LEED Material Resource and Environmental Quality Credits VS competing cork or recycled rubber flooring and acoustic underlays. SOUND STEP 'LEED-STAR' Composite contains 100% 'post-consumer' recycled rubber (car tire rubber) in addition to post manufacturing, pre-consumer recycled EDPM and natural cork 'color-flecs'. The potential for FSC Certification credits makes LEED-STAR composite unique within the industry.

LEED Materials & Resource Credits:

MR Credit: 7 - Certified Wood

MR Credits: 4.1, 4.2, 5 and 6

For materials used within 500 miles of manufacturer;

MR Credits: 5.1 & 5.2

EQ Credit: 4.4 - Low-emitting Composite Wood

EQ Credit: 4.1 Low-emitting Materials



SOUND STEP sound insulation products have been thoroughly tested for sound insulation value. Copies of test results may be obtained by request from [SOUND STEP](#).

CITY OF MIAMI BEACH**Building Department****1700 Convention Ctr Dive, 2nd Floor****Miami Beach, Florida 33139****Inspections: (305) 673-7370****Office: (305) 673-7610****B1104986 APP****Building Work Permit****08-30-2011****Activity Number: B1104986**Status: **APPROVED**

Issued By:

Site Address: **50 SOUTH POINTE DR MBCH**
Parcel #: **42033400660**Applied: **08/30/2011**
Approved: **08/30/2011**
Completed:
To Expire: **02/26/2012**Valuation: **\$20,100.00**Applicant: **MIAMI STONE DISTRICT INC**
335 NE 59 TR
MIAMI, FL 33137
305-762-7930Property Owner: **BLAKE GOODNER**
LOIS GOODNER
50 S POINTE DR UNIT2602 331394790Description: **Unit 2602/Installation of soundproofing,**
Inspector Area: **S** Class Code: **R2****DETAIL LIST****New Construction Fees**

New Building or Addition - Per Sq.Ft.:	0	\$1,062.00
Storage/Industrial Building - E & F - Per Sq.Ft.:	0	\$0.00
Greenhouse/Agriculture on Premises - Per Sq.Ft.:	0	\$0.00
Screen Enclosure/Trail on Premises - Per Sq.Ft.:	0	\$0.00
New Construction other than Above - Per Costs:	\$0.00	\$0.00
Wood/Prefabricated Storage Sheds - Per Sq.Ft.:	0	\$0.00
Service Station Undergrund Tanks - Per # of:	0	\$0.00
Civil Defence Approved Shelters - Per # of:	0	\$0.00
FL not Common Elevator Hoistway - Per # of:	0	\$0.00

Alteration/Repair Fees

Alteration Bulding/Structures - Per Costs:	\$0.00	\$0.00
Awning, Canopy, Patio Cover - Per Costs:	\$0.00	\$0.00
Area Under Roof - RADON - Per Sq.Ft.:	3000	\$0.00
Walk-Thru (Zoning) - Per Valuation:	\$20,100.00	\$0.00
Repairs to Building/Structure - Per Costs:	\$0.00	\$0.00
Roofing or Re-roofing - Per Sq.Ft.:	0	\$0.00
Window/Doors - Per # of:	0	\$0.00
Signs 36-4 (Writer/Erect) - Per Sq.Ft.:	0	\$0.00
Fence and/or Wall - Per Linear Feet:	0	\$0.00
Partial Demo (Struct, Sign, Wall) - Per Costs:	\$0.00	\$0.00
Swimming Pool - Per Gallon:	0	\$0.00
Painting - Per Costs:	\$0.00	\$0.00
Sandblasting - Per Costs:	\$0.00	\$0.00

Activity Number: B1104986

Alteration/Repair Fees (cont'd)

Paving - Per Sq.Ft.:	0	\$0.00
Concrete Slab - No Paving - Per Sq.Ft.:	0	\$0.00
Trees - Per # of:	0	
Hedges - Per Linear Feet:	0	
Groundcover - Per Sq.Ft.:	0	
Landscaping Fee:		\$0.00
Other Fees:		\$0.00
Penalty Fee (If Applicable):		\$0.00

Fire Safety Fees

New Building or Addition - Per Sq.Ft.:	0	\$0.00
Storage/Industrial Bldg - E & F Occup - Per Sq.Ft.:	0	\$0.00
Greenhouse/Argiculture on Premises - Per Sq.Ft.:	0	\$0.00
Screen Enclsoure/Trail on Premises - Per Sq.Ft.:	0	\$0.00
SS Underground Tanks/App Shelter - Per #:	0	\$0.00
Construction not shown Above - Per Costs:	\$0.00	\$0.00
Alt/Repair Building/Structure - Per Costs:	\$0.00	\$0.00
Fire Fee:		\$0.00

Marine Structure Fee

Dock Area - Per Sq.Ft.:	0	\$0.00
Seawall - Per Linear Feet:	0	\$0.00
Boat Lifts, Davits, Hoist - Per # of:	0	\$0.00
Batter, Mooring, Dock Piles - Per # of:	0	\$0.00
Marine Structure Alt/Repair - Per Costs:	\$0.00	\$0.00

SFBC Compliance Surchage

New Const/Add - Res/Mult-Fam/Comm - Per Sq.Ft.:	0	\$0.00
New Const/Add - Strg/Ind/Msc - Per Sq.Ft.:	0	\$0.00
Cost for Other Construction:		\$0.00
MDC Compliance Fee:		\$12.60

Training Fee

Training Fee:		\$63.72
Sanitation Fee:		\$60.30
Fire Training Fee:		\$0.00
Public Works Fee:		\$0.00

Additional Fees

1st Reinspection:		\$0.00
Continued Reinspections - Per # of:	0	\$0.00
Building Joint Inspections - Per # of:	0	\$0.00
Change of Contractor Per # of:	0	\$0.00
Permit Extension - Per # of:	0	\$0.00

Residential Card:		
Commercial Card:		
Permit Card Replacements:		\$0.00

Lost Plan Fee - SF:		\$0.00
Lost Plan Fee - Other:		\$0.00
Overtime Inspection Fees:		\$0.00

Total of All Fees:		\$1,368.48
Total of Payments:		\$1,368.48
Balance Due:		\$0.00

CITY OF MIAMI BEACH
Miami Beach, Florida 33139

RECEIPT OF PAYMENT
(This is not a permit it is a receipt only)

08-30-2011

Receipt: R110019728

Activity Number: B1104986
Status: INREVIEW

Date Applied: 08/30/2011
Date Completed:

Date Issued:
Date Expired:

Entered By: BUILGONJ

Site Address: 50 SOUTH POINTE DR MBCH
Parcel #: 42033400660

Balance Due: \$0.00
Valuation: \$20,100.00

Applicant: MIAMI STONE DISTRICT INC
335 NE 59 TR
MIAMI, FL 33137
305-762-7930

Owner: BLAKE GOODNER
LOIS GOODNER
50 S POINTE DR UNIT2602 331394790

Description: Unit 2602/Installation of soundproofing,

Payments made for this receipt:

Type	Method	Desct.	Amount
Payment	Check	55654	1,368.48

Payment Made: 08/30/2011 09:40 AM Accepted By: JGP

Total Payment: 1,368.48 Payee: MIAMI STONE DISTRICT, INC.

Current Payment Made to the Following Items:

Account Code Description	Amount
011800032210 Building Permitting	1,062.00
011800032910 BDFF - Planning	138.00
435800036329 Sanitation Impact Fees	60.30
601700022921 Dept of Comm. Affairs.	31.86
601700022921 MDC Compliance Fee	12.60
601700022925 Building Training Fee	63.72

Account Summary for Fees and Payments:

Item#	Description	Account Code	Tot Fee	Paid	Prev. Pmts	Cur. Pmts
10	Building Permitting	0118000322100	1,062.00	1,062.00	.00	1,062.00
420	MDC Compliance Fee	6017000229217	12.60	12.60	.00	12.60
440	Sanitation Impact Fe	4358000363293	60.30	60.30	.00	60.30
465	Dept of Comm. Affair	6017000229213	15.93	15.93	.00	15.93
466	Bus. and Prof. Reg	6017000229213	15.93	15.93	.00	15.93
485	Building Training Fe	6017000229253	63.72	63.72	.00	63.72
1070	BDFF - Planning	0118000329101	138.00	138.00	.00	138.00

**BUILDING DEPARTMENT**1700 Convention Center Drive | Miami Beach, FL 33139
Office: 305.673.7610 | Fax: 305.673.7857**WORK PERMIT APPLICATION**

FLORIDA BUILDING CODE _____ EDITION

Date: <i>08/30/11</i>	DATA INFORMATION PLEASE PRINT (USE BLACK OR BLUE INK)			Permit No: <i>B1104986</i> (For office use only)			
Parcel/ Folio No. <i>0242033400660</i>	Job Address: <i>50 South Pointe Dr. #2602</i>						
If subsidiary or revision; provide the Master Building Permit Number:			Is this permit associated with a violation? If yes, BV #: <i>No</i>				
Type of Service: Check Applicable	<input checked="" type="checkbox"/> New Permit Application	<input type="checkbox"/> Revision	Change of: <input type="checkbox"/> Architect <input type="checkbox"/> Engineer		<input type="checkbox"/> Shop Drawings	<input type="checkbox"/> Occupant Content	
Type of Permit: Check Applicable Provide permit detail on page 4	<input checked="" type="checkbox"/> Building	<input type="checkbox"/> Electrical	<input type="checkbox"/> Mechanical	<input type="checkbox"/> Plumbing	<input type="checkbox"/> Fire	<input type="checkbox"/> Special Events	<input type="checkbox"/> Demolition
Type of Property: Check Applicable	<input type="checkbox"/> Commercial			<input type="checkbox"/> Residential (SFH or Duplex)		<input checked="" type="checkbox"/> Multi – Family	
Type of Improvement: Check Applicable	<input checked="" type="checkbox"/> New Construction		<input type="checkbox"/> Addition		<input checked="" type="checkbox"/> Reconfiguration of space	<input type="checkbox"/> Remove & Replace	
Type of Review: Check Applicable	<input checked="" type="checkbox"/> Regular Walk Thru	<input type="checkbox"/> 24 Hour Walk Thru		<input type="checkbox"/> Drop Off	<input type="checkbox"/> Electronic Plan Review		<input type="checkbox"/> Expedited Plan Review (O.T. Payment Required)
Type of Project: Check Applicable	<input type="checkbox"/> City Project	<input type="checkbox"/> Historic	<input type="checkbox"/> Housing Urban Development (HUD)	<input type="checkbox"/> Leadership In Energy & Environmental (LEED)		<input type="checkbox"/> Special Inspector	<input checked="" type="checkbox"/> Private Provider
Type of Occupancy: Check Applicable	<input type="checkbox"/> A-1 Assembly (Theater/ Concert Hall) <input type="checkbox"/> A-2 Assembly (Restaurant/Night Club/ Bar) <input type="checkbox"/> A-3 Assembly (Worship/Amusement/ Arcade Community Hall) <input type="checkbox"/> B – Business <input type="checkbox"/> D/E -Daycare & Educational		<input type="checkbox"/> I-1 Institutional (Ambulatory) <input type="checkbox"/> I-2 Institutional (Non Ambulatory) <input type="checkbox"/> M -Department Store / Drug Store <input type="checkbox"/> M – Gas Station <input type="checkbox"/> M – Retail/ Warehouse <input type="checkbox"/> R-1 Residential Transient (Boarding House/ Hotel/Motel) <input checked="" type="checkbox"/> R-2 Residential Permanent (Apartment/Dormitory/ Timeshare)		<input type="checkbox"/> R-3 Residential (Dwelling/ Custom Homes) <input type="checkbox"/> R-4 Residential (Assisted Living 6-16 person) <input type="checkbox"/> S-1 Storage (Mod. Hazard (Repair Garage)) <input type="checkbox"/> S-2 Storage (Low Hazard (excluding Parking Garage)) <input type="checkbox"/> S-2 Storage (Parking Garage)		
Square feet for each occupancy type ¹ :	1. <i> </i>	2. <i> </i>	3. <i> </i>				
Other:	Job Value\$: <i>\$20,100</i>			Square Ft: <i>3,000</i>			
Description of Work: Please be specific with description	<i>INSTALLATION OF SOUND PROOFING, WATERPROOFING AND NATURAL STONE TILES THROUGH OUT THE INTERIOR AND EXTERIOR.</i>						
Extent of Work: Check Applicable	<input type="checkbox"/> Alteration Level I <input type="checkbox"/> Alteration Level II			<input type="checkbox"/> Alteration Level III <input type="checkbox"/> Change of Occupancy			
Building Information:	Number of Units:			Height of Building:		Number of Stories:	
New Construction/Addition:	Job Value \$:			Sq Ft:			
Alteration/Reconfiguration of space:	Job Value \$: <i>\$20,100</i>			Sq Ft: <i>3000</i>			

¹ For reconfiguration of space (i.e. alteration/remodeling), provide the area of work as define in the FBC-Existing Building Chapter 2.



MIAMI BEACH

BUILDING DEPARTMENT
1700 Convention Center Drive
Miami Beach, FL 33139
Office: 305-673-7610 Fax: 305-673-7857

WORK PERMIT APPLICATION

FLORIDA BUILDING CODE IN EFFECT

Date 6/22/11

Permit # _____

Folio # 0242033400660 Job Address 50 SOUTH POINTE DR # 2602 MIAMI BEACH
FL 33139

If subsidiary or revision: provide the Master building permit number here B: _____

IS THIS PERMIT ASSOCIATED WITH A VIOLATION? If so; BV # _____

Is this a City Owned Property? Yes No HISTORIC DISTRICT Yes No

Type of Property: Single Family Commercial Multi-Family/Condo *Condo Conversion

Type of Permit: Building Electrical Plumbing Mechanical

Type of Improvement: New Construction Renovation Demolition – Year Built _____

Type of Change: Change of Contractor Change of Architect/Engineer Revision

Description of Work: # of Units _____ # of Stories _____

INSTALL SOUND PROOFING AND WATERPROOFING.

INSTALL NATURAL STONE TILE THROUGH OUT THE INTERIOR
AND EXTERIOR (NO BATHROOMS INCLUDED)

New Construction/Addition: Job Value \$ _____ Sq Ft _____

Alteration/Remodel/Renovation: Job Value \$ 20,100 Sq Ft 3,000

OTHER - Job Value \$ _____ Sq Ft _____ Linear Ft _____ Pool/Spa Gallonage _____

Owner's Name Blake Goodner Drivers License No. 629 662 296

Address 50 South Pointe Drive Unit # 2602

City/State/Zip Miami Beach, FL 33139 Phone 9175090939 Email bgoodner@bridgerecp.com

Tenant's Name _____ Address _____

City/State/Zip _____ Phone _____ Email _____

Fee Simple Title Holder's Name (if other than owner) _____

Address _____

City/State/Zip _____ Phone _____ Email _____

Contractor Miami Stone District License No. 07BS00062 Cell # 786 444 2921

Address 335 NE 59TH TERRACE

City/State/Zip Miami, FL 33137 Office # 305 702 7930 Email _____

Architect _____ License No. _____ Cell # _____

Address _____

City/State/Zip _____ Office # _____ Email _____

Engineer _____ License No. _____ Cell # _____

Address _____

City/State/Zip _____ Office # _____ Email _____

Bonding Company Name _____

Address _____

City/State/Zip _____

Phone _____

Mortgage Lender's Name _____

Address _____

City/State/Zip _____

Phone _____

This application is hereby made to obtain a permit to do the work and installations as indicated. I certify that all work will be performed to meet the standards of all laws and construction regulations in this jurisdiction. I understand that a separate permit must be secured for Electrical Work, Plumbing, Signs, Wells, Pools, Furnaces, Boilers, Heaters, Tanks, and Air Conditioners, Etc.

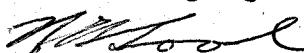
***CONDO CONVERSIONS are a change use of the building and require a new certificate of occupancy. If this application implies a condo conversion, it shall be clearly stated in the description and on the plans; otherwise, the certificate of occupancy will be denied.**

OWNER'S AFFIDAVIT: I certify that all the foregoing information is accurate and that all work will be done in compliance with all applicable laws regulating construction and Zoning.

NOTICE: In addition to the requirements of this permit, there may be additional restrictions applicable to this property that may be found in the public records of this county, and there may be additional permits required from other governmental entities such as water management districts, state agencies or federal agencies.

Under penalties of perjury, I declare that to the best of my knowledge, the facts stated in this document are true. Any information found to be false may cause the revocation and/or denial of the permit and/or certificate of occupancy.

If the contractor is going to be hired by the tenant, check here.



Signature of Owner or Agent

Signature of Tenant



Signature of Qualifier



Printed Name of Owner or Agent

Printed Name of Tenant

Date 6/22/11

Date _____



Signature of Notary Public

Signature of Notary Public

Identification Personally Known

Identification _____

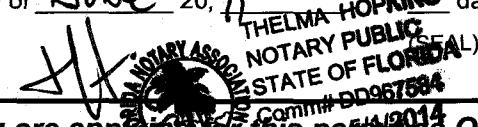
Sworn to and subscribed before me this

22 day of June 20, 11

Sworn to and subscribed before me this

22 day of June 20, 11

(SEAL)



If you are applying for this permit as Owner/Builder, please sign below only

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT. NOTICE OF COMMENCEMENT SHOULD BE FILED AT: 22 NW 1ST STREET, MIAMI, FL

STATE OF FLORIDA NEW YORK



Print Owner's Name

Sworn to and subscribed before me this 22 day of JUNE 2011, by: BLAKE GOODNER

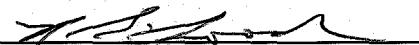
Personally Known Produced Identification - Type of Identification



Signature of Notary Public

Application Approved By: _____

COUNTY OF NEW YORK



Owner's Signature

NICOLE MARIE DOHOGNE
Notary Public, State of New York
(Seal) No. 01DO6094366
Qualified in New York County
Commission Expires June 16, 2015

Permit Clerk

FORM # 4

CONTINUUM ON SOUTH BEACH CONDOMINIUM, THE NORTH TOWER
ASSOCIATION INC.
ARCHITECTURAL MODIFICATION APPLICATION FORM

Date: 5/31/11 Unit Number: 2602
Unit Owner (Applicant): Lois & Blake Goodner
Home Telephone: (212) 743-0034 Work Telephone: (212) 934-2127
cell phone (917) 529-0979 (Dish)
(917) 623-6777 (voicemail)

TYPE OF MODIFICATION BEING REQUESTED (Please describe in detail. Include materials and colors used as well as size.): Install Sound proofing insulation and Limestone flooring.
Install Base Board and Paint Unit.

ARCHITECT'S PLANS & DRAWINGS MUST BE ATTACHED BEFORE APPLICATION WILL BE CONSIDERED. COPIES OF CONTRACTORS' CURRENT CERTIFICATE OF INSURANCE AND LICENSE, AND BUILDING PERMITS FROM CITY OF MIAMI BEACH MUST BE ATTACHED BEFORE FINAL APPROVAL FROM THE ASSOCIATION.

I / We hereby make application to THE CONTINUUM ON SOUTH BEACH CONDOMINIUM, THE NORTH TOWER ASSOCIATION, INC. for the above described item to be approved in writing.

I / We understand and acknowledge that approval of this request must be granted before work on the modification may commence and that if modification / installation is done without the approval of the Association; the Association may force the removal of the modification/ installation and subsequent restoration to original form at my expense.

Lois & Blake Goodner
Applicant's Signature

5/31/11

Date

Lois & Blake Goodner
Applicant's Signature

5/31/11

Date

This Section for Association Management Use Only

APPLICATION APPROVED

Association's Authorized Representative

Robert McCay

APPLICATION DENIED

Date:

JUAN CARLOS GUERRERO
Notary Public - State of Florida
My Commission Expires Nov 13, 2011
Commission # DD 733976
Bonded Through National Notary Association

FORM # 2

CONTINUUM ON SOUTH BEACH CONDOMINIUM, THE NORTH TOWER
ASSOCIATION INC.

50 South Pointe Drive - Miami Beach, FL 33139 - Phone: 305 674-7795 - Fax: 305 674-7996

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES

IN RE: PETITION FOR ARBITRATION

Atlantic Cloisters Association, Inc.,
Petitioner,

v.

Case No. 2003-05-7612

Kimberly Courteau,
Respondent.

/

SUMMARY FINAL ORDER

This final order is entered pursuant to Rule 61B-45.030, Florida Administrative Code, which permits the arbitrator to enter a summary final order where there are no disputed issues of material fact.

FACTS

On April 25, 2003, Atlantic Cloisters Association, Inc. (petitioner/association) filed its petition for mandatory non-binding arbitration, naming Kimberly Courteau as respondent/unit owner. The petition alleges that the unit owner has installed hard surface flooring in the bedrooms of her second floor unit without obtaining permission from the association, in violation of the association's rules and regulations, as adopted in 1962 and 1997, and section 7.7 of the declaration of condominium, as amended on or about December 7, 1994. As relief, the association requests an order compelling the unit owner to remove the hard surface flooring from the bedrooms in her unit. On May 20, 2003, the unit owner filed an answer in this proceeding wherein she admits to installing the tile flooring, but asserts estoppel and/or waiver, ultra vires,

selective enforcement and equitable relief as defenses thereto. In an order dated August 11, 2003, the arbitrator struck the defense of equitable relief and required the association to file a response to the respondent's remaining defenses.

On December 15, 2003, the association submitted a sound testing report, incorporated and attached hereto, completed by Donald J. Washburn, of The Audio Bug, Inc. Mr. Washburn performed sound tests on the hard surface flooring in the respondent's unit to ascertain the flooring's impact insulation class (IIC) rating. His report provides that the insulation material installed with the respondent's flooring has an "IIC rating of approximately 30." As the test results confirmed that the respondent's flooring fails to comply with the minimum IIC rating required by the association's declaration of condominium, the arbitrator issued a notice of intent to enter a summary final order granting the relief requested by the association. As permitted, the respondent filed a response to the arbitrator's order on January 28, 2004, requesting additional time in which to have the flooring installation re-inspected to determine the accuracy of Mr. Washburn's findings. Counsel for the association filed an objection to the respondent's request arguing that the parties previously agreed to have the testing conducted by Mr. Washburn.

CONCLUSIONS OF LAW

Pursuant to the association's rules and regulations, as adopted in 1962 and 1997:

9. Second floor apartments shall be carpeted except in bathrooms, kitchens and entrance foyer.

Relevant portions of section 7.7 of the association's declaration of condominium, as amended on or about December 7, 1994, provide the following:

Hard Surface Flooring. An apartment owner wishing to install any hard surface flooring material (including, but not necessarily limited to Ceramic Tile, Marble, Wood, Etc.) inside his unit, must first obtain the approval of the Board. The apartment owner must provide a description of the proposed installation along with any other reasonable information requested by the Board. The apartment owner is required to install a Sound Control Underlayment System which will provide an Impact Insulation Class (IIC) rating of .52 or greater as further described herein. The apartment owner must provide to the Association, prior to installation and at the time of requesting the Association's approval, Independent Laboratory Test data which shows that the proposed underlayment system to be used has been tested without a suspended ceiling below and achieved a rating of IIC .52 or greater. (emphasis added)

The respondent has asserted selective enforcement as a defense claiming that the owners of unit #T-5 have installed tile flooring without approval from the association, that the association is aware of such flooring and has failed to enforce the provisions of the condominium documents against these owners. The association's response contends that even if such flooring has been installed in unit #T-5, there is no evidence that the flooring is non-compliant. The respondent has failed to produce any evidence to support the allegation that the owners of unit #T-5 have installed non-compliant tile flooring in their unit or that the owners have failed to secure permission from the board of directors for such flooring. As the respondent has failed to meet her burden of proof regarding the defense of selective enforcement, the defense is stricken.

The respondent has also asserted the defenses of estoppel and/or waiver. The elements of estoppel are (1) a representation as to a material fact that is contrary to a later-asserted position; (2) reasonable reliance on that representation; and (3) a change in position to his detriment by the party claiming the estoppel by the representation

and reliance. Enegren v. Marathon Country Club Condominium Association, Inc., 525 So. 2d 488, 489 (Fla. 3d DCA 1988). In a letter dated December 17, 2002, counsel for the association informed the respondent that because she had failed to secure consent from the board for installing hard surface flooring in her unit, she would either have to remove the flooring or allow the association to inspect the flooring to verify the level of sound deadening material used therewith, noting that even with an inspection, the policy has not been to allow such flooring to be installed in bedrooms. However, the respondent contends that she had previously informed the association of the specifications of her sound-proofing in a letter dated November 26, 2002. In this letter, the respondent explains that she installed Pergo¹ flooring in her unit after she purchased it in the summer of 2001. When she experienced leaking from the flooring, Pergo replaced it and included additional cork for extra sound-proofing, at the respondent's request. The letter further advised the association the respondent waived her right to a Pergo warranty in order to have the additional cork installed and attached a Pergo "silent step" spec sheet to this letter. However there is no evidence that this spec sheet contained an IIC rating for the respondent's flooring material. The association argues that the respondent's November 26th letter is not a request for flooring approval, but an admission, and further argues that the respondent failed to provide the association with independent laboratory test data which shows that the sound control

¹ According to www.pergo.com, Pergo, Inc. is a subsidiary of Pergo AB, a division of Perstorp AB, a Swedish company that manufactures laminate flooring.

underlayment system used with her Pergo flooring achieved an IIC rating of .52 or greater. There is no evidence that the respondent provided the association with the required IIC documentation either before or after she installed her Pergo flooring. Moreover, the respondent has not demonstrated that the association made any representation or otherwise authorized her flooring or approved such flooring after its installation. Accordingly, the respondent has failed to establish the elements of estoppel and the defense is hereby stricken.

The defense of waiver involves "the intentional or voluntary relinquishment of a known right, or conduct which implies the relinquishment of a known right." Mizell v. Deal, 654 So. 2d 659, 663 (Fla. 5th DCA 1995). The respondent has not shown that the association relinquished its right to enforce provisions of the governing documents, namely section 7.7 of the declaration of condominium; thus, this defense is also stricken.

The respondent has argued through her defense of ultra vires that rule #9 of the association's rules and regulations, is invalid and, thus, unenforceable. However, it is not necessary to address this argument because, as counsel for the association correctly points out, even assuming that rule #9 is invalid, the respondent would still be required to comply with the provisions of section 7.7 of the declaration of condominium which require prior approval for flooring installation and evidence of a flooring underlayment system that has achieved a minimum IIC rating of .52. In order to determine if the respondent's flooring complies with section 7.7, the parties were required to retain the services of a qualified expert in the field of acoustical and vibration performance to perform sound testing on the respondent's flooring to ascertain the IIC rating. The expert report provides that the insulation material

installed with the respondent's flooring has an "IIC rating of approximately 30." It is clear that the respondent's flooring fails to comply with the association's minimum IIC rating for hard surface flooring. Accordingly, it is unnecessary to determine the validity of rule #9 as the respondent would still be required to comply with section 7.7 of the declaration of condominium and has failed to do so; thus, the defense of ultra vires is stricken.

In response to the arbitrator's notice of intent to enter a summary final order, the respondent has requested additional time in which to have her flooring re-inspected to determine if Mr. Washburn's evaluation is accurate. The arbitrator's order which originally required the sound testing specifically directed the parties to confer and agree upon the services of a single expert to conduct the testing. At that time, neither party objected to the arbitrator's order or to the requirement of a single expert to administer the tests and report his or her findings. It is clear that the parties jointly agreed to retain the services of The Audio Bug, Inc., with Mr. Washburn to conduct the testing, and the respondent is simply unhappy that the results confirm that her flooring fails to comply with the association's governing documents. Accordingly, the results of Mr. Washburn's sound testing stand and no additional time will be allotted for further testing.

Based on the foregoing, the arbitrator finds that the respondent is in violation of section 7.7 of the declaration of condominium by installing hard surface flooring in the bedrooms of her unit which fails to contain an underlayment system that provides an IIC rating of .52 or greater.

It is therefore ORDERED: The respondent, Kimberly Courteau, shall remove the hard surface flooring installed in the bedrooms of her unit within thirty (30)

days from the date of this order. The respondent shall additionally comply with section 7.7 of the declaration of condominium in the future.

DONE AND ORDERED this 4th day of March 2004, at Tallahassee, Leon County, Florida.

Melissa Mnookin, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing summary final order has been sent by U.S. Mail to the following persons on this 4th day of March 2004:

John M. Siracusa, Esq.
Becker & Poliakoff, P.A.
500 Australian Avenue South
Ninth Floor
West Palm Beach, Florida 33401

Kimberly Courteau
1299 South Ocean Boulevard
Apt. T-6
Boca Raton, Florida 33432

Melissa Mnookin, Arbitrator

Right to Appeal

As provided by section 718.1255, F.S., a party which is adversely affected by this final order may appeal by filing a petition for trial de novo with a court of competent jurisdiction in the circuit in which the condominium is located, within 30

days of the entry and mailing of this final order. This order does not constitute final agency action and is not appealable to the district courts of appeal.

Attorney's Fees

As provided by section 718.1255, F.S., the prevailing party in this proceeding is entitled to have the other party pay its reasonable costs and attorney's fees. Rule 61B-45.048, F.A.C., requires that a party seeking an award of costs and attorney's fees must file a motion seeking the award not later than 45 days after rendition of this final order. The motion must be *actually received* by the Division within this 45-day period and must conform to the requirements of rule 61B-45.048, F.A.C. The filing of an appeal of this order does not toll the time for the filing of a motion seeking prevailing party costs and attorney's fees.

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES

IN RE: PETITION FOR ARBITRATION

**Montecito Palm Beach
Condominium Association, Inc.,**

Petitioner,

v.

Case No. 2006-05-4182

**Darren D'Amico, John Russo, Gregg
Greaves, John Michael Cunningham,
Edward Frangione, Patricia V. Cohen,
And James Barbuto,**

Respondents.

/

FINAL ORDER

Statement of Issue

The issues in this case are whether the installation of travertine marble floors in Respondents' units violated Petitioner's Declaration of Condominium, and whether Respondents should be ordered to remove the floors.

Procedural History

The Association filed a Petition for Arbitration on September 27, 2006, alleging Respondents had installed travertine marble flooring throughout their units without obtaining approval from the board of directors, and that it was anticipated noise from the floors would create a nuisance to units beneath. Respondent filed an Answer on November 13, 2006, admitting the marble floors, claiming permission from the Association, and that the floors were built with soundproofing material.

Based on case management conferences, the failure of the parties to agree on

testing, and the lack of occupancy of potentially affected units, the issues of fact for the final hearing were limited to:

- a.) whether the Respondents submitted written applications for approval for the floors;
- b.) whether Respondents received approval from the board of directors of the Association or an authorized representative;
- c.) whether the marble floors were installed according to the approval;
- d.) whether enforcement of Section 17.9 of the Declaration would be inequitable based on waiver, estoppel or selective enforcement.

The issues were further limited to what was necessary to consider the request for relief in the Petition for an Order to require removal of the hard floor.

The Amended Order Scheduling Hearing dated March 22, 2007, further provided, "No evidence of the actual level of noise from the travertine floors will be accepted at this hearing. Because it was not ripe at the time the Petition was filed, this case will not decide an issue with respect to nuisance."

The case proceeded to a final hearing on April 2, 2007, with the arbitrator in attendance at the office of Petitioner's attorney. After a day of testimony, the hearing was adjourned until August 10, 2007, with the arbitrator attending the reconvened hearing by telephone.

The parties were given 30 days to submit written arguments or proposed orders, and both did so. This Order is entered after consideration of the testimony, documentary evidence and post hearing written submissions of the parties.

Findings of Fact

1. Petitioner is the condominium association responsible for management of Montecito Palm Beach Condominium ("the Condominium").

2. Respondents are the record owners of seven units in the Montecito Palm Beach Condominium, Units 509, 309, 401, 913, 704, 901, 1202.

3. The Condominium was created by the conversion of an existing apartment building with the filing of a Declaration of Condominium on February 4, 2005.

4. Respondents Russo, Greaves, Cunningham, Frangione, Cohen and Barbuto purchased vacant units from the developer between September 30, 2005 and November 2, 2005.

5. Respondent D'Amico acted as an agent or construction manager for the other Respondents, at all times relevant to this case, and on December 8, 2005, acquired a partial interest in record title to unit #509 of the Condominium.

6. Respondent D'Amico received keys to some of Respondents' units in September 2005.

7. In September 2005, the bottom floor of the Condominium housed separate offices for the developer and for the building manager. The developer's office handled presentation of the building, negotiation and sales. The management office performed specific building maintenance.

8. For the first eight months or so, the board of directors of the Condominium consisted of employees of the developer. A non-resident unit owner was elected to the board in October 2005. Turnover of the board from developer control to unit owner control occurred on December 15, 2005.

9. Before turnover to the unit owners in December 2005, there were no meetings of the Association's board of directors.

10. In August 2005, the management office of the Condominium was operated by Atlantic and Pacific Management, with the responsible condominium association manager, Janice Moncour. Anthony DiMartino, working under the supervision of Janice Moncour, served as the on-site representative of Atlantic and Pacific.

11. In practice, if unit owners sought approval to make changes to their units in August, September or October of 2005, the building manager did not get involved. Such requests were passed on to the developer.

12. In late September or early October, Respondents began installation of the marble floors.

13. Before Respondents began construction, Respondents did not make a request in writing to the board of directors for permission to install hard flooring in their units. Respondents did request permission from the developer's representatives to allow construction activity including the floor installation.

14. Over a period of more than two months, materials for the marble floor installation, including perlite cement mix were stored in four to six parking spots of the covered parking area of the Condominium. Respondents were also allowed to store construction materials in the utility closets on the stories on which they were working. This activity was known and observed by representatives of the developer, the management office and unit owners.

15. Apparently, during this same period, renovations in a number of units, in addition to those of Respondents, exposed unit owners to construction workers,

materials and noise on a regular, if not daily, basis.

16. Installation of the marble floors in Respondents' units was substantially finished in early December 2005.

17. Section 17.9 of the Declaration of Condominium provides

Weight and Sound Restriction. Hard and/or heavy surface floor coverings, such as tile, marble, wood, and the like will be permitted only in foyers and bathrooms or as otherwise installed by the Developer or prior to the recordation of this declaration. Installation of hard surfaced floor coverings (other than by the Developer) in any other areas are to receive a sub-floor sound proofing (for example corking) sound absorbent, less dense floor coverings, such as carpeting. Use of a hard and/or heavy surface floor covering in any other location must be first submitted to and approved by the Board of Directors and also meet applicable structural requirements and any sound insulation standards adopted by the Board. Also the installation of any improvement or heavy object must be submitted to and approved by the Board, and compatible with the overall structural design of the building. The Board of Directors may require a structural engineer to review certain of the proposed improvements, with such right to be at the Owner's sole expense. The Board will have the right to specify the exact material to be used on balconies. Any use guidelines set forth by the Association shall be consistent with good design practices for the waterproofing and overall structural design of the Building. Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations. **Applicable warranties of the Developer, if any, shall be voided by violation of these restrictions and requirements. Sound transmission in a high-rise building is very difficult to control and noise from adjoining or nearby Units or mechanical equipment can often be heard in another Unit. The Developer does not make any representation or warranty as to the level of sound transmission between and among Units and other portions of the Condominium Property, and each Unit Owner hereby waives and expressly releases any such warranty and claim for loss or damages resulting from sound transmission.**

(bold in original)

18. Section 9.1 of the Declaration of Condominium provides:

Consent of the Board of Directors. No Unit Owner shall make any

addition, alteration or improvement in, or to, the Common Elements, his Unit or any Limited Common Elements without the prior written consent of the Board of Directors. The Board shall have the obligation to answer any written request by a Unit Owner for approval of such an addition, alteration or improvement in such Unit Owners Unit or Limited Common Elements within 30 days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise.

19. Because there was no functioning board before December 2005, Respondents did not make requests for permission to install hard floors that were "first submitted to and approved by the Board". Also, there were no "sound insulation standards adopted by the Board".

20. The marble tiles were installed over a mortar incorporating perlite which has some sound insulating properties. This mortar was intended as a sub-floor soundproofing.

21. At all times relevant to this case, Respondents' units and the units below them have been vacant. Any issue of actual noise originating from Respondent's units is not part of this arbitration.

22. On January 10, 2006, Petitioner sent the first letter to Respondents demanding removal of the installed travertine marble floor from areas other than the bathroom or foyer. Letters to each of the Respondents followed.

Conclusions of Law

1. The arbitrator has jurisdiction over the parties and the subject matter.

2. Petitioner relies on application of Sections 9.1 and 17.9 of the Declaration of Condominium to the activities of the Association and Respondents before turnover of control to unit owners. In this case, before turnover, the only authority of the Association or of a “board of directors” was exercised by the developer through the developer’s employees.

3. When a developer gives permission for changes to a unit before turnover to a unit-owner board of directors, the association is estopped to enforce a provision of the declaration that might not have allowed the changes. *Plaza Del Prado Condominium Ass’n v. Richman*, 345 So. 2d 851 (Fla. 3rd DCA 1977).

4. Petitioner’s proof that Respondents’ did not make a written request has little value. If Respondents had made a written request to the developer’s “board”, the evidence shows it would have been handled by a non-board representative. Assuming Respondents had figured out who the developer’s directors were, and how to get a written request to them, with no board meetings, such a request would have been automatically approved by operation of section 9.1, after thirty days. Section 17.9 does not specifically state a written request is required. The law will not require performance of an act when the undisputed evidence establishes such performance would have been futile. Cf., *Waksman Enterprises, Inc. v. Oregon Properties, Inc.*, 862 So. 2d 35 (Fla. 2nd DCA 2003)(non-performance of application for permit did not prevent claim for refund of deposit where inability to apply for permit caused by factors outside of control of party seeking refund.)

5. In this case the developer’s representatives actively assisted Respondents’ renovations. Section 17.9 provides that the developer could have

performed installation of hard flooring without violating the Declaration.

6. Although Petitioner now challenges the sound proofing claimed by Respondents, the developer was well aware of the technique at the time it was installed. Section 17.9 further supports an interpretation that, if the perlite sound proofing is equivalent to cork sub-floor, the travertine floors would have been acceptable upon application to the board. Under these facts, Respondents were entitled to rely upon acceptance by the developer of the placement of the marble floor and use of the perlite sound proofing.

Based on the foregoing it is Ordered:

1. Petitioner may not require Respondents to remove the travertine marble floor installed in Units 509, 309, 401, 913, 704, 901, 1202, before turnover of control from the developer.

DONE AND ORDERED this 17th day of September, 2007, at Tallahassee, Leon County, Florida.

Bruce A. Campbell, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Trial *de novo* and Attorney's Fees

This decision shall be binding on the parties unless a complaint for trial *de novo* is filed in accordance with section 718.1255, Florida Statutes. As provided by section 718.1255, Florida Statutes., the prevailing party in this proceeding is entitled to have the other party pay reasonable costs and attorney's fees. Any such request must be filed in accordance with Rule 61B-45.048, F.A.C.

Copies furnished to:

Spencer Sax, Esq.
Sachs Sax Klein
301 Yamato Road, Suite 4150
Boca Raton, Florida 33431

Jennifer K. Thomas
Gelfand & Arpe, P.A.
Regions Financial Tower, Suite 1220
1555 Palm Beach Lakes Blvd.
West Palm Beach, Florida 33401-2349