



Rec Facility Use Can Be Suspended For Nonpayment

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Q: We have a few owners who have not paid their dues in over two years, but still live in our complex. It really irritates many of us to see these people using the fitness room, swimming pool, and other recreational amenities while they are not paying a dime to help maintain them. Can't we ban them from using these facilities until they pay up? **T.A. (via e-mail)**

A: It depends. If your community is governed by the Florida Homeowners' Association Act, Chapter 720 of the Florida Statutes, the answer is yes. Specifically, Section 720.305(2)(b) of that statute allows an association to suspend common area use rights for those who are delinquent in the payment of assessments. The association cannot suspend rights of access (ingress and egress) nor parking rights. However, use of recreational facilities can be suspended for non-payment.

Such suspensions are not self-implementing. First, the governing documents (typically the declaration of covenants or bylaws) must contain the authority for suspension. Secondly, the board of directors must actually impose the suspension. I recommend that the board have a uniform collections policy which will authorize the president or manager to implement a suspension, without need for further board action. This accomplishes a couple of objectives. First, the suspension can be implemented without having to

wait for a board meeting. Secondly, having a standing order to implement suspensions for delinquencies eliminates the need to discuss particular delinquencies at open board meetings, which can potentially give rise to legal claims by the debtor/owner.

If your association is a condominium association, you are governed by the Florida Condominium Act, which is found in Chapter 718 of the Florida Statutes. If that is the case, the answer to your question is no. The Condominium Act does not currently permit suspension of use rights for non-payment of assessments. However, Senate Bill 1196 which was sent to Governor Crist on May 17, 2010 would allow suspension in condominiums as well.

At deadline time for this column, it is not known whether the Governor will approve SB 1196. Three things can happen. First, the Governor can sign the Bill, and it would become law on July 1, 2010. Secondly, the Governor could veto the Bill and it would not become law (unless the veto is overridden, which would be highly unlikely). Thirdly, the Governor can take no action (neither sign nor veto) and once the Bill has been before him for fifteen days (i.e., until June 1, 2010), it becomes the law without his signature (and again would become effective July 1, 2010).

Q: Our homeowners' association board holds "workshop" meetings. There is no agenda for these meetings. Notice of these meetings is posted and they are open for homeowners to watch, but not speak. No votes are taken at the meetings, they primarily involve the development of agendas for future board meetings, discussion of long-range planning issues, and similar matters. Is this legal?
R.S. (via e-mail)

A: Yes.

The gathering you describe is a "meeting" of the board, since a quorum of the board has gathered and association business is being "conducted", even though no votes are taken.

However, the only legal requirement for your board is that they post notice of the meeting and allow homeowners to attend and observe, which your inquiry indicates is the case. Members in homeowners' associations are not given the right to speak at board meetings by statute, except in limited circumstances where a special type of petition has been filed with the board, or where the association's bylaws confer such a right.

Q: We have a volunteer board and no manager or management company. Our board consists mostly of people who have a "live and let live" attitude. However, there are a couple of families in the neighborhood who apparently feel that the rules do not apply to them. Our board members do not feel like they signed up to be a police force, so they

turn a blind eye to most of these situations. I am very frustrated because I live close to one of the homes where the rules are always being violated, loud parties being the most constant offense. What are my options? **D.M. (via e-mail)**

A: The situation you describe is not uncommon. Many board members find the enforcement of restrictive covenants and rules and regulations to be one of the least desirable aspects of board service because they are often ridiculed as being "nit-picky", "condo commandos", "control freaks", and the like.

One thing that I can say for sure is that courts routinely impose a "use it or lose it" standard on subdivision and condominium restrictions. Stated otherwise, the failure to enforce restrictions by a board will eventually render them unenforceable, at least in many situations.

Of course, you have the prerogative to run for the board and volunteer to help solve the problem, if a problem indeed exists. Alternatively, your association's restrictions constitute a contract amongst the neighbors, and every owner has legal standing to enforce those contract rights with other owners. Stated otherwise, if your neighbors are engaging in conduct which rises to the level of a legal nuisance, you have the right to address the matter directly with them in a formal legal setting, regardless of whether your association chooses to get involved or not.

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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