



Guest Usage can Become Contentious Condo Issue (part 5)

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Today's column is the fifth part of our series about updating the legal documents for your community association. In the first four editions we learned some basic definitions, discussed the functions of the constituent documents, considered the procedures for presenting proposed amendments, analyzed the required votes for amendment and looked at rental amendments (Courts err on side of homeowner, Aug. 4; Amend documents with care, Aug. 11; Use vote to amend papers, Aug. 18; Pay attention to rental restrictions, Aug. 25).

Today's topic is restrictions in the legal documents addressing guest usage.

As the old saw goes, fish in the refrigerator and house guests have one thing in common: both start to smell bad after three days. On a more serious note, property ownership in America is often said to carry a "bundle of rights." After all, our home is our castle and the homeowner is the king or queen thereof. However, Florida's courts have specifically ruled that individual freedoms in the multi-residential housing setting must occasionally give way to a greater collective good.

As all of us who are transplants to Florida know, we seem to become more popular with friends and relatives than when we lived in more frigid parts of the country. So when Mr. and Mrs. Smith decide that their grandson and 15 of his fraternity brothers ought to be able to use their beach condo for spring break, where do you draw the line?

Obviously, having a clear and well-defined set of guidelines in the association's documents is a good starting point.

There are basically a few different scenarios where the regulation of guest usage comes into play:

- Non-overnight guests while the owner is in residence: Most associations do not have major problems in this area. After all, if Mr. and Mrs. Smith wish to have five other couples over for dinner, why should the association care? Typically, regulation in this area is limited to two points of contention. First, if the community has scarce parking, it may be necessary to establish regulations on where visitors should park during their visits. Obviously, the couple's next-door neighbor will be upset if they come home from work to find a dinner guest

parked in their assigned spot. A second area where disputes occasionally arise involves the use of the common recreational amenities. For example, the Smiths may not play tennis, and might see no harm in letting their dear friends, Mr. and Mrs. Jones, come over and play tennis in the community. Others might see it differently.

- Overnight guests while the owner is in residence: Again, this is an area where minimal regulation is usually sufficient to stem problems. Parking and access to amenities are again occasional chal-

allenges in this arena. Additionally, the number of permitted occupants in a home can present issues. While few would object to the Smiths having their children and grandchildren visit for a week or two, even if the grandkids have to sleep on a couch, 15 fraternity brothers in sleeping bags might evoke a different reaction. Unit density can become particularly controversial in condominiums where water consumption and related sewage expenses are charged to all owners as a common expense.

- Non-overnight guest usage while the owner is absent: A high percentage of condominium units and single-family homes sit empty for much of the year, due to seasonal occupancy trends, investor-owned units waiting for the next tenant, and the like. It is not uncommon

for owners of these properties to ask a friend, relative or paid caretaker to stop by and check on the unit from time to time. In fact, it is good for this to happen. The rub arises when the owner allows someone who is not occupying the home to come and use the community's beach access, swimming pool or other recreational amenities. For example, should our hypothetical Smith family be allowed to let their housekeeper host her child's birthday party at the condo pool, even though the Smiths are away for the summer?

Next week, we will wrap up the guest usage issue, including overnight guest usage of the property while the owner is absent, the unique challenges involved with guest usage of units being rented by tenants, and some drafting tips. ■

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.

Use Cooperative Approach to Resolve Carport Issue

Question: In December of 2004, my daughter and I bought a condominium unit for her to live in. The complex does not have carports for every unit. The deed to our unit states that a carport comes with the unit, and taxes for a carport appear on the tax bill. When my daughter moved in, we went looking for her carport, but could not find it.

After checking the County's tax records, we determined that someone else is parking in that space. A letter was sent to the board, requesting clarification on this issue. In January, the president called me saying that he agreed that we own a carport, and that he would get with the association's attorney. Nothing has happened since that time. What do you recommend? B.A. (via e-mail)

Answer: First, you should follow up with another call to the association's president. I have always found that a cooperative approach in dealing with condo problems goes much further than an adversarial tone. After eight months though, the board and its attorneys should have been able to come to some conclusion on your question.

The Florida Condominium Act requires an association to respond to "inquiries" received from unit owners, by certified mail, within at least thirty days of receipt of the inquiry. The deadline can be extended to sixty days if the association refers the matter to an attorney, and so notifies the owner within the thirty day time-frame. If the association does not respond within the designated time-frame, there are potentially stiff penalties available.

Therefore, I would follow your call to the association with a polite, but direct, certified letter seeking a substantive response to your inquiry. If you are unable to address the matter through that avenue, you and your daughter should consult an attorney. An assigned parking space is a valuable right, and if you bought and paid for it, you should see that you get it.

Question: We would like to install wood floors in our fifth floor condo. The rules say that only kitchens and bathrooms can have tile or hard surfaces on the floor. All other areas must have rugs. Can this restriction be enforced, or do I have the right to install wood floors with appropriate sound cushioning? A.C. (via e-mail)

Answer: The law confers no right for you to install any particular type of flooring.

Restrictions that require the use of carpeting in living areas are common in high-rise condominiums. While some associations allow hard flooring with sound-deadening underlayment, some do not.

Assuming that the rule was properly enacted, it is enforceable, also assuming that the association has enforced it with respect to known violations.

Violation of covenants and restrictions applicable to condominiums can result in legal action. Typically, a dispute of this nature would start through the state's mandated arbitration program. There are a number of arbitration decisions where owners who have violated hard-flooring regulations have been required to remove the hard flooring. In addition to that expense, you might also be liable for the association's attorney's fees, should you end up in a legal battle and lose.

Most condominium documents provide some method for petitioning for change. You should review the petition process in your documents and determine if your neighbors would support a change to the existing regulations.

Question: What is the law about the board getting and having a key from each unit owner? Some people feel it is an infringement on their privacy. I am the president of our condominium association. K.O. (via e-mail)

Answer: The Florida condominium statute states that an association has an irrevocable right of access to units. The law says nothing about keys.

If the requirement for posting of a key is contained in the recorded condominium documents, or in a properly-enacted board rule, it will be upheld.

Once the association takes possession of keys to individual units, it also takes on additional responsibility and liability for the proper safe-keeping of the keys.

Question: I live in a "55 and over" community. Everyone in the development seems to agree on the rules for occupancy, including that leased units must have at least one occupant age 55 or over. However, there is a division of opinion about ownership. Some feel that anyone can own regardless of age, others feel that the buyer must be age 55 or over. Who is correct? R.G. (via e-mail)

Answer: Unless the governing documents for the community specifically require buyers to be age 55 or over, that is not necessary to comply with the so-called "55 and over exemption" to the Fair Housing Amendments Act of 1988, as amended by the Housing For Older Persons Act of 1995.

These federal laws focus on occupancy, not ownership. The law requires that in order for the exemption to be claimed, at least eighty percent of the occupied units must be occupied by at least one person age 55 or over.

Question: Thank you for your recent article entitled *Coping With Sex Offenders In Your Area*. I am on the board of an association in Collier County, and we recently learned that a registered sex offender is living in our community. We have been struggling with this issue, and I wanted to share the column with our board. Is this permissible? M.C. (via e-mail)

Answer: Yes. All past editions of my columns (both the Question and Answer column as well as the regular column), are posted on the web-site of Becker & Poliakoff, P.A., the Law Firm with which I am affiliated. Go to www.becker-poliakoff.com, click on publications, then articles, and scroll down to the list of my articles.

The article you referenced is dated May 19, 2005, and will be listed as such (articles are posted in chronological order). Please also note my follow-up column on that topic (see *Warning About Offender Warranted*, July 28, 2005). ■

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