



Towing Away Dilapidated Car Not Simple Fix

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Question: Several months ago, one of the owners in my condominium parked a severely dilapidated vehicle in one of our guest spaces and has not moved the car since. Oil and other engine fluids are leaking out of the vehicle and the car's owner has not done anything to correct the situation. It seems that he has simply abandoned it. All that I see from my front window is this beat up eye sore. Can the association have it towed? G.V. (via e-mail)

Answer: Before looking at whether the car can be towed, you will have to review your condominium documents to find out if the car is in violation of any of the provisions in those documents. Sometimes, there may be a specific use restriction or rule prohibiting vehicles in such condition from being parked on the condominium property. Also, there is usually some type of general "nuisance" provision in the condominium documents. The term "nuisance", however, can be somewhat subjective and more information would be needed to determine whether the car you are complaining about rises to the level of a nuisance.

If the car is in violation of the condominium documents, towing might be one possible remedy. Before proceeding with any remedy (i.e. towing, fining, filing a petition for arbitration), your condominium association's board of directors

should send a written notice to the owner advising of the violation and the possible consequences of not correcting the violation. If your board wants to tow the vehicle, they would first need to review the condominium documents to find out if the authority to tow a vehicle is contained therein. If it is, Section 715.07, Florida Statutes, which is commonly known as the Florida Towing Statute, sets forth requirements for towing vehicles.

You should note that towing is a "self-help" remedy, and self-help remedies are generally not favored in the law. The Florida Towing Statute contains specific requirements that must be strictly adhered to by an association before it tows a vehicle. Failure to adhere to the strict requirements contained in the law may subject the association to liability for the cost of towing the vehicle, storing it, and any damages incurred by the owner of the vehicle, including attorney's fees and court costs, which are caused by any improper towing.

Some of the specific restrictions set forth in the Florida Towing Statute include requirements for the placement of signage on the property, information that must be contained on the signs, height restrictions for signs, requirements that must be followed by the towing company, distance limitations for the storage of vehicles that have

been towed, etc. Signage requirements might be avoided where notice is personally given to the owner, or other legally authorized person in control of the vehicle, that the area in which that vehicle is parked is reserved or otherwise unavailable for unauthorized vehicles and that the vehicle is subject to being removed at the owner's or operator's expense. The local police must also be notified within 30 minutes of the vehicle being towed, and be provided with the make, model, color and license plate number of the vehicle. If the vehicle is in the process of being towed and the owner returns to the vehicle, the vehicle must be returned upon the payment of a reasonable service fee.

Ultimately, the towing of a vehicle is not the simple "fix" many believe it is, and I would recommend that associations consult with legal counsel prior to towing a vehicle, in order to ensure compliance with Florida law.

Question: The board of directors of my association recently mailed a notice of special assessment to each member for repair work that needs to be done to the pool. Although the work needs to be done, and I don't object to the special assessment, no bids were taken for the repair work and the board is not able to provide the membership with any actual costs. Is our board acting correctly? P.L. (via e-mail)

Answer: When discussing contracting for products and services and the requirement for competitive bidding, there are some differences between homeowners' associations and condominium associations.

The Condominium Act requires that any contract that is not to be fully performed within one year after the making thereof, for the purchase, lease or renting of materials or equipment to be used by the association, and all contracts for the provision of services shall be in writing, and if the Contract requires payment by the association on behalf of any condominium operated by the association in

the aggregate that exceeds five percent of the total annual budget of the association, including reserves, the association must obtain competitive bids.

The Homeowners' Association Act contains similar provisions, however it states that competitive bidding is required where the contract requires payment by the association that exceeds ten percent of the total annual budget of the association, including reserves.

In either case, the association is not required to accept the lowest bid. Also, if a condominium or homeowners' association enters into a contract through the competitive bidding process, the renewal of that contract is not required to be rebid if the contract has a provision that allows the board to cancel the contract on thirty days notice.

There are several exceptions to the competitive bidding process. For instance, the statutory competitive bidding requirements are not intended to limit the ability of an association to obtain needed products and services in an emergency. Additionally, the competitive bidding requirements do not apply if the business entity with which the association desires to enter into a contract is the only source of supply within the county serving the association. The competitive bidding requirements also do not apply to contracts with employees of the association, and contracts for attorney, account, architect, community association manager, timeshare management firm (this is only listed as an exception in the Condominium Act), engineering, and landscape architect services.

The Condominium Act provides that associations with less than 100 units may opt out of the competitive bid requirements if two-thirds of the unit owners vote to do so.

You indicate that your board has already mailed a notice of special assessments to each member for pool repairs. You should note that there is no requirement that the association actually obtain

bids prior to levying a special assessment. If competitive bidding is required in your situation, that process will need to be followed before any contact is actually entered into.

Question: What is the proper procedure for voting on amendments to the condominium documents? If there are not sufficient votes to pass an amendment, can the board solicit additional votes after the meeting? D.C. (via e-mail)

Answer: Typically, if the association suspects that there will not be enough votes to approve an agenda item, such as the amendment, no motion is made to approve the agenda item and the meeting is adjourned to a later date so that additional proxies can be solicited. Proxies are valid for the specific meeting for which originally given and any lawfully adjourned meetings thereof, but in no event shall a proxy be valid for longer than ninety days after the date of the first meeting for which it was given. Therefore, any adjournment should be

no longer than ninety days after the date of the first meeting.

According to Robert's Rules of Order, once a vote tally is announced, the vote is deemed cast and cannot be postponed by adjournment of a meeting in order to collect more votes. However, in an arbitration decision from the Division of Florida Land Sales, Condominiums and Mobile Homes, the arbitrator held that even if Robert's Rules of Order had been violated by announcing the vote prior to the motion to adjourn, such procedural violation would not render void the action taken by the association. Although arbitration decisions are not afforded the same weight as court cases, they are persuasive authority and will be specifically relied upon in any arbitration proceeding. Therefore, even if there is a procedural violation of the Robert's Rules of Order, it may not affect the validity of the amendment.

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.

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.