



Neighbors Have Some Recourse on Messy Lawn

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Q: I am on the board of a small homeowners' association. Most of the owners are year-round residents. Recently, a home was bought and the owner lives out of state and there are tenants living in the home. The lawn needs to be mowed, there are weeds in the flower beds, and the yard is generally a mess. Does the association have any recourse? Can we hire a lawn maintenance company to mow the lawn and clean up the flower beds and charge the owner for the cost? J.K. (via e-mail)

A: The Homeowners Association Act does not address maintenance of the lots. You will need to check the governing documents for your community to see what rights, if any, the association has. First, you should look at the declaration of covenants (sometimes referred to as the deed of restrictions or the declaration of restrictions) to see what the owners' maintenance responsibilities are with respect to the yard or lot. Typically, the declaration will state that the owner must maintain the yard in a neat condition (or state some other general terms). Also, some declarations include a provision permitting the association to enter the lot to make corrections in the event that the owner fails to maintain the lot and landscaping as required by the declaration. Notice to the owners is required prior to entering the lot and making the corrections, and the owners

must also be given a reasonable period of time to make the corrections themselves before the association steps in to make the corrections. The required notice will typically be stated in the declaration. If the association uses these "self help" measures and charges the owners for the cost, the association may be able to file a lien for the charges, but only if the declaration authorizes the association to file a lien for unpaid charges. If the declaration does not authorize a lien for the unpaid charges, then the costs would need to be collected by way of a personal action against the owner (probably in small claims court).

Another option is to fine the owner for the failure to maintain the yard, but that option is available only if the governing documents (the declaration, the article of incorporation, or the bylaws) permit the association to levy fines. The fine may not exceed \$100.00 per violation, but the violation may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for a hearing, except that no fines shall exceed \$1,000.00 in the aggregate unless otherwise provided in the governing documents. An owner's failure to maintain the yard would be considered a continuing violation and the association could levy the fine (after the proper notice and opportunity for a hearing) on a continuing basis until the correction is made, but the total amount of the fine

could not exceed \$1,000.00 unless provided otherwise in the governing documents. Note that the law does not permit the association to file a lien for unpaid fines. Therefore, if an owner fails to pay the fine, the association can only collect the fine through a personal action against the owner.

Another option is a lawsuit against the owner requiring him to maintain his yard as required by the governing documents. However, before filing an action in court, the association would be required to mediate the dispute with the owner. Also, notice of the violation and an opportunity to cure the violation would need to be sent to the owner before instituting mediation.

Q: My homeowners' association has a restriction which provides that all basketball goals must be approved by the board before being installed. I was unaware of this restriction in our documents when I put my basketball goal up over two years ago. Recently, I received a letter from my association informing me that I need to remove the basketball goal. I have heard that I may have an argument that the basketball goal should be permitted as it has taken over two years for the association to require that I remove it. Is this accurate? D.R. (via e-mail)

A: You indicated that you installed your basketball goal two years ago. The statute of limitations governing an association's right to enforce restrictions set forth in its governing documents is generally five years. Therefore, the Association will likely be able to maintain an action to require you to remove the basketball goal if the action is filed within five years of your installation.

Even if the action is filed within five years, you may be able to utilize a defense known as laches. The doctrine of laches is based upon the notion that fairness aids the vigilant and not those who slumber on their rights. The doctrine of laches will prevail as a defense if you can demonstrate that the passage of time taken together with other

circumstances has caused you prejudice. However, the passage of time alone will not suffice unless more than five years passes and the statute of limitations expires.

Q: I live in a condominium and several members and I have questions about the way the president and the board are conducting business. The president owns several units in our community, and the other board members tend to act and do whatever the president requests. In our opinion, the 2 full-time maintenance employees are unnecessary as we have separate contractors who take care of the pool, landscaping and elevator. We have legitimate concerns that one or both of the full-time maintenance employees spends time working on the president's units. One of the maintenance employees is a relative of the president. Meanwhile, the common areas are neglected and our annual assessments, compared to other buildings, are excessive. What are the rights and responsibilities of the owners as they relate to employees? What is the recourse of the owners for abuse or neglect of office by the directors? Can we demand that the board show an accounting of the maintenance employees' activities? Is it legal for a president to use association employees for personal matters? Should the president be required to reimburse the condominium association? Y.M. (via e-mail)

A: You have asked several questions which may have been intended as rhetorical questions, as there can be no doubt that directors and officers cannot abuse their office and cannot hire relatives as association employees unless the board votes to hire the relative, and the contract is fair and reasonable to the association. Moreover, it is clear that an officer or director cannot utilize association employees for personal benefit. Therefore, the real question is what can members of the association do if they suspect abuses are taking place.

First, it is critical to remember that the members of the association elect the directors, who in turn elect the officers. Condominium unit owners have the

ultimate authority to operate and administer the association by electing only persons who will do the job properly, and in the event elected directors are not doing the job properly, the members may utilize the recall provisions of the Condominium Act to recall those directors and replace them with preferred directors. If other condominium unit owners are not willing or able to step up and take a seat on the board, then it is often difficult to address your concerns. Many of the decisions made by a board such as whether or not to hire additional employees, or what activities those employees will be engaged in, are part of the business judgment and discretion left to the board. However, flagrant abuses or misuse of association resources can be addressed by non-director members of the association.

One of the most important legal rights that is established by the Condominium Act is the right of all members to review official records of the association, and to be present at all director and member meetings. The exceptions to these general rights are that members are not permitted to review attorney-client privileged communications, information obtained in connection with the transfer of a unit, or medical records of owners, or to take part in board meetings between the board

and the association's attorney to discuss proposed or pending litigation. In all other cases, you, as a condominium unit owner, may make a written request to the board to review all of the official records of the association, and thereby, may essentially audit all of the activities and expenses of the association. In the event you determine that directors have misappropriated association resources for their own personal benefit, you certainly may proceed to rectify such conduct by either bringing legal action in the name of the association, which is permissible based upon your status as a member, or you may report any violation to the Division of Florida Land Sales, Condominiums and Mobile Homes, which may elect to conduct an investigation. I do not believe that the association members can demand that the board maintain certain records or logs concerning the daily activities of its maintenance employees, although I would agree that such a daily log would be an appropriate and beneficial document. As mentioned above, if the way in which the current directors operate the association is not to the liking of the members, the members should take steps to replace those directors with persons who will conduct operations in accordance with the members' wishes.

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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