

## Seasonal Problems Come Back

THE NEWS-PRESS JANUARY 8, 2004



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The end of the holiday season starts a migratory pattern as predictable as the southern sojourn of Canada's geese or the return of the swallows to Capistrano: The Return of The Snowbird.

Over the next three and one half months, local communities will be filled to the brim with seasonal residents, their families, as well as transient vacation visitors.

While our inability to find a parking spot or get a preferred tee time may grate the nerves, associations can implement effective measures to fairly allocate the use of community resources and amenities during peak times. Remember, units which sit empty nine months per year pay the bills year round, and are equally entitled to their slice of paradise.

Here are some common problems encountered during "season," and some tips for effectively addressing them:

- **Parking:** While most American families own two cars, most local development ordinances only require one and one-half parking spaces per residential unit, which creates disputes waiting to happen. While there is no easy solution to chronic parking shortages, many associations attempt to achieve fairness by limiting each unit to having no more than two cars. Particularly in beach-front communities, parking by trespassers is also a common problem. A system of registration (including decals) can help identify and remove unauthorized vehicles. Towing parking scofflaws is effective, but be sure to comply with Florida Statute 715.07, which contains required procedures necessary to legally tow unauthorized vehicles.
- **Sound Transmission:** Although most condos have rules that require carpeting in above-ground floor units, this is one of the most unenforced

rules in condominium living. With the assistance of a qualified consultant, the association should develop specifications for sound-deadening. Many associations have loosened up their rules by permitting hard flooring (wood, tile, marble, etc.) if an adequate sound barrier is laid beneath the hard flooring surface. Many associations still insist on carpeting or area rugs. Unenforced condominium regulations, at some point in time, become unenforceable. However, there may be a procedure for breathing life back into the regulation, which may require "grandfathering" particular violations. A qualified community association attorney can assist in reviewing the history of your community's situation and make recommendations for moving forward.

- **Unit Overcrowding:** While most associations are fairly liberal about visits by family members, a two-bedroom apartment is simply not equipped to handle ten overnight guests. In addition to the potential over-taxing of the common facilities (available parking, swimming pool, etc.), most condos share water and sewer costs equally among the unit owners. Through rule or deed restriction (amendment to declaration of condominium) associations can strike a reasonable balance between individual preferences and the interests of the community. A common clause I have seen limits overnight occupancy (perhaps excepting young children) to two persons per bedroom, plus two. Obviously, the size of the units will have some impact on appropriate density regulations.
- **Defined Use Rights:** While most association documents have a clause limiting use of the property to "single family" residency, many documents fail to define what that means. For example, under most local zoning codes, six college students living together in a two-bedroom unit would be considered

a “single family” for legal purposes. While most associations do not wish to “legislate” morality, defining the concept of single family usage may help avoid problems. Another problem occasionally encountered is when a large group of people own a unit, either in the name of a corporation or through co-ownership on the deed. In many cases, when multiple individuals or families “chip in” on a piece of property, they try to split up use rights in a manner many associations see as akin to time-sharing. While associations should permit flexibility in how title to real estate is held (for a variety of family, estate, and tax planning reasons), appropriate provisions in the governing documents (such as designation of a “primary occupant”) can help avoid disputes before they are given the opportunity to occur.

Of course, every community is different and there is no one-size-fits-all prescription. What may be desirable in an owner-occupied project that does not permit rentals would not work in a beach-front resort condo which permits weekly rentals. The association should also keep in mind that Florida law prohibits treating tenants any differently than unit owners with respect to use rights involving condominium common areas which are generally available for use in the community.

When all else fails, the rule that will go furthest in avoiding discord was taught to us all in kindergarten, and is known as the Golden Rule. ☺

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## Flood Insurance Requirement is a Gray Area

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**QUESTION:** Our association is confused about flood insurance. Most of us carry individual flood insurance due to requirements by the mortgage holders. One of our members is insisting that the association is required by Florida law to carry flood insurance on the building. Is this true? I can't get a straight answer from anyone, even the insurance companies. N.L. (via e-mail)

**ANSWER:** Florida's law is not at all clear on this point.

One section of the condominium statute states that an association “may” carry flood insurance, implying that it is permissive. Another section of the same law states that an association shall maintain “adequate insurance” which many commentators argue would require flood insurance if the community is located in a federally-designated flood hazard area.

The first step is to review the declaration of condominium. If the declaration requires flood insurance, then it must be carried on the building. If the declaration is silent, the answer would arguably depend upon your flood zone rating. Obviously, the association does not want to find itself in a situation where both the association and the individual unit owners are buying the same insurance, and therefore paying for it twice.

**QUESTION:** What happens if a condo association has absolutely no one who will take a position on the board? Does the State of Florida ever appoint people

to be administrators when the owners cannot or will not serve on the board? P.G. (via e-mail)

**ANSWER:** Unfortunately, particularly in smaller associations, finding people willing to serve on the board can be a challenge.

First, if your association does not have a management company, you should think about hiring one. It is not necessary for the board to handle all of the day-to-day tasks of operating a condominium, and if there are no volunteers willing to do so, a management company would be a good alternative. While a management company will not eliminate the need for a board, it will substantially ease the burden.

Florida's law requires a minimum of three directors to serve on the condo board. If you cannot establish at least a quorum of the board, any unit owner may petition the local court to have a receiver appointed to operate the condominium. A receiver will typically be an accountant or property manager who will act as the board, under the direction of the court. Receiverships are very expensive and should be avoided.

**QUESTION:** We are part of a large condominium association. A certain group of our owners, who all live on the same street, would like to secede from the association and form our own association. Is this possible? R.M. (via e-mail)

**ANSWER:** You would need to terminate the existing condominium and create two new condominiums,

each with its own governing association. Pursuant to Florida law, unless the declaration of condominium provides otherwise, unanimous consent of all unit owners and their mortgagees is required to achieve this goal. I have seen some documents which require a lower threshold, such as eighty percent.

In my experience with condominium issues, especially when there are “political” overtones, it is usually impossible to achieve unanimous agreement.

**QUESTION:** There are five seats up for election on our condominium association board. We received four letters of intent from unit owners wishing to be candidates. Three of these are from current board members wishing to be re-elected. Our bylaws require five board members, and a minimum of three. Our question is whether the board must appoint all four of

those who have submitted letters of intent, or whether an election can be held where the four candidates compete for three seats. S.K. (via e-mail)

**ANSWER:** An attorney would need to review your association’s governing documents to give you an unqualified legal opinion.

I can tell you that Florida’s arbitration bureau has held that if the bylaws state there shall be “three to five” directors, then five seats exist on the board. That is because the condominium statute provides that unless the bylaws specify another number, the “default” level of directors is five.

Since you have four candidates, I would recommend that all four be seated on the board. The four of them can pick a fifth person to fill the roster of five directors. ⚖️

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*Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners’ associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm’s Naples and Ft. Myers offices.*

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