Rental Bill Creates Some Problems

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It appears that the controversial issue of rentals and a condominium association's ability to retroactively restrict rental rights will get some play in the current session of the Florida Legislature, which convened for its annual sixty-day session on March 2, 2004.

One proposed measure, House Bill 1223, would all but eliminate an association's ability to address concerns in the community when rentals become a problem. House Bill 1223, along with all other proposed legislation considered by the Legislature, may be viewed on the Internet at www.leg.state.fl.us.

According to widely published news reports, the impetus behind the proposal arises from a couple from northern Florida who were upset because their neighbors voted to change the rental policy in the condominium which they had purchased with the intention of renting. The couple owning this unit felt that they should be "grandfathered," and proceeded on a successful crusade to bring enough attention to the issue to have it brought up before the Legislature.

The language of H.B. 1223 provides that unless a proposed amendment to the condominium documents specifically provide otherwise, unit owners who own property as of the date of the amendment are "grandfathered" with respect to rental rights. Personally, I do not think most associations would have a problem with this, as it provides each association with local choice on whether grandfathering is the best way to address the issue. In my opinion, that is the law already, so this change does not appear necessary.

The more troublesome aspect of the proposal is a clause which states that an association not wishing to confer grandfather status may only do so by a vote of seventy-five percent of the entire membership, or such greater number as is set forth in the condominium documents. This idea presents both practical and constitutional problems.

From a practical standpoint, many condominium associations have a difficult time even getting enough votes represented at a meeting to establish a quorum. Under the proposed scenario, owners who do not participate would be voting against the measure, and could thwart majority sentiment simply by apathy.

The constitutional infirmity of the proposal involves the issue usually referred to as "impairment of contract." Both the federal and state constitutions prohibit the Legislature from impairing contract rights between parties. Condominium documents are contract rights between the unit owners. By imposing a voting threshold which may be different than what the owners have agreed upon between themselves, the proposed law appears to tread on thin constitutional ice.

As has been discussed in this column on many occasions, the issue of what rights you purchase when you buy a condo unit, and how those can be changed after the fact, go to the heart of the condominium concept.

As of this writing, there has been no counterpart to this proposal filed in the Florida Senate. This will be an interesting debate, and one associations should definitely keep an eye on. ⚖

Documents Control Specifics on Door Replacement

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QUESTION: My condominium association is discussing replacing the exterior doors on all units. The current doors have small "peepholes" and the board is proposing a larger, diamond-shaped insert. The board also wants to assess each owner $1,800.00 per door. Does the board have the right to change our doors and assess us, or is a unit owner vote required? C.G. (via e-mail)

ANSWER: All three of your questions will depend upon an interpretation of your declaration of condominium. The first question to address is whether the documents define the door as part of the units or common elements. If the door is part of the common elements, then the declaration typically gives the board the authority to determine when it is time to change the doors. Conversely, if the door is part of the unit, this is usually delegated to the unit owner as an individual responsibility.

Changing the aesthetic appearance of the doors is probably considered a "material alteration" of the common elements. Again, the documents control. In some cases, the board is given broad discretion. In other condominiums, the documents severely restrict the board. The law states that if the documents are silent, then seventy-five percent of the entire membership must approve the aesthetic change.

Finally, the question of financing the new doors is again driven by the documents. Typically, if a function of the condominium association is properly exercised by the board, then the documents will also give the board the authority to levy a special assessment. Certain notice procedures must be followed. However, I have seen documents which limit a board's assessment authority, and in my opinion, such limitations are generally valid.

QUESTION: Our condominium association would like to charge unit owners that rent out their units more than ten months per year a monthly fee of $200.00 to cover the cost of problems created by some of the tenants. Can the board impose this charge without a membership vote? E.K. (via e-mail)

ANSWER: The board cannot impose such a fee, even with a membership vote. The Florida Condominium Act specifically provides that the only charge that an association can make in connection with rentals is a transfer approval fee, which must be authorized by the documents, and which cannot exceed $100.00 per applicant.

An association can also require a security deposit, not to exceed one month's rent, which can be held as security for damage to common property. The security deposit must also be authorized by the condominium documents, and may be a good option in your case.

QUESTION: I am a member of a homeowner's association. I have requested a balance sheet and an income and expense statement from the board of directors. I have asked the president twice and the treasurer once. The board members said they would provide me the documents, but never did. What should I do? J.L. (via e-mail)

ANSWER: First, members of homeowners' associations are entitled to inspect official records within ten days of receipt of a written request. Therefore, you should request records in writing, not verbally.

The association's year-end financial reports are part of the official records, and you are entitled to see them. However, the law applicable to homeowners' associations does not necessarily require the preparation of a balance sheet and statement of revenue and expenses. Pursuant to Section 720.303(7) of the statute applicable to HOA's, an association must either present financial statements in conformity with generally accepted accounting principles, or a financial report of actual receipts and expenditures, using the cash-basis method of reporting.

QUESTION: Our homeowner's association meetings are always scheduled at a very inconvenient time, usually between noon and 4:00 p.m. Homeowners who work during normal business hours cannot attend. A petition was signed by more than sixty percent of the homeowners requesting that the meetings be held at more convenient hours. Our bylaws state that our annual meeting is to be held at 8:00 p.m. during the second week of February, but there is no specific reference to the time that board meetings must be held. What can we do? K.E. (via e-mail)

ANSWER: Obviously, your board should be sensitive to the will of the majority. Setting aside

the legalities, if more than fifty percent of the entire membership has requested that board meetings be held at a different time, it seems that the board should do so.

Legally, your petition may or may not have been sufficient. In all likelihood, if you wanted to force the board to hold meetings during what you determine to be reasonable hours, you would have needed to present a petition to seek a vote of the members to amend the bylaws. Your petition would need to set forth exactly what time board meetings should be held.

Given community sentiment, it would be my suggestion that the board and the group leading the petition drive come to a compromise that is acceptable to all concerned.

QUESTION: We are a small condominium, consisting of only six units. We heard that associations of our size are not subject to the Florida Condominium Act. Is this true? J.L. (via e-mail)

ANSWER: No, it is not true. Every condominium created in the State of Florida is subject to Chapter 718.

There are various provisions of the Condominium Act that permit associations of smaller sizes to "opt out." Competitive bidding is one example. Certain year-end financial reporting requirements do not apply to associations of less than fifty units.

Otherwise, the entire law applies to your operation. ⚖

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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