



Cooling System in Gray Area

Association may not be responsible for maintenance

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Q: I am a condominium owner in a community with three-story buildings with stacked plumbing, which includes the air conditioning condensation line. The air conditioning condensation line recently backed up and leaked into my first floor unit. The association disclaimed responsibility for maintaining the pipe, and I was unable to easily repair the pipe as I have no authority over common property, which I believe includes the air conditioning condensation line. However, I was eventually able to have contractors clear the clog by accessing the condensation line in my unit. I question whether this air conditioning condensation line falls under the Florida Statute pertaining to conduits as common elements, but I am unsure. Any information would be greatly appreciated. M.S. (via e-mail)

A: The answer to your question lies in the specific provisions of your declaration of condominium. As you may know, condominium property is generally divided into the unit, which is owned and used exclusively by the unit owner, and the common elements, which can include general common elements owned and equally usable by all members of the association, and limited common elements, which are items of property owned by all members, but restricted in their use to certain owners. The best examples of property that is

typically limited common element include balconies, lanais, or parking/carport spaces. However, it is possible for plumbing lines, including air conditioning condensation lines, to be established as either part of the unit, or as general or limited common elements.

Typically, an air conditioning unit and related equipment, including condensation lines, that serve only one unit, are made a part of that unit, or are described as limited common elements. In either case, the unit owner who exclusively uses the air conditioner and related equipment is responsible to maintain and repair that equipment. You may know that the Florida Condominium Act provisions concerning insurance clearly provide that the association is not required to insure air conditioning compressors that serve only an individual unit, whether or not located within the unit boundaries.

As you suggest in your question, it is often deemed best that the association maintains the right and authority to repair shared utilities contained within the condominium building, which would include ducts, plumbing, wiring, and other facilities. The Florida Condominium Act also specifically identifies as common elements an easement through the unit boundaries in favor of the

association for conduits, pipes, etc. The purpose of this statutory provision and framework is to maintain the right of the association to access pipes and other utilities in order to be certain that all units receive needed services and utilities. However, the provision in the Florida Condominium Act regarding easements through units for conduits is merely designed to preserve rights in the association, and does not necessarily assign the maintenance obligations for each and every utility in your building. As noted above, it is necessary for you to carefully read the declaration of condominium to determine who is responsible to maintain various pipes and utilities. In my experience, shared pipes and utilities are typically maintained by the Association, although the cost of that maintenance may be either a common expense of all unit owners, or may be divided just amongst the units that make use of the particular limited common element pipe or utility service.

Q: I live in a condominium and the title to my unit is in my name only. However, my husband lives in the unit with me and would like to run for a seat on the board of directors. I would like to give my husband my voting rights or a power of attorney so that he can run for the board. Is this possible? A.K. (via e-mail)

A: The Condominium Act permits any unit owner to run for the board of directors. The only exception is that if a person has been convicted of any felony by any court of record in the United States and has not had his or her rights restored pursuant to the law in the jurisdiction of his or her residence, he or she is not eligible for board membership.

The Condominium Act does not address the eligibility of non-owners. Therefore, you would need to review the condominium documents for the association (the declaration of condominium, the articles of incorporation, and the bylaws) to determine whether the documents require that board members be unit owners. In other words, if the documents do not state that board members must be unit owners, then non-unit owners are eligible to run for the board.

In my experience, most condominium documents require board members to be unit owners. However, I have seen some documents that do not limit board membership to owners. Most modern condominium documents limit board membership to unit owners, or the spouse of a unit owner. These provisions take into account the fact that title to the unit is not always placed in the name of both the husband and wife for tax or estate planning purposes.

I have seen some attempts by unit owners to give, for example, a husband or a child "voting rights" or a power of attorney in order to permit the non-owner to serve on the board. However, there is a specific administrative rule promulgated by the Division of Florida Land Sales, Condominiums and Mobile Homes, which states that where the governing documents preclude non-unit owners from serving on the association's board of directors, one acting under a power of attorney is similarly precluded from serving on the board unless he or she is a unit owner. Therefore, I do not think that a power of attorney or other type of document attempting to give the owner's right to run for the board to a non-owner would be sufficient to confer eligibility for the board of directors if the governing documents preclude non-unit owners from serving on the board.

Q: I am a board member of a condominium association, and I have resided in my community for a considerable period of time. Over the years, the number of renters has increased dramatically. Presently, approximately fifty percent of the units are rented. We do not have any rental restrictions contained in our documents, so the unit owners have been permitted to rent their condos without any restrictions. The situation is unfortunately getting out of hand and the quality of life in our community continues to deteriorate as more units are rented. Is there a method by which we can limit the percentage of units in which rentals are allowed? D.S. (via e-mail)

A: You will need to amend the declaration of condominium if you want to add any rental

restrictions. An amendment to the Condominium Act which became effective on October 1, 2004, provides that any amendments restricting unit owners' rights relating to the rental of units applies only to unit owners who consent to the amendment and unit owners who purchase their units after the effective date (which is the date the amendment is recorded in the public records) of that amendment. Therefore, owners who vote against such an amendment, and even owners who simply fail to vote at all, are not bound by the amendment even if it passes and is recorded in the public records. This statute has the effect of creating three groups of owners that the association must keep track of with regard to any new rental restrictions. First are the owners who vote in favor of the amendment, and second are the owners who take title to their units after the effective date of the amendment. The new restrictions apply to the owners in each of these cases. Third are the owners who either vote no, or cast no vote, for the amendment. The new restrictions do not apply to these owners.

In my experience, owners who rent their units typically do not vote in favor of rental amendments that further restrict their ability to rent their unit. As a result, it can be difficult getting enough votes to pass an amendment, and even if the amendment is successful the purpose behind it is usually not accomplished.

As you can imagine, keeping track of which units the restriction applies to and which units it does not can create significant administrative problems.

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Many associations elect to "grandfather" all of the existing owners and only apply the new rental restriction to those owners who acquire title to their units after the date the amendment is recorded in the public records. While this may encourage some owners to vote in favor of the amendment who might otherwise vote against it, it would not solve your immediate problem.

If your association adopted an amendment which limited the percentage of units that could be rented in your condominium at any one time, you would have to factor in the above considerations. For example, the new amendment would not apply to any owner who voted against the amendment, or who simply did not vote at all. This could create a very complex situation with regard to enforcement. It would probably be very difficult to "police" this restriction to ensure that the percentage of units that are allowed to be rented is not exceeded. Additionally, if the number of rented units were at the maximum percentage, there would be no way to prevent owners that are not subject to the new amendment from renting their unit, which would result in the required percentage being exceeded. Ultimately, such an amendment is probably not the best idea, however your board may want to consider other types of rental restrictions, such as minimum and maximum rental terms, the ability to screen tenants, and other restrictions that can eventually help to restore some order as it relates to the rental problems your association is dealing with.