



Renovation Interrupts Neighbors

Condo association can take steps to reduce inconvenience

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Q: I live in a condominium unit and my neighbors are renovating their unit. I realize this is a temporary situation, but the odors from paint, and what I believe to be glue or other adhesives, is very disturbing to me in my unit. In addition, the construction activity begins very early in the morning, sometimes as early as 6:30 a.m., and continues into the early evening hours. I can't fault my neighbor for wanting to improve his unit, but it does not seem right that he can disturb other unit owners to this degree. **N.M. (via e-mail)**

A: Some of the challenges and issues that go along with condominium ownership are accentuated when a neighboring unit owner renovates his unit. Unfortunately, it is virtually impossible for renovation activity to not interrupt the normal, peaceful environment in the condominium building or development. However, there are some steps that an association may take to at least reduce the inconvenience that one unit owner's renovations cause to other unit owners.

First, most well-written condominium documents require that unit owners seek the approval of the association prior to undertaking substantial renovations in the unit. Such a requirement is important because it is practically inevitable that major renovations will somehow touch or affect common elements, which the association is

responsible to maintain. The association clearly has an interest in making sure any renovations of a unit do not adversely affect the common elements. In giving any required approval, the association may reasonably insist on certain specifications or methods and manner of completing the renovation so as to protect the common elements, as well as the rights of other unit owners.

It is very common, in my experience, that a condominium association board adopts rules and regulations governing the time and manner in which construction activity may take place. Assuming that the board has rule making authority, and that the declaration of condominium does not contain any conflicting provisions, the board may adopt reasonable rules that limit construction activity to certain hours of the day, certain days of the week, and excluding holidays.

Some condominium communities, especially condominiums which are occupied only seasonally, restrict construction activity to the summer months when most of the owners are not in residence. As for the fresh paint and adhesive odors, assuming that the materials being used are conventional, residential construction materials, I believe you will just need to endure what is hopefully a temporary condition.

Q: I am planning to sell my condominium unit “for sale by owner.” What kind of documentation do I need to give to prospective purchasers? **T.G. (via e-mail)**

A: The Florida Condominium Act specifies the types of disclosures that must be given when the unit is being sold by a “non-developer” (i.e. a unit owner). If someone is just looking at your unit you do not need to provide them with the condominium documents. However, a prospective purchaser who has entered into a contract for the purchase of your unit is entitled, at your expense, to a current copy of the declaration of condominium, articles of incorporation of the association, by-laws, rules and regulations of the association, the most recent year-end financial report of the association, and a document entitled “Frequently Asked Questions and Answers” which is required to be maintained by the association. The Frequently Asked Questions and Answers Sheet must be maintained by the association and updated yearly and the format must be the same as the form adopted by the Division of Florida Land Sales, Condominiums, and Mobile Homes. The form adopted by the Division can be found on its website at: http://www.myflorida.com/dbpr/lsc/documents/6000-4_faq_sheet.pdf

There are a couple of different ways to handle providing the information to the prospective purchaser. The first way is to give the prospective purchaser the information prior to entering into the contract. For example, if you receive an offer to buy your condominium unit, you could provide the required information to the prospective buyer and after three days, excluding Saturdays, Sundays and legal holidays, execute the contract (assuming that the buyer still wishes to enter into a contract to purchase the unit).

The second way to handle would be to enter into the contract with the prospective purchaser and at that time give him or her a copy of the required information. In that case, the contract would be voidable by the buyer by delivering written notice of the buyer’s intention to cancel within three days,

excluding Saturdays, Sundays and legal holidays. If you do not provide the information to the purchaser at the time that the contract is signed, the contract is voidable if the purchaser requests the information in writing and for no more than three days, excluding Saturdays, Sundays and legal holidays, after the buyer receives the information. Even if the closing is scheduled and you have not provided the required information, the buyer can extend the time for closing for a period of not more than three days after the buyer receives the required information, excluding Saturdays, Sundays and legal holidays, if the buyer requests the information in writing.

The Condominium Act also requires that the contract entered into between the buyer and seller have certain form language setting forth the way that the required disclosure was handled (either one of the two methods described above).

You may find that you do not have (or cannot find) a copy of the documents that you need to provide to a prospective purchaser. If so, you should be able to obtain a copy from the association. The Condominium Act requires the association to maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each, as well as the question and answer sheet and year-end financial information to ensure their availability to unit owners and prospective purchasers. The association is entitled to charge its actual costs for preparing and furnishing the documents to those requesting the same.

Q: I am on the Board of Directors of a 32 unit condo. I have always been told that we do not want investors to own a large part of our units because they would rent them and would not be around to keep the place up. Is there any way that we can eliminate investors from purchasing our units and then renting them? We had five units for sale and one just sold to another investor who is going to rent it. This puts us at twenty percent investor owned and we do not want it to go higher. **(R. S. via e-mail)**

A: The Condominium Act provides that associations have the authority to create covenants and restrictions concerning the use, occupancy, and transfer of units. This includes both the sale and leasing of units.

Leasing restrictions must be specifically provided for in the condominium documents of the association. An association can tailor the leasing restrictions to its individual needs. For instance, an association could adopt an amendment that prohibits leasing or regulates the frequency and duration of leases. When uniformly enforced, such

restrictions can aid the association in creating a less transient community.

Pursuant to a relatively recent amendment to the Florida Condominium Act, however, any amendment 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 of the amendment. Because of this new statutory provision, it is now more difficult to adopt amendments affecting rentals.

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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