



Bylaws Dictate Frequency of Payments

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Q: Can an owner pay the maintenance fees in one lump sum (i.e., yearly)? The board of my condominium association says that these fees must be paid one month at a time. Is this legal? G.L. (via e-mail)

A: Good question. This question often arises both from owners as well as boards of directors. Some owners find it more convenient to pay assessments in one lump sum, as opposed to having to remember to pay one more bill on a monthly basis. Some associations sometimes face increased expenses at a particular time (i.e., such as when an unexpectedly high insurance premium is due) and boards ask if the yearly assessments can be paid all at once, or possibly “frontloaded” to some extent, to cover such costs.

The Florida Condominium Act indicates that the bylaws must state the manner of collecting owners’ shares of the common expenses (i.e., regular assessments), and that assessments are to be made against units not less frequently than quarterly. Therefore, assessments can not be required to be paid less frequently than once every three months.

You will also need to review your association’s bylaws to see how frequently the assessments are to be paid. I presume that in your case the bylaws

probably indicate that assessments are paid on a monthly basis, which is allowable under the law.

Q: The board of directors of my homeowners’ association is very inconsistent with the enforcement of the rules and restrictions in our neighborhood. They allow people to put their garbage, especially landscape materials, at the curb several days before trash collection, even though there is a rule that says the garbage cannot be placed at the curb more than 24 hours before collection. Some owners are even permitted to store their trash container on the side of the house, which is also a violation of the rules. However, the board regularly sends notices of violation and threatens to fine when children’s toys are occasionally left out overnight or when visitor’s cars are occasionally parked in the street overnight. Isn’t the board required to enforce all rules equally? What recourse do the members have if the board elects to enforce some rules, but not all? E.S. (via e-mail)

A: A primary function of the board is to administer the community in accordance with the restrictions and rules contained in the governing documents. Typically, boards do their best to identify violations and take enforcement action. However, boards are sometimes not aware of some violations of the rules. In my experience, I have

often heard members complain about the lack of enforcement, and the board truthfully advises the member that the board was not aware of the violation. Therefore, if you witness, or are generally aware of, a violation within your community, you should inform the board so that they may take appropriate action.

Perhaps in your community a member is particularly aware of toys left in the yard and cars parked in the street and has complained directly to the board, resulting in enforcement action. While I agree that the board should be diligent in enforcing all violations, it is sometimes difficult because board members are volunteers who also have other activities and obligations in their lives.

However, the board must be diligent in enforcing the restrictions or risk losing the ability to enforce the restrictions in the future. For example, if the board has allowed members to store trash receptacles outside or to violate the restrictions on placing landscape debris at the curb, any attempt to enforce those restrictions against individual owners in the future may be met by a "selective enforcement" defense. This defense is based on the obvious principle that it is not fair for the board to enforce restrictions against some, but not all members. Moreover, once a significant number of members are permitted to routinely or continuously violate the rules, it is difficult to correct the situation because simultaneous enforcement against many violators must take place in order to avoid a selective enforcement defense by any one owner. Therefore, a board is well advised to diligently and consistently enforce all restrictions, and members of the association should assist the board by reporting known violations.

While some owners may feel that strict and consistent enforcement of all rules and regulations does not always create a desirable living environment, the fact is that failure to do so could result in losing the ability to maintain and operate the community in the manner intended, and in

accordance with the expectations of most members.

Q: Is there any situation where a condominium association may be determined to be negligent and therefore liable for damages to a condominium unit? K.E. (via-email)

A: A claim of negligence against a condominium association may not be as simple as it initially seems. It is necessary to show that the association knew or had reason to know that their actions or their failure to act could reasonably cause damage to a unit. However, there are some general examples of where a condominium association could be found negligent, thus creating a potential claim for an owner if his unit were damaged. For instance, the association has the duty to maintain the common elements. This includes the responsibility to keep the property in a good state of condition and to repair and replace portions of the property when necessary and as circumstances dictate. Therefore, when a condominium association fails to repair common elements as required, and that failure leads to damage to a unit, the unit owner may have a claim against the association.

Another potential example would be when the association accesses the unit in order to repair common elements but causes unnecessary damage within the unit. The Condominium Act grants the association the irrevocable right of access to each individual condominium unit for the purposes of maintaining, repairing, or replacing common elements, or portions of the unit which are the responsibility of the association. If, during the course of the maintenance, repair or replacement of common elements, the unit is damaged, the association could be responsible for those damages if the damage arose from the failure to exercise due care.

Ultimately, there could be a number of situations where an association is found negligent and thus responsible for damages caused to a unit. Such

matters are very fact specific, and must be analyzed liability.
on a case-by-case basis to determine potential

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