



Association Should Limit Number of Vehicles

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Q: It is that time of year again when all of my “snowbird” friends come back to their condominium homes. I am genuinely happy to see them since many of them are very good friends. But just as local traffic becomes a problem at this time of year, so too does parking in our small parking lot. Our condominium development was built in the early 1970’s, and the developer gave every owner one carport space and use of a parking lot which does not even have enough spaces for every owner to have a second car. I think every owner limits themselves to two cars total, and many retired couples just keep one car at the condo. However, with family and guests visiting, often for weeks at a time, we have a severe parking problem during the “high season.” The association has not wanted to do anything in the past because the problem is confined to a two-month period and because there is no readily apparent solution. The only other available parking is about two blocks away. Do you have any practical solutions in your experience that might help us to address this situation? **N.Y. (via e-mail)**

A: Your problem is not uncommon. Although development regulations have changed over the years, I am aware of many condominiums which were developed with only one and one-half parking spaces per unit. Many developers chose not to provide extra parking facilities with the goal of maximizing the number of dwellings they could

sell. Obviously, adequate and orderly parking is an extremely important part of any high-density housing development.

Typically, in addition to assigned carport or garage spaces, a developer may also assign uncovered parking spaces to particular units and then reserve a number of parking spaces for guest parking. Where there are no such general parking spaces assigned to unit owners, those spaces are common elements which may be administered by the association. The association may assign use of a particular parking space to a particular unit owner through a lease in exchange for consideration, or simply through general assignment of a particular parking space to facilitate the orderly use of the parking lot. However, there are limitations to the association’s authority in this regard, because the association, in the absence of an appropriate unit owner vote, may not convey the common elements or alter an unit owner’s use rights in those common elements. Therefore, any lease of a parking space must be of a sufficiently short term to not constitute a “disguised sale”, and arguably, any assignment and use scheme should include some sort of rotation system so that everyone gets an equal chance, over time, to use any preferred parking spaces.

Given your description of your problem, it would appear that the best, and probably unavoidable,

solution is that the association must limit the number of vehicles that each owner, including their guests, may have upon the property at any time. While such a restriction could reasonably be placed in board-made rules and regulations, it would be better, and more certainly enforceable, to have the members amend the declaration of condominium to include this restriction. Such restrictions are not uncommon, and while they may cause inconvenience to some owners, the restrictions are fairly and equally applied. In addition to a two vehicle limit, many associations with limited parking space prohibit longer storage of vehicles upon the property while the owner is away, and require that the unit's assigned space be used before a guest space can be occupied.

Q: I serve as the treasurer on the board of our condominium association. Unfortunately, we have some issues with our building. In addition to making some repairs, we have made a demand on the developer for reimbursement. We have consulted with legal counsel and may sue the developer, if necessary. One of our unit owners is selling his unit and the buyer noticed the work being performed when he toured the property. The buyer has asked for information from the association about the condition of the building and the prospects for recovering from the developer. I am familiar with the requirement that the association must provide a prospective purchaser with a letter stating how much assessments are owed on the condominium unit, but I am not aware of our obligation to respond to this inquiry, and was hoping you could shed some light on this issue? **W.R. (via e-mail)**

A: You are correct that the Florida Condominium Act does require an association to provide a timely response to a request from an owner or prospective lender, or either of their designees, for the account balance owing to the association on the unit. The letter that the association provides is called an "estoppel" letter, because the association will then be "estopped", or legally prohibited, from demanding that the new unit owner pay any more than the amount disclosed in the letter. Unit purchasers and their

title insurers use the estoppel letter to make sure that all amounts owing against the unit are paid by the seller at the closing.

However, the estoppel letter is all the association is legally required to provide directly to prospective buyers, although the selling unit owner is obligated to furnish additional information regarding the association. However, it is not unusual, and in fact is becoming more and more common, for a buyer's mortgage lender to send a "lender questionnaire" to the association to inquire about a whole host of issues, including pending litigation. The Florida Condominium Act clearly provides that the association is not obligated to respond to those lender questionnaires, but may do so, and may charge \$150, plus attorneys' fees and costs incurred in responding to the questionnaire. In addition, the association may limit its exposure to liability for responses on a lender questionnaire by including "magic language" from the statute to the effect that the person completing the questionnaire has responded in good faith and to the best of his or her ability.

Even if an association elects to provide answers to the prospective mortgage lenders questionnaire, it is rarely a good idea to provide any details about alleged building defect or to theorize as to the prospects of recovery from the developer or any third party. For one thing, any such disclosure is not confidential and could easily be used against the association if litigation does arise. The association does have a duty to disclose in its "Question and Answer Sheet" any litigation to which the association is a party and in which the association may be exposed to liability in excess of one hundred thousand dollars.

The above being said, many associations have exhibited a more liberal attitude in responding to "lender questionnaires", so as to facilitate transactions in a difficult market. If disclosures regarding pending claims regarding alleged construction defects are going to be made, you should definitely involve the association's legal counsel to ensure that no statements are made

which would harm your case, or cause other problems.

Q: My son has a physical handicap which requires him to be in a wheelchair. We must help him into our Unit because there is no ramp available for his use. It was brought to my attention that the Association may be required to provide handicapped access. However, when I asked the President of our Association about this, he stated that the Association is not required to provide handicapped access. What do you think?

N.C. (via e-mail)

A: The Federal Fair Housing Act provides that it is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a

dwelling to any buyer or renter on the basis of race, color, religion, sex, familial status, national origin, or handicap.

The term “handicap” is defined in the law as “a physical or mental impairment which substantially limits one or more of such person’s major life activities.” Where the owner or any other person who uses the dwelling is handicapped, the Association cannot refuse to allow the owner to make a reasonable modification to the dwelling or associated common use areas if such modifications are necessary to afford the handicapped individual full enjoyment of the premises. However, the modifications are made at the expense of the person making the request.

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.