



## Rule About 14-Day Meeting Notice Clarified

### Condo owner more than five years behind on paying monthly fees and special assessments

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**Q:** I am confused about the 14 day notice for adopting rules in a condominium. We have been told that rules involving unit use may only be approved by the board after the notice of the board meeting is mailed to the owners 14 days before the board meeting. What information must be included with the 14 day notice? Some rules are very important and it seems as if the board should come to an agreement on the actual final wording and then the proposed rule should be mailed with a 14 day notice for a final board meeting. Is this procedure correct or do we need to send a 14 day notice every time the board discusses changing a rule involving unit use? **E.B. (via e-mail)**

**A:** First, I will presume that your condominium documents permit the board of directors to adopt and amend the rules and regulations regarding both units (apartments) and common elements. In some condominiums, rules and regulations must be approved by the owners, and in such a case, approval would need to occur at a properly noticed membership meeting. If the board has the authority to adopt and amend rules and regulations, the Florida Condominium Act provides that written notice of any board meeting at which an amendment to rules regarding unit use “will be considered” shall be mailed, delivered, or electronically transmitted to the unit owners and

posted conspicuously on the condominium property not less than 14 days prior to the meeting. Evidence of compliance with the 14 day notice requirement must be made by affidavit executed by the person providing the notice, and the affidavit is to be filed among the official records of the association.

What makes the statute unclear is the use of the word “considered.” That could be interpreted to mean that anytime a change to a rule involving unit use is brought up for discussion, it requires 14 days notice by mail, delivery, or electronic transmission, as well as posting. However, I do not interpret the law that way. Rather, I think that the intent of the law is that the 14 day notice is only required when the board is going to adopt a rule involving unit use. In my opinion, the board can meet and discuss proposed changes to the rules regarding unit use at a meeting subject to the regular 48 hours posted notice requirement, but once the board is going to vote on the rule change, the board must mail and post the notice of the board meeting.

Please also note that the 14 day notice requirement only applies to rules regarding “unit use.” In other words, absent any restrictions to the contrary in the condominium documents, amendments to rules and regulations regarding common elements can be

adopted by the board at a meeting that is simply posted 48 hours in advance, with no mail-out requirement.

If the board is going to adopt or amend a rule regarding unit use, although not required by law, I believe the proposed new rule or amendment to the existing rule should be mailed along with the notice. If the proposed action involves a change to an existing rule, the proposed rule would typically be sent in "black-lined" format (with new language underlined and deleted language struck through). At the board meeting, the board can change the wording based on comments from those in attendance, decide not to adopt a rule, or adopt it as originally proposed. In other words, there is still some leeway for the board at the actual meeting where the rule change or new rule is adopted.

There may be other requirements to meet before the new, or amended, rule can be enforced. For example, some condominium documents will require all new or amended rules to be sent to all owners before they can be enforced. It is always a good idea to review the condominium documents before taking on the task of adopting new rules or amending existing rules.

**Q:** Our condominium association has an owner who has not paid monthly fees nor special assessments for over five years. This individual continues to enjoy normal living conditions here, despite owing a large sum of money in assessments to our association. What are our options? Can we tack on interest, late fees and attorney's fees? **L.G. (via e-mail)**

**A:** Although it is beyond debate that delinquencies in community associations are at an all time high, few associations allow the problem to persist for five years.

The Florida Condominium Act provides that a unit owner, regardless of how his or her title has been acquired, is liable for all assessments which come due while he or she is the unit owner. The association has a lien on each condominium parcel to secure the payment of assessments.

Assessments and installments on them which are not paid when due bear interest at the rate provided in the declaration, from the due date until paid. This rate may not exceed the rate allowed by law, and, if no rate is provided in the declaration, interest shall accrue at the rate of eighteen percent per year.

Also, if the declaration or bylaws so provide, the association may charge an administrative late fee in addition to such interest, in an amount not to exceed the greater of \$25.00 or five percent of each installment of the assessment for each delinquent installment that the payment is late. Payment received by an association shall be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in the collection, and then to delinquent assessments.

Further, the association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgment from late assessments.

The condominium laws do not, in general, permit more extreme remedies in the nature of "self-help", such as the ability to ban use of recreational facilities or suspend voting rights.

In my opinion, the board of directors has a fiduciary duty to take reasonable steps to ensure that all accounts of the association are paid in a timely fashion. Your association can presumably record a claim of lien against the subject property. Florida law requires that the delinquent unit owner be notified that a claim of lien is being recorded against his property, and that the unit owner has thirty days in which to pay his account in full. If, after thirty days, the owner has not paid in full, then the association is authorized to foreclose the claim of lien, and possibly acquire title to the

subject property or have a third party acquire title, who then becomes jointly and severally liable for past due assessments unless that third party is the first mortgagee.

First mortgagees who acquire title through foreclosure of their lien are required to pay one percent of the original mortgage debt or the unit's unpaid common expenses and regular periodic assessments which accrued or came due during the

six months immediately preceding the acquisition of title.

Your association should consult its attorney prior to initiating proceedings against this owner, as the lack of action for five years could pose additional problems, including limiting the ability to collect some of the past-due amounts due to the statute of limitations.

*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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