



Association is Legally Obligated to Enforce Rules

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Q: I live in a community operated by a homeowners' association. I have a question about the board's right to come onto my property to "inspect" the exterior of my home and landscaping. My association has started walking the property quarterly, and between those inspections are follow-up inspections. It seems as though board members and architectural control committee members are constantly on my property. I know that the police need to get a warrant to come onto my property, so I wonder how it is that the association can trespass whenever they want to?
D.H. (via e-mail)

A: One of the most common functions of a homeowners' association is to enforce covenants concerning exterior maintenance and general appearance standards. The most often cited reason for covenants and restrictions is to maintain a certain quality and character of the community, both for the day-to-day enjoyment of people who choose to live in that setting, and for the purpose of maintaining property values. Your association's board has not only the right to enforce the community's covenants and restrictions, it has a legal obligation to do so.

There is no express easement right in the Florida Homeowners' Association Act that would grant authority to the board or other association representatives to come on to your property. Some

declarations of covenants will include a provision granting an easement to the association for this purpose.

The short answer to your question is that if the governing documents of the community provide easement rights for the association to enter your property for inspection purposes, then such a provision would be valid. In the absence of such a provision, there is generally no right of entry upon the land of another. Of course, if violations can be observed from common areas (such as from the roadways), or from the land of another for which access permission has been granted (such as from a neighboring lot), the association could address the issue on that basis as well.

The underlying theme of your question invokes one of the fundamental philosophical debates amongst those who live in mandatory membership communities. Many people want to "live and let live", and just "be left alone." However, I believe that everyone who buys into a deed-restricted community needs to be aware that other people might have made the decision to live in your community because the covenants and restrictions are important to them, or perhaps even because one rule is important to them. While it might not bother you for a neighbor to keep a boat in their driveway, it could drive your next door neighbor

crazy, and the “no boat rule” is why he or she chose to live there.

I think a Florida appeals court said it best some forty years ago. In the 1971 case of *Stirling Village Condominium Association v. Breitenbach*, the court said: “Every man may justly consider his home his castle and himself as the king thereof; nonetheless his sovereign fiat to use his property as he pleases must yield, at least in degree, where ownership is in common or cooperation with others. The benefits of condominium living and ownership demand no less. The individual ought not be permitted to disrupt the integrity of the common scheme through his desire for change, however laudable that change might be.”

Although the *Stirling Village* case was decided in the condominium context, it seems equally applicable in the HOA context these days.

Of course, those who ascribe to the “freedom to do my own thing” theory of private rights will argue that there are few housing choices available in modern society, at least in Southern Florida, that do not involve a mandatory membership association.

Like most things in life, there are reasonable points of view on both sides of the issue.

Q: We have had our first home in our neighborhood lost to foreclosure. The owners just moved out last week and the bank is the new owner. I understand we were fortunate compared to some associations because the owners stayed in the home until the end and took care of the

landscaping and the swimming pool. I do know that the bank is now liable for future assessments, but we wonder who will take care of the lawn and the swimming pool while the house is vacant. Are you able to address our concerns? **B.N. (via e-mail)**

A: The experience you have described is not uncommon these days. I would agree that you are fortunate that the prior owner did not walk away from his obligations long ago, leaving an eyesore to contend with. Presumably, the foreclosing lender will now maintain the property since selling the property for top dollar is likely the only way the lender will recoup its loan, or at least some of it. However, many banks are either too overloaded with foreclosures or simply unwilling to spend funds to protect their collateral.

The good news is that the bank is now not only liable for assessments going forward, but also all responsibilities of being a property owner in your community. With respect to ongoing maintenance of the lawn and sanitary pool care, hopefully the bank will take reasonable steps for its own benefit. If it fails to do so, check the governing documents of your association to determine if they contain covenants and restrictions requiring basic upkeep of the property. If so, the documents might also include what is called an “enforcement of maintenance” provision which would allow the association to demand that the property be maintained, and in the event that the property is not maintained, the association may do the work itself and charge the cost to the current owner.

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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