



Condominium Law Q&A

November 27, 2006

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Question – We live in a development in which we have to belong to a homeowners association. The people behind me don't belong as their homes were built before ours. The fees have increased twice in the five years we have lived there. They do nothing to help us. What steps can be taken to get out of a homeowners association? There are other people besides me that would like the answer to this. R&K.D. South Daytona

Answer – If your property is subjected to covenants, conditions and restrictions which were in place at the time the home was constructed, then the owners are subject to the terms of the covenants, which are deemed to “run with the land,” and cannot unilaterally extricate themselves from the provisions. In the case of condominiums, the Act contemplates termination of the condominium regime if the procedures prescribed by the Act are followed. While it is rare, some homeowner associations also provide a method for termination of the covenants, conditions and restrictions within their documents. Florida law also contains a chapter known as the Marketable Record Title Act, which automatically extinguishes covenants which have been in place in excess of 30 years, if action was not taken to extend or renew the expiring covenants.

Question – I live in a community of 58 townhomes, and we have a 5 board member homeowners association. The association pays two homeowners to do work for the community. One person does the accounting (e.g., pay bills, deposit and collect dues and keep record of all money matters), and the other

person maintains the pool area. Each is paid \$200.00 a month. Does this money have to be taxed and reported by both the homeowners and the association? Because these people are paid by the board and are homeowners must they abstain from voting on issues in the community, as they could be swayed by the board who pays them? If they have not reported this in the past at tax time, what are the consequences the board and homeowners can face? Does social security tax also have to come out of this money? M.H.F. – Merritt Island

Answer – In so far as whether individuals, be they homeowners or otherwise, who perform work for the association for which they are compensated have to report the income to the IRS, the answer is absolutely. In addition, the association must, to the extent required, report the payments, withhold Social Security, Medicaid taxes, and federal income tax. In some cases, depending upon the nature and extent of the work performed and the number of employees, the association must also obtain and maintain workers compensation insurance, and liability insurance for injury caused by the employees in carrying out their duties. The association should discuss this with its accountant.

Question – I am on a condo board and am co-chair of the rules and regulations committee. Our house rules clearly state that anyone wishing to put up hurricane shutters must get written permission from the board (to ensure that a licensed, insured installer is used and that a certain color is used). An owner has put up shutters without permission and used an

unauthorized color. They are now on the board and gave permission to their neighbors to do the same. (they also put in an unauthorized color). Our president feels that we should bring it to the board for them to vote on whatever action should be taken (the owners have verbally refused to paint the shutters the authorized color) and possibly “grandfather” them in. We, the Rules and Regulations committee, feel that you can’t “grandfather” someone in if the rule was not changed after the fact. What should our next action be? Our documents state we can take legal action, but we don’t want to have to go that far. I say we send a written notice of the violation with a time allotment to have them paint, and if they do not, contact a lawyer. Your thoughts please. M.M.

Answer – A condominium unit owner, regardless of any provision within the governing documents to the

contrary, has the right to install hurricane shutters which are in compliance with specifications adopted by the board. There is no comparable provision in the Homeowners Association Act. If an owner puts up shutters which are not in compliance with the board’s approved specifications and not in conformity with the approved color scheme, the association should enforce its regulations. The problem, as expressed by you, is that the new board has apparently given its approval to the non-conforming shutters, which in effect constitutes a modification of the previously approved regulations. That will make it almost impossible to enforce. Can the board grandfather in the non-conforming shutters and prospectively say “no more?” Yes. However, it should not have permitted the variance from the start.

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