

New Condo Office Stresses Education

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Today's column continues our interview with Virgil Rizzo, the newly appointed "Condominium Ombudsman" for the State of Florida. (See Condo Ombudsman outlines his vision for job, March 10, 2005.)

Adams: Have you seen any evidence of widespread election fraud or misdeeds in condominium elections?

Rizzo: Yes. I do not know how "widespread" it is, as I have only handled eight elections so far. I should say that there are many allegations of election fraud. I try to stay impartial.

Adams: The law which created your position states that you are supposed to act as a "neutral resource" in assisting both boards and unit owners in understanding their respective rights and responsibilities. Some critics charge that your office has so far demonstrated an anti-board bias, and comes in with "guns blazing" on the side of the unit owner who has made the complaint. What is your response?

Rizzo: I have not heard that. I really encourage boards to call me if they have a question about procedures. Many board members are lay people without experience in the corporate world. The primary way to improve the performance of associations is through education. This is not a battle between boards and unit owners, its about understanding rights and responsibilities.

Adams: Recently, a Bill was filed in the Legislature which would make education mandatory for all condominium association board members. Do you think this is a good idea?

Rizzo: I think board members should have some knowledge. As to whether training should be mandatory by law, that is hard to grasp for me. The most important thing is for boards to learn that they must make decisions as a group. An association is not one person, even if that person is the president.

Adams: Many of the State's condominiums, particularly here in Southwest Florida, contain less than 100 units. Many of those associations have a difficult time in finding volunteers to serve on their board. Do you think the laws should exempt smaller associations?

Rizzo: No. My experience with smaller communities is that they are more like families, but they should all be subject to the same laws. When everyone knows their neighbors, there is a greater tendency for people to go out of their way to avoid trouble with each other. In large communities, no one knows their neighbors, so disputes have less social consequence.

Adams: The Division of Florida Land Sales, Condominiums, and Mobile Homes estimates that there are more than two million condominium unit owners in the State of Florida. Last year, there were approximately 1,800 complaints filed by unit owners against their boards. About 50 people account for 800 of those complaints, so there were actually about 1,000 unit owners who filed complaints against their association. Some would say that the current system allows the tail to wag the dog. What do you say?

Rizzo: I would question the accuracy of those statistics. Keep in mind that many people have concerns, which you might call "gripes", that do not go to the point of filing a formal complaint with the State. We are trying to resolve those gripes.

Adams: Do you feel there is significant graft or corruption in the operation of Florida's condominium associations?

Rizzo: I have not seen it. There have been allegations made, but those are serious charges and require hard evidence. The condominium scheme definitely presents the opportunity for kickbacks, but I honestly cannot say whether or not that is going on. If so, it should be addressed by the criminal authorities.

Adams: Recognizing that you have only been on the job for a few months, what is the greatest accomplishment of the Office of the Ombudsman so far?

Rizzo: Offering a resource for people to find answers to their questions.

Adams: Is there anything you have done so far which you would do differently if you had to do it over again?

Rizzo: No.

Adams: Under the current system, if an association violates the law, the Division can levy a fine against the association. Do you think fines against associations are an effective way to administer the condominium laws?

Rizzo: No. People are reluctant to address concerns in their communities because when the fine is levied by the association, the person who complains ends up having to pay. That is like fining yourself.



Question: What happens if only four people choose to run when there are five seats open for our condominium association board. Two of those four are current directors, who were originally appointed, not elected. The association is telling us that there will be no election. Is this the law? What happens to the fifth seat? What happens if the four members cannot agree on the fifth person? Can a person that has a condo as a second home be on the board? R.M. (via e-mail)

Answer: Any unit owner is entitled to stand for election to the board, provided that they pre-qualify for election. Typically, this requires that a unit owner file with the association at least 40 days before the annual meeting. It sounds like there were only four candidates who filed for five seats. Accordingly, your association's position is correct, no election is required. The four who put their names into nomination (whether incumbents on the board or not, whether sitting on the board due to election or appointment) will be automatically elected.

The remaining four directors will fill the fifth seat. If they are unable to do so, they will need to keep balloting until they break the deadlock.

Question: In our condominium, all owners contribute equally to association assessments. However, some owners who do not own carports are required to pay toward their upkeep. This does not seem fair. Should we have to pay? C.G. (via e-mail)

Answer: It is likely that your declaration of condominium describes the carports as "limited common elements."

Limited common elements are a sub-set of common elements, meaning that their exclusive use is reserved for a particular unit (or group of units) to the exclusion of other units.

Section 718.113(2)(a) of the Florida condo statute provides that the maintenance of limited common elements may be assigned to the association at the expense of all owners (as a "general common expense"), may be assigned to the association, but only at the expense of the benefiting owners (sometimes called a "limited common expense"), or may require the individual assignees to undertake the maintenance, at their individual expense.

If the declaration of condominium is silent, then the carports would be maintained as a general common expense, and that could only be changed through an amendment to the declaration of condominium. The owners who do not have carports may wish to review the procedure for petitioning for an amendment to the declaration.

Question: Our board recently decided to make a change to our rules and regulations. The first time the rule came up, one of the board members voted against it, because he did not like it. The board ruled that the change did not pass, because the board thought that it took unanimous approval of the board to change our rules. A second meeting was called, and the association stated that it had found out that the rules can be changed by a majority of the board. The board then changed the rule. Is this legal? L.T. (via e-mail)

Answer: In my opinion, assuming all notice procedures were followed, and that the board's current interpretation

of the bylaws is the correct one, it would seem that a valid rule was adopted.

Just because the association misunderstood the required vote to change a rule does not bind the association to the misunderstanding perpetually.

Question: Our condo was established in the mid-1980's. Ownership for two bedroom units is two shares and ownership for one bedroom units is one share. The maintenance fee is half for the one bedroom units over the two bedroom units (example, \$180 for two bedroom units and \$90 for one bedroom units). Since all of the units use the common elements equally, can the board change the maintenance fees so that everyone pays the same? If a vote of the unit owners is necessary, what would the required percentage vote be? C.T. (via e-mail)

Answer: The Florida Condominium Act provides that unless otherwise provided in the declaration of condominium, as originally recorded, an amendment cannot change the method by which common elements are owned or common expenses are shared, unless all unit owners and lien holders approve.

Question: I am an owner in a condominium association, but I use my unit as a rental. Our association has a restriction that says that owners can keep pets in their units, but tenants cannot. Is the association allowed to keep my tenants from having pets when other owners are allowed to have them? D.T. (via e-mail)

Answer: Many associations' governing documents provide for pet restrictions, and it is not uncommon to see a restriction where the owners are allowed to maintain and harbor pets in their units but tenants are not allowed to do so. The question is whether this disparate treatment between owners and renters is allowed. This has not been addressed by the courts.

However, there have been several cases from the State's arbitration program that have discussed this issue. *Grove Isle Condominium Association, Inc. v. Levey, et al.*, was a case where the association had a pet restriction allowing owners to maintain pets so long as they were within specifically defined parameters, but renters were not allowed to have pets at all. The arbitrator ruled: "it does not appear that the rule against pet ownership by tenants is wholly arbitrary, violates public policy, or abrogates a fundamental constitutional right." As a result, the tenants in this case were required to remove their dog from the unit.

Additionally, in the arbitration case of *Quatraine Condominium Two Association, Inc. v. Convisor and Sotolongo*, the association's rules contained a similar ban on pets by tenants, but allowed owners to keep pets within the guidelines established by the rule. The arbitrator concluded that the rule precluding tenants from having pets was enforceable, and that the differential treatment between owners and tenants was valid. ⚖️

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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