Clear Rules Help Resolve Issues About Tenant Use

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Although you would not know it from the hot weather of late, we have officially kicked off Southwest Florida's "season." Our mild, but not-too-hot weather during the months of December through April, draw both seasonal residents and out-of-town visitors in droves.

In addition to making it tougher to get a tee time at the golf course, or a seat at your favorite restaurant, the tourist/snowbird season also tends to fill local neighborhoods and condo communities to the brim. Predictably, this is also the time of year that accelerates opportunities for neighborhood disagreements.

The condo resident who for the past six months has had ample parking for the three cars shared by his family, all of sudden cannot find a parking space when he gets home from work late. To rub a bit more salt into the wound, there is not a poolside lounge chair to be found on a balmy Sunday afternoon, they have all been taken by "strangers."

Particularly in condominium communities in this locale, it is not unusual for over half the units to sit empty for most of the year. When the property gets crowded, tempers can flare. Of course, every property owner in a community association has equal rights regarding the commonly used facilities, whether they live there year-round, or only spend a week in Florida.

One thing that seems to aggravate conditions affiliated with overcrowding is a perception by full-time residents that part-time residents, or investor owners, abuse the community's infrastructure through permitting guests to use their home, while they are away. Tenants are also often looked upon as "second class citizens", at least by some. This is particularly acute around the holiday season, at year's end, and during the couple of week period where Easter, Passover, and many schools' spring break fall.

From the eyes of the absentee owner, they pay their share of maintaining the property, and ought to be able to let whom they please use it, or rent it out within the bounds of association rules. In the eyes of many full-time residents, they did not buy into a hotel, nor a spring break mecca for unruly college kids.

Boards of directors and association managers are often called upon to balance these competing interests, or perhaps better stated, differing perceptions on a daily basis. In many cases, Solomon himself would tear out his hair.

One way that an association can minimize the opportunity for friction is to have fair, clear, and well-publicized policies on tenant and guest usage of property within the community association, both the individual homes, as well as the common amenities. As always, it is preferable to have such restrictions contained in the deed restriction for the community, called the declaration of condominium in condominiums, and usually called a declaration of covenants in the homeowners association context.

Even in the absence of guidance in the recorded deed restriction, a rule properly promulgated by the board of directors may also stem civil unrest.

In today's column, and in next week's as well, we will explore some of the challenges typically faced by associations, and talk about some ways to address them.

Let's start by taking a look at tenant rights. By definition, a tenant is a person who contracts for the exclusive use and possession of a piece of property from the landlord. At common law (old English tradition upon which most American law exists), the tenant took the entire "bundle of rights" of the property owner when the lease is signed.

Whether the tenant rents for a week or year, the law has historically presumed that the tenant would step into the shoes of the landlord (unit owner). However, this concept has been modified, at least in community associations, in modern times. The courts have upheld restrictions regulating a unit owner's right to rent, and the law also permits "discriminating" against tenants, at least to a certain degree.

The Florida Condominium Act specifically states that an association cannot discriminate against tenants in the use of common elements generally made available for use of other unit owners. For example, a condominium association could not permit unit owners to park extra cars in the guest parking area, while prohibiting tenants from having the same right. Conversely, the state agency which regulates condominiums has upheld restrictions which treat tenants differently with respect to the use of the unit, as opposed to the common elements. For example, at least one decision has upheld a clause contained in condominium documents which permits unit owners to keep pets, but prohibits tenants from keeping pets.

In the homeowners' association context, there is no statutory regulation of tenant issues. In general, the governing documents will control.

One challenge faced by many associations is owners who try to circumvent rental rules by having the occupant state that they are a "guest." Next week we will take a look at guest usage issues, including bona fide guests, and those situations where someone is trying to skirt the rules. ■

Mr. Adams concentrates his practice on the law of community association law, primarily representingcondominium, 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**.*

Adequate Notice of Board Meetings Required

Question: My condominium association posted a notice for a board of directors meeting 48 hours in advance. Forty hours prior to the meeting the notice was removed at the request of the board and a new meeting notice with an expanded agenda was posted. Have the legal requirements been met? D.R. (via e-mail)

Answer: The Condominium Act requires adequate notice of all board meetings, which notice must incorporate an identification agenda of items, and which must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting, except in an emergency. Also, any meeting at which non-emergency special assessments, or at which amendments to the rules regarding unit use will be considered, requires notices to be mailed, delivered or electronically transmitted to the unit owners and posted conspicuously on the condominium property not less than 14 days in advance of the meeting.

Presuming that special assessments and/or rules regarding unit use were not to be considered at the meeting in question, the meeting notice should have been provided at least 48 continuous hours in advance of the meeting, otherwise the statutory requirements as noted above were not met.

If the board wished to consider items on the expanded agenda, they should have held the board meeting after 48 continuous hours from the time the updated notice was posted. Alternatively, items not included on a notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. In such cases, the emergency action must be properly noticed and ratified at the next regular meeting of the board.

Question: I read your column in the News-Press when I am in Florida and via the internet when I am back up north. I am the treasurer for our condominium and the 2007 budget process is my first. In a prior column, you indicated that Chapter 718 of the Florida Statutes requires the proposed annual budget to be delivered to each unit owner at least 14 days before the board's budget meeting. Is there a similar rule for a meeting of the finance committee where the budget will be discussed? B.P. (via e-mail)

Answer: The answer to your question involves multiple provisions of the Florida Condominium Act. First, any meeting where a proposed annual budget of an association will be considered by the board or unit owners must be open to all unit owners, and at least 14 days prior to the meeting, the board must hand deliver to each unit owner, mail to each unit owner at the address last furnished to the association, or electronically transmit to the location furnished by the unit owner for that purpose, a notice of the meeting and a copy of the proposed annual budget.

With regard to committees, certain committee meetings are subject to specific notice requirements. The Condominium Act requires that meetings of a committee to take final action on behalf of the board or to make recommendations to the board regarding the association budget must be noticed to all members, although a forty-eight hour posting is considered sufficient for the budget (although the statute is not really clearly written on this point).

Meetings of a committee that does not take such action or make such recommendations are also subject to may be exempted from notice posting requirements by the bylaws of the association. Therefore, the 48 hour posted notice requirement does exist for budget committees. However, the committee meeting notice requires does not include a requirement that the proposed budget be delivered to unit owners prior to the committee meeting.

As always, it is also necessary to check your documents to be certain no special, additional notice and budget meeting requirements exist.

Question: I have some questions regarding homeowners' associations. I know that Section 718, Florida Statutes says that a condominium board cannot restrict a unit owner from putting up shutters as long as the shutters conform to certain specifications, but is there a similar rule for homeowners' associations? We are getting customers coming back to us saying that their homeowners' association will not let them install shutters. L.K. (via e-mail)

Answer: You are correct that the Condominium Act specifically addresses the issue of hurricane shutters. Specifically, each board is required to adopt hurricane shutter specifications, and if an owner must obtain approval to install hurricane shutters the board cannot refuse to approve the installation or replacement of hurricane shutters that conform to the adopted specifications. There are, however, no provisions in the Homeowners Association statute regulating hurricane shutters.

In many cases, the documents governing a homeowners' association will grant the board authority to adopt and enforce rules and regulations. If that authority extends to rulemaking authority regarding the use of an owner's home, then the board would have the ability to regulate hurricane shutters. If rules regarding hurricane shutters are adopted in a procedurally correct manner, unless they are unreasonable or arbitrary on their face, such restrictions would likely be upheld. Such restrictions might also be found in the declaration of covenants, conditions and restrictions, or a properly adopted amendment thereto. Provisions found in the recorded deed restrictions are typically afforded a presumption of validity, if challenged in court. ■

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