



Realtor's Board Vote on Sign is Likely OK

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Q: At a recent meeting of our condominium association, one of the board members, who happens to be a realtor, introduced and the board approved, a change to our rules regarding the placement, size, and exposure of real estate "For Sale" signs. Our old rule limited the signs to weekends, except when holding an open house. The new rule allows for 24/7 exposure and limits the size of the signs to twelve inches by twelve inches which will be paid for by the homeowner and purchased through a company recommended by the realtor/board member. Although the new signs are certainly more attractive, the proposal was made and voted on by a realtor board member and at a time when many unit owners were gone for the summer. As such, the action has caused some disagreement regarding the propriety of the realtor's involvement and vote and the appearance of a possible conflict of interest. R.S. (via e-mail)

A: Regarding the adoption of rules and regulations by the board of directors, a board adopted rule must meet three criteria: (1) the condominium documents must give the board of directors the authority to adopt rules and regulations; (2) the rule may not contravene either an express provision of the declaration or a right reasonably inferable therefrom; and (3) the rule must be reasonable. Therefore, before the board adopts a new rule or an amendment to the rules,

the condominium documents (declaration of condominium, articles of corporation and bylaws) must be reviewed to ensure that the board has the authority to adopt the rules and that there are no provisions in the condominium documents, or a right inferable therefrom, that contravene the proposed rule. Assuming that the rule passes the first two criteria, it must also be determined whether the rule is reasonable.

Another consideration when adopting a board-made rule is the type of notice required for the board meeting at which the rule will be adopted. In general, board meetings require notice posted forty-eight hours in advance. However, if a proposed rule involves "unit use", the Condominium Act requires that written notice of the board meeting be mailed, delivered, or electronically transmitted (if electronic notice is permitted by the governing documents) to the unit owners and posted conspicuously on the condominium property not less than fourteen days prior to the meeting. Evidence of compliance with this fourteen day notice requirement shall be made by affidavit executed by the person providing the notice and filed among the official records of the association.

Regarding the possible conflict of interest, the Condominium Act provides that the officers and

directors of a condominium association have a fiduciary relationship with the unit owners. However, the law does not specifically require directors to abstain because of a conflict of interest. The law on director conflicts of interest is found in the Florida Corporation Not-For-Profit statute, not the Condominium Act. The law provides that a director with a conflict may vote so long as the conflict is disclosed and there is sufficient votes to approve the action without counting the vote of the interested director, or, if the contract or transaction is fair and reasonable.

Regarding your specific question and based on the information provided, it does not appear as if the board member/realtor acted unlawfully. If the board member/realtor owned the sign company or had a financial interest in the sign company, then there would be a conflict on the issue of requiring owners to purchase from that particular sign company. However, even if there is a conflict of interest, the law does not prohibit the interested director from voting on the issue, as noted above. Also, the connection between "For Sale" signs in general and the realtor's business may be too remote to constitute a direct conflict of interest.

Q: I serve on my condominium board of directors. The developer of our community has turned over control of the board of directors, but we still lease the land where the pool and clubhouse are located and use their management company. The developer recently sent us a letter saying because the consumer price index went up last year, our payments to them are being increased. We do not think this is fair. What can we do? B.M. (via e-mail)

A: Florida law prohibits escalation clauses in leases or agreements for recreational facilities serving residential condominiums, such as your pool and clubhouse. An escalation clause is language in the lease or contract that provides that rent due under the agreement will increase at the same percentage rate as any nationally recognized

commodity or consumer price index. These types of agreements are void and unenforceable.

Florida law also prohibits similar provisions in management contracts for condominiums. Depending on the nature of your community and when the developer turned over the community, the unit owners may be able to vote to cancel the management agreement.

Q: I have joined the board of my condominium as vice president. One of our problems is that we have never created a mechanism for enforcing condo rules. Our covenants allow for fines of \$100 (first violation), \$500 (second violation), and \$1000 (third violation). The documents also say "fines shall be treated as an assessment subject to the provisions for the collection of assessments, and the lien securing same." I looked up the Florida Condominium Act online and it contradicts our covenants. Does state law supersede our covenants? Can we place a lien on a unit for someone who is a repeat violator and who refuses to pay their fines? H.S. (via e-mail)

A: As you mentioned, your governing documents do conflict with the Florida Condominium Act. The Act provides that the maximum fine may not exceed \$100 per violation. However, the Act does allow a \$100 fine to be levied on a daily basis for continuing violations up to \$1000 total. Therefore, the provisions of your governing documents that attempt to create an escalating penalty levied per violation is in conflict with the Act and when the documents and the Act are in conflict, the Act supersedes.

Furthermore, the Act provides that fines may not become the basis of a lien against a unit. Therefore, the Act is once again in conflict with your documents and the Act takes precedence.

Keep in mind that there are subtle differences between the Condominium Act and the law applicable to homeowner associations. In HOA's, the maximum fine per violation is also \$100, but

the governing documents may impose an aggregate fine in excess of \$1,000. The limitation on the aggregate fine in an HOA is set at a “reasonable” amount.

Q: If a lawsuit is filed against my condominium association, is each member required by law to be served with a copy of the lawsuit or some other “notice” that a lawsuit is being filed against the association. It doesn’t seem right for a judge to rule on association business without every member having knowledge that a lawsuit has been filed which will affect his or her property. Further, isn’t a dispute required to be mediated or arbitrated before a lawsuit is filed? G.G. (via e-mail)

A: In Florida, condominium associations are corporations which can sue and be sued similar to the manner in which an individual may be sued. If the association (and not the individual unit owners) is being sued, the party bringing the lawsuit would not be required to serve the individual members of the association, but would only be required to serve the corporation (usually an officer, director, or the registered agent).

Imagine for a moment that a major Florida corporation, with thousands of shareholders, were to be sued and all of the shareholders in that corporation were required to be served. If this were the case, it would severely impede the filing of lawsuits against such corporations. Both the courts and legislature favor providing reasonable access to the courts. A system whereby every shareholder, or in your case member, would be required to receive service would limit an

individual’s access to the court system. However, the complaint filed by the plaintiff would become a part of the association’s official records and would be available to the association’s unit owners upon a proper request.

Further, the Condominium Act requires associations to maintain a current question and answer sheet which must identify any court cases in which the association is currently a party of record where the association may face liability in the excess of \$100,000.00. The Condominium Act also requires that in any legal action in which the association may be exposed to liability in excess of insurance coverage, the association must give notice of the exposure “within a reasonable time” to all owners, and the owners have a right to intervene and defend. Accordingly, while the plaintiff would not be required to serve each member of the association (where the association and not the individual unit owners are being sued), the association may be obligated to notify the individual unit owners of the lawsuit.

You are correct that condominium “disputes”, as that term is defined by law, are required to be submitted to mandatory non-binding arbitration prior to the filing of a lawsuit. This requirement is used to prevent the court system from becoming overburdened, when many condominium disputes can be amicably resolved through the arbitration process. If the outcome of the arbitration proceeding is not satisfactory, either party may file a complaint for “trial de novo” in the appropriate trial court for a judicial resolution of the dispute.

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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