



Committees Help, But Power is Limited

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Q: I live in a condominium where our documents state that the board of directors has the authority to approve or disapprove leases. Given the amount of time the board was spending collecting information and interviewing possible tenants, the board decided that it would be best to create a "screening committee". The board decided to give the committee the full authority to approve or disapprove the leases. My question is, since the recorded documents state that the board of directors has the authority to approve or disapprove leases, do the bylaws need to be amended in order to allow the "screening committee" to have that authority? **R.E. (via e-mail)**

A: Committees can be created in one of two ways. First, the governing documents of the association can create a committee and provide that committee with specific duties and functions. A committee may also be created by a resolution adopted by a majority of the full board of directors. A committee created by a board resolution may exercise portions of the board's duties and responsibilities. However, the authority granted to the committee should be specifically contained within the resolution creating the committee.

Therefore, it is my view that a board may create a committee to carry out the functions of the board as provided in the bylaws. However, there are legal limitations on a committee's authority. For instance, a committee can never authorize an

action which is required to be voted on by the members. For example, a committee could not authorize a material alteration of common elements which requires a unit owner vote pursuant to the declaration. Furthermore, a committee cannot fill vacancies on the board of directors or adopt, amend, or repeal the bylaws.

It is important to note that committee meetings, whether advisory or where the committee exercises the authority of the board, must be normally open to the association membership, although the bylaws can provide otherwise in limited circumstances. Stated otherwise, committees that cannot take final action on behalf of the association can be exempt from state "sunshine" regulations, if so provided in the bylaws. When a committee is empowered to act on behalf of the board, the committee meeting must conform to the notice requirements established for meetings for the board of directors, and these requirements cannot be disclaimed in the bylaws. This includes posting notice of the meeting 48 hours in advance, posting an agenda, and permitting unit owner attendance. The same rules apply to a budget committee.

Ultimately, the board will be responsible for the actions of the committee, since the board cannot delegate its fiduciary duty. However, as long as the bylaws do not limit the board's authority to create committees, nor limit the ability to delegate corporate authority to the committees, I believe the board of directors can create a "screening

committee” and delegate the authority to approve or disapprove leases to the committee without the need to amend the bylaws.

I would also note that some commentators do not favor the use of the term “screening”, as it connotes (at least to some) a discriminatory theme. A term like “lease review committee” is more neutral, and may be a better term to use. I also recommend that if the association intends to disapprove a lease, that there be a process in place for review and ultimate decision-making by the board of directors, since these situations often result in litigation.

Q: I serve on the board of my condominium association and we continue to be divided on the question of what are appropriate rules to be included in the board-made rules and regulations as opposed to being included in the declaration of condominium. The bylaws of the association clearly give the board the authority to make rules and regulations and it would seem to me that the board could add pet restrictions to the rules and regulations. However, some board members think that only the members can add pet restrictions by amending the declaration. What do you think?

D.H. (via e-mail)

A: A key Florida appeals court case, decided many years ago, established that a board-made rule will be valid if it can pass three tests. First, the board must be granted rule-making authority in the condominium documents. Second, any rule adopted by the board cannot be in conflict with any right that is contained in the superior condominium documents (declaration, articles or by-laws), including any right which is “inferable” from those documents. Finally, any board-made rule must be reasonable and not discriminatory.

You stated in your question that the documents of your condominium do, in fact, give the board rulemaking authority, so the first test is presumably satisfied. However, it is important to verify that the Board’s rule-making authority extends to both common elements and units (apartments). Many condominium documents, particularly older ones, only grant the board rule-making authority with

respect to common elements. In such cases, the Board would not have rule-making authority regarding use of the units, and restrictions upon unit use could then only be established through an amendment to the condominium documents, typically the declaration.

Next, you must determine whether the rule conflicts with any provision in the condominium documents. In the case of pets, if the condominium documents are completely silent on pets, it is likely that a board-made rule regulating pets will be valid. In my opinion, it does not seem “inferable” from silence that a particular right is established by the condominium documents. However, you must read your condominium documents carefully as I have seen declarations of condominium that make some passing reference to pets which contemplates that pets will be present in the community. If your declaration contains such a provision, then it is reasonable to say that the right to have pets, at least, is inferable from the condominium documents.

The third test is whether or not the rule is reasonable. The problem with this standard is that it is very subjective and difficult to pin down for an exact meaning. For a condominium development that has multiple units within one building and is configured like a traditional apartment building, it may be perfectly reasonable for the association to limit the size of dogs, as larger dogs might not adapt well to tight quarters. I do not believe anyone would question that it is reasonable for a board to make rules including leash requirements, or designating permitted pet walking areas within the condominium.

Because board-made rules are subject to much stricter scrutiny by the courts, I normally recommend that “significant” pet restrictions (such as an outright ban) be included within the declaration of condominium, which is subject to the democratic voting process, involving all unit owners. However, each situation has to be analyzed on a case-by-case basis, because what is “reasonable” for one community may not be so for another.

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