

Guests Can Wear Out Welcome Fast

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By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

Following last week's column ([Hard To Stop Condos From Going Rental](#), April 15, 2004), we will continue to explore issues that are often addressed by associations when it is time to update the community's governing documents.

Today's topic, guest occupancies.

In my opinion, a well-written set of condominium documents will predict what types of guest situations present the potential for problems or abuse in the community. It is always easier to prevent a problem, than fix it after it has surfaced. These same observations apply, although perhaps to a lesser extent in typical single family home subdivisions, to homeowners associations.

There are basically four types of guest occupancy which come into play:

Non-overnight guest occupancy while owner or tenant is in residence: Having temporary (non-overnight) visitors is usually not a significant source of problems, although occasionally friction does arise. For example, some condominium communities are plagued by insufficient parking. In some cases there is not even enough parking for residents' vehicles. Obviously, having eight couples over for a cocktail party who steal your neighbors' parking spots can create an unpleasant situation. Another pet peeve involves a single owner having so many "day guests" using the condominium facilities (such as the community swimming pool) that no one else is able to enjoy it. These types of concerns can usually be addressed in board regulations, and need not necessarily be dealt with in the declaration of condominium or covenants.

Non-overnight guests when the owner or tenant is absent from the premises: Many absentee owners have their units inspected by caretakers, which is a good thing. The rub usually arises when a unit owner permits a friend or acquaintance to use the condominium facilities (but not the apartment). I have seen many cases where unknown persons show up at the condominium and use the pool, beach access, and tennis courts, although they never enter a building. When challenged as to their right to use the common property, they respond that they are "Mr. Smith's guests." Most associations that I have dealt with do not permit day use of the common facilities by outside parties when the owner or tenant is absent. This is best addressed through the declaration of condominium or covenants.

Overnight guests while the owner or tenant is in residence: Having houseguests, in the traditional sense, is a right that most people would consider fundamental. The interests of the association, as the managing entity for the community, are occasionally implicated. The most common problem involves overcrowding of units. For example, having twelve people sleep overnight in a two-bedroom condo unit is the type of situation that is typically frowned upon by associations. Not to mention the potential for noise and nuisance, the common facilities can be overtaxed, including the amount of trash generated and the amount of water consumed. Another area where abuse occurs with guests is when people want to sublet or "rent share" in violation of the documents. The scofflaw can simply claim that the occupant is a "guest" and that the association is powerless to deal with it. In this area, protection of the collective good can be accomplished through appropriate language in the declaration of condominium or covenants. For ex-

ample, many association documents contain limits on the number of persons who can occupy a unit on an overnight basis, as well as regulations regarding the permissible duration of stay.

Overnight guests when the owner or tenant is absent from the premises

This is probably the most frequent source of contention in associations. Many people feel that if they spend their hard earned money to buy a Florida condo unit and only use it a few months a year, they ought to be able to permit their friends and family to enjoy a bit of paradise as well. On the other hand, unbridled guest rights can be used to circumvent lease restrictions and other practices which often create consternation in the community. For example, when a company buys a unit and uses it as a reward for customers and employees, there are often complaints by the

neighbors when a new party group cycles through every week. In my experience, many associations strike the balance by prohibiting tenants from allowing use of the premises while the tenant is away. As to owners, the most common solution seems to be to permit guests who are family members to occupy the unit, and either limit or prohibit non-family members from occupancy while the unit owner is not in residence. This is a matter of choice to the particular association, and should definitely be in the declaration of condominium or covenants.

Like all other aspects of community association living, the freedom to do as you please and accommodating the wishes of other co-owners are in a constant state of tension. Having well-written documents is definitely an area where an ounce of prevention is worth a pound of cure. ⚖️

Submit your Plans for Hurricane Shutters to Board

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QUESTION: I am a “snowbird” and live in a single family home governed by a homeowner’s association. I have gone through our documents and find no mention of shutters. I would like to install shutters on my sliding glass doors. Our community is still under control of the developer. Am I able to install shutters? R.S. (via e-mail)

ANSWER: It does not matter whether your association is under control of the developer or the homeowners. Alterations to the appearance of the property are typically governed by the covenants and restrictions. Although there may not be a specific clause regarding hurricane shutters, there is probably something that deals with altering the exterior appearance of the home.

In condominiums, the law prohibits boards from denying the right to install hurricane shutters. Unfortunately, there is no similar law in the homeowners’ association context. This is one issue which the Florida Legislature ought to give some attention.

I would recommend that you submit your request, in writing, along with a set of plans to the board of directors of your association. Even though the board is under developer control, there should be a procedure for review of exterior change requests. If the board approves your request, then you can go ahead. If not, you may want to have your own counsel review the

documents to ensure that the board has acted within the confines of the authority delegated to it by the governing documents.

QUESTION: I am the property manager for a small association. A new board has been elected and wants to “shake things up.” This means that they want to do all of the maintenance work themselves, to “save money.” Examples include cleaning dryer vents (which requires climbing up on the roofs) and changing electrical circuit boxes. What is your opinion? T.G. (via e-mail)

ANSWER: Condominium associations and homeowners’ associations could not operate without some level of volunteer participation.

Obviously, the association’s insurance agent needs to be brought into the picture as to the association’s practices, to ensure that appropriate risk management procedures and insurance policies are in place.

Under no circumstances would I recommend volunteer board members engaging in any action which requires a licensed contractor, or any action which would reasonably pose a danger to those doing the work. Obvious examples include working with electricity, and climbing on a ladder or otherwise working at heights. The potential cost savings to the association may pale in comparison to the exposure in the event of a mishap.

QUESTION: I am on the board of a “55 and over” community. I have read many articles regarding eighty percent occupancy requirement for people age 55 or over. I want to know who can make up the other twenty percent. My other question involves the census we are supposed to take on the units’ occupancy. I do not understand why owners who rent their units do not count. D.C. (via e-mail)

ANSWER: The twenty percent available for non-age qualifying occupants is a subject of great confusion and debate.

The rules issued by the Department of Housing and Urban Development (HUD) state that HUD does not care what an association does with the twenty percent, that is a decision for the association.

The manner in which the twenty percent is treated depends upon how the documents for the association are written. In my opinion, the best approach is for the twenty percent to constitute a “cushion” in the event of a hardship. Typical hardships would include the death of an age-qualifying spouse, an inheritance situation, or a family emergency.

Some communities treat the twenty percent as a “set-aside” which is more liberal than the “cushion” concept. Here, anyone can live in the “set-aside” units, as long as the eighty percent threshold is met. This can create problems if the association hovers close to the twenty percent margin. Your community’s best bet is to have legal counsel review your current “55 and over” clause and see that it meets the needs of the community.

You are not correct about the census. Units which are rented are counted in the census. The federal regulations deal only with occupancy of the units, not ownership. Therefore, if a unit is owned by a person who is under age 55, but rented out to someone who is over 55, the unit should be counted in the census and would meet the requirement of the law.

QUESTION: I live in a homeowner’s association. Our governing documents state that “the provisions of this declaration shall effect and run with the land and shall exist and be binding upon all parties claiming an interest in the development for twenty years, after which time they may be extended for additional ten year periods if approved by a majority of the members.” Our documents are approaching twenty years. However, won’t the Marketable Record Title Act extend them to thirty years? J.H. (via e-mail)

ANSWER: No. MRTA only serves to extinguish restrictions that are more than thirty years old and which have not been properly preserved. MRTA does not serve to extend restrictions which have terminated in their own right.

QUESTION: How often should the governing documents for a homeowner’s association be updated? The developer turned over our community several years ago and they are full of obsolete and confusing references to the “declarant.”

ANSWER: Many associations find it helpful, after transition of control (turnover), to “clean up” the governing documents by removing obsolete references to the developer. Many people find that this creates a “cleaner” and better reading set of documents.

In my experience, many developers do not devote adequate resources to generating a good set of documents for their customers to live with in the future. Many developer “boilerplate” documents are woefully inadequate in a number of areas.

I would recommend that the association’s legal counsel review the documents and provide an opinion as to whether they would benefit from substantial updating, not just cleaning up the developer references. I also recommend that associations review their documents thoroughly, at least every ten years or so, as laws in this area seem to change rapidly, as does the “state of the art” with respect to issues typically covered in a well-written set of governing documents. ⚖️

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.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.