



Remedies Exist for Problem Tenants

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Q: I live in a condominium, and we have a very nice community. However, we have a continuous problem with tenants, some of whom do not respect the property or their neighbors. We have continuing noise problems with tenants, and have had several situations where the clubhouse and pool area have been mistreated and even damaged by tenants. When the board of directors have approached the tenants, they usually find them to be unwilling to adjust their behavior and sometimes they are very defensive. What suggestions can you make for us to address this problem? B.R. (via e-mail)

A: Unfortunately, there are times when occupants of a community do not have the same interests and lifestyle. These differences are often most pronounced between permanent occupant owners and temporary tenants. Fortunately, there are several steps that the association can take to limit the disruptions and conflict that some tenants may cause.

First, well written condominium documents include application and approval requirements whenever an owner wants to rent a unit. These provisions give the association the opportunity to gather relevant information about a prospective tenant, including the right to conduct an interview prior to the tenancy, and, when appropriate, to

disapprove a lease for good cause shown. While the legal right to disapprove a tenant for good cause (including such reasons as prior criminal history, or prior conduct indicating the tenant is not well-suited to living in a close community) has not been firmly established by the courts, it is my opinion that such provisions are reasonable and are likely to be upheld by an arbitrator or by the court when properly applied.

Additionally, the rental application procedure provides an opportunity for the tenant to be advised of all the restrictions and rules governing the community, and can be an opportunity for the association to require a specified lease form to be used by the owner and the tenant.

Well written condominium documents also provide various remedies for the association when a tenant's conduct becomes a problem, such as the right of the association to "step into the shoes" of the owner/landlord to evict a tenant.

In any event, an association should always remember that the unit owner is ultimately responsible for all of the actions of the occupants, tenants, and guests of the unit owner. My usual advice is that the association direct its enforcement action against the unit owner so that the unit owner incurs the cost and bears the burden of

addressing the issues with the tenant. Often, tenant problems exist because the unit owner is located out of town, or is satisfied to collect rent and is not sympathetic to the issues and interests of the permanent occupant owners of the community. In such cases, it is often necessary to bring all of the association's available recourse to bear against the owner, which typically involves filing an arbitration action with the Division of Florida Land Sales, Condominium and Mobile Homes seeking an order to enforce the governing documents of the association and seeking to recover from the owner all attorneys' fees and costs incurred by the association in bringing that action. Typically, such enforcement action will resolve most issues with problem tenants.

Q: My condominium association is planning to spend a large sum of money on re-landscaping the common elements. They intend to remove some trees and shrubs and plant new ones. Is this a material alteration of the common elements that requires a vote of the owners? B.T. (via e-mail)

A: The Condominium Act provides that there shall be no material alteration or substantial addition to the common elements or to real property which is association property except in a manner provided in the declaration of condominium. If the declaration does not specify the procedures for approval of material alterations or substantial additions, seventy-five percent of the total voting interests must approve the alterations or additions.

The case law that has developed on the issue of material alterations describes a material alteration or addition as one that "palpably or perceptively varies or changes the form, shape, elements or specifications of a building in such a manner as to appreciably affect or influence its function, use or appearance." However, if the alteration or addition is necessary to maintain or preserve the common elements, it is exempt from the requirement of unit owner approval.

There are several reported arbitration decisions, decided by the arbitration section of the Division of Florida Land Sales, Condominiums and Mobile Homes which address the issue of material alterations and substantial additions. The tendency of the arbitrators is to find many changes to the property to be "material alterations", although the arbitrators have exhibited fairly wide latitude toward boards with respect to landscaping decisions. In one case, the arbitrator upheld a board's decision on the planting of three palm trees, and also the board's decision as to the height at which hedges should be kept, stating that the board's decisions are presumptively correct. However, in another arbitration decision, a unit owner complained that the association's planting of certain trees constituted a material alteration to the common elements. The arbitrator held the case in abeyance, pending the association's agreement to submit the plantings to a unit owner ratification vote, implicitly recognizing that significant landscaping decisions might rise to the level of a material alteration of the common elements.

Although there was not a "bright-line" test regarding what types of landscaping changes would be considered a material alteration of the common elements, the arbitration decisions suggest that any "major" landscaping changes would constitute a material alteration of the common elements. However, if the current landscaping is diseased or dead, and needs to be replaced, then I believe that the board has a certain amount of discretion in deciding the type of trees and shrubs that should be planted. However, if the reason for re-landscaping is to upgrade and improve the aesthetic look of the property, and changes are "major", then the board should consider obtaining a vote of the owners to avoid any argument that the changes rise to the level of a material alteration to the common elements.

Q: Our homeowner's association bylaws state that the president can call a special meeting of the board giving 3 days' written notice to each director, which conflicts with the Florida Statutes that say

at least 48 hours notice must be given. My question is, since our bylaws are stricter than the Florida Statutes, do we follow them? P.K. (via e-mail)

A: There are two types of notice that is given for a homeowners' association board meeting, including notice to the individual board members and notice to general membership. It appears that you are confusing the notice required to be given to the board members as set forth in your bylaws with the notice that is required to be given to the membership as set forth in Chapter 720, Florida Statutes (unofficially referred to as the Homeowners' Association Act).

The Homeowners' Association Act requires the bylaws to provide for giving notice to parcel owners and members of all board meetings, and if they do not do so shall be deemed to provide that notice must be posted in a conspicuous place in the community at least 48 hours in advance of the meeting, except in an emergency. Similarly, the Florida Condominium Act requires notice of board meetings to be posted conspicuously on the condominium property at least 48 continuous hours preceding the meeting except in an emergency.

You indicate that your bylaws require that each director be given three days' written notice prior to the board meetings. This is different than, and in addition to, the requirement that notice be given to the parcel owners and members by posting notice 48 hours in advance of the board meeting. You should also note that although the directors can waive the requirement that they receive prior notice of a board meeting, the 48 hour posted notice requirement cannot be waived, except in an "emergency."

There are some instances where notice posted 48 hours prior to a board meeting is insufficient. The Homeowners' Association Act requires that written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property not less than 14 days before the meeting. Similarly, the Condominium Act requires not less than 14 days prior notice of board meetings where nonemergency special assessments, or at which amendments to rules regarding unit use, will be considered, which notice must be both posted and mailed, delivered, or electronically transmitted to the unit owners.

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, cooperative, 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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