



Condominium Law Q&A

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Question – In response to a reader’s inquiry as to whether the association’s manager could operate the association’s rental programs, you advised that “many condominiums lawfully operate rental programs with a portion of the rentals going to the association to defray the cost of management and over-utilization of amenities...” “While normally one needs to be a licensed broker to engage in rentals an exception is made when done by an employee of the association for the benefit of the association.” We now have a new management team, one of whom is a licensed CAM manager. Our board voted to have the manager run the rental program. However, our attorney advises that “this would be illegal.” He feels that it is necessary that a licensed broker be used even though no fee from rentals is paid to the manager. What is the correct position on this?
B.K., Daytona Beach Shores

Answer – In retrospect, no doubt my answer lacked clarity, so allow me to amplify it. As a general rule, any person or corporation, who/which engages in acts of real estate brokerage must be licensed by the State of Florida as a broker. There are two relevant exceptions which apply to condominium and cooperative associations. The first is at Chapter 475.011(5), Florida Statutes which exempts from the brokerage law:

Any person employed for a salary as a manager of a condominium or cooperative apartment complex as a result of any activities or duties which he may have in

relation to the renting of individual units within such condominium or cooperative apartment complex if rentals arranged by him are for periods no greater than one (1) year.

It is critical when analyzing the aforesaid exemption to understand that neither the manager or the association can receive any compensation in the way of commissions for operation of said rental program.

When I wrote my prior answer, referencing monies going to the association to defray the cost of management and over-utilized amenities, what I had in mind was the second exemption, namely, the operation of transient rental programs and public lodging establishments. Translated, a “transient lodging facility” is any condominium which permits rentals of thirty (30) days or less, more than three times per year. In the case of a “public lodging establishment,” there is no minimum rental stay, and each unit in the condominium must be registered and licensed with the Division of Hotels. Here, we are generally talking about timeshares and hotel condominiums. Accordingly, the second exemption is found in Chapter 475.011(11), Florida Statutes, which covers:

Any person, partnership, corporation or other legal entity which, for another and for compensation or other valuable consideration, rents, or advertises for rent, for transient occupancy, any public lodging establishment licensed under Chapter 509. If an association qualifies under the aforesaid exemption, it is legally permissible for the association to collect a commission on transient

rentals; i.e. rentals of thirty (30) days or less. I trust that this clarifies my answer in a previous column.

Question – I am 93 years old and a 25 year resident of a condominium. I want to know what the responsibility of the association is to a unit owner injured while using exercise equipment in the clubhouse. I was injured when a stationary bicycle I was exercising on turned over on me as I was getting off of it. W.L., Fort Lauderdale

Answer – It is a question of whether the cause of the accident and resulting injury was a direct result of the association's failure to properly maintain the equipment or fix it to the surface, or if the user contributed to the accident by improperly using or exiting from the equipment. Florida follows a policy known as "comparative" negligence. When someone is injured due to the conduct of another, the court weighs the degree to which each of the parties contributed to the cause of the injury, including the injured party's own negligence. ■

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