



Condominium Law Q&A

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Question – We live in a community of single family homes with comprehensive conditions, covenants and restrictions. A section in the conditions, covenants and restrictions permits rentals with a lease of no less than three months. Speculators have bought several of the homes and are renting them out. Many residents feel that rentals have a negative effect on values, and the board of directors agrees with this position. A question arises as to how to control or limit the spread of rentals and to control those already rented. One position is to change the conditions, covenants and restrictions to ban rentals entirely. Another position is to impose reasonable restrictions (e.g., home ownership for one year prior to rental, proof that the tax assessor has been notified for tax purposes, etc.) as a method of carrying out the legislative intent. Of the two alternatives, which would be more desirable legally? E.K.P. Port St. Lucie

Answer – Common interest ownership housing communities [condominiums, cooperatives and planned developments governed by mandatory membership associations; HOAs] come in every conceivable variety and format, designed and marketed to different segments of the market, all to serve a particular need. There are the traditional residential condominiums and HOAs which are primarily owner occupied. There are timeshares, hotel condominiums, housing for older persons, mixed-use-residential and commercial, and even clothing optional communities. The rub comes when a community which was sold as an owner occupied community starts drifting

toward transient occupancy. This often occurs with the passage of time when heirs of the original unit owners inherit the unit and see leases as an investment option. It is accelerated in communities which are aging in place or where older residents pass away and speculators grab up undervalued units with the intent of renting them on a seasonal or annual basis. And, yes, there is a significant difference in the manner in which most tenants treat leased residents as opposed to an owner; after all, the unit owner knows in the end that they will be responsible for the cost of repair or restoration of common amenities which are vandalized or worn out from excessive wear. That is perhaps the reason why in every single court decision involving the rights of the unit owners to restrict the term of a lease, the number of guests, and even to ban leasing altogether, the court sided with the unit owners desiring to control transient occupancy. Then “Big Brother” intervened. In 2004, pushed by a unit owner who disagreed with his board’s policy, the Florida Legislature amended the Condominium Act to provide that any amendment restricting unit owners’ rights relating to the rental of units applies only to unit owners who consent to the amendment and unit owners who purchase after the effective date of the amendment. The amended Act does not affect rental restrictions in effect prior to its enactment and, for the moment, does not apply to HOAs. So, if your members feel restricting leasing is a good thing and you can muster the necessary vote to amend your conditions, covenants and restrictions to restrict leasing, you are free to do so; however, you

better act quickly because the Florida Legislature is back in session. As an aside, a number of committees have adopted the “no rentals during the first year of ownership” restriction, and they do help.

Question – I have lived in my condo for 6 years. In the past, all repairs to the garage doors were paid by the entire building. We now have a new board and, when my outside garage door (which is attached to the building) broke, they made me pay for the repairs. My garage is part of the common area, so why should I be responsible for the payment. A.B., Indian Harbor Beach.

Answer – To answer your question one would have to read two sections of the declaration of condominium. The first is the definition of unit boundaries to determine if, in fact, the garage door is part of the unit or the common elements. The second is the provision dealing with responsibility for maintenance and repair. The mere fact that a building component [exterior doors, windows, sliding glass doors, balcony, portico, etc.] is or is not part of the unit is not dispositive of whether the cost of repair is that of the unit owner or the association. Hopefully, a properly drafted set of condominium documents will clarify who is responsible. ■

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