



Condominium Law Q&A

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Question – At the time I purchased my condominium unit, renting of units was permitted. I purchased with the intent of renting the unit as an investment, in the short term, with expectation of eventually retiring into the unit. In August or September 2004, prior to the amendment to the Condominium Act which prohibits restrictions on leasing without the consent of the unit owners taking effect, the association amended the declaration of condominium to restrict rentals to a minimum term of three (3) months and a maximum of nine (9) months. This seems unfair. Is it legal? K.D., West Palm Beach.

Answer – Yes, prior to the enactment of the 2004 amendment, the Condominium Act (which amendment prohibits restrictions on leasing unless unit owners owning units at the time the amendment is passed consent to the amendment and to unit owners who purchase after the effective date of the amendment) assuming that the requisite approval of the members was obtained, condominiums could restrict the term of the lease, and/or prohibit leasing altogether. Once imbedded into the documents such restrictions cannot be changed by future legislative amendments, because to do so would be a constitutionally prohibited impairment of an existing contract right.

Question – A question has come up as to whether the wife of an owner can qualify to serve on the Board. The wife's name is not on the deed. H.F. Melbourne

Answer – The articles or bylaws generally provide the criteria for qualifying to serve on the board of a community association. Most documents require that a member of the board be a “member” of the association, which is usually defined as a “record title owner.” That is, someone who has some vested title interest in the unit. Absent the requirement that a board member be a record title owner, anyone listed can serve. Often, even when the documents require a director to be a record title owner, an exception is made for the spouse of an owner who, even if not on the deed, can qualify to run for the board. So the bottom line is that you need to check the documents.

Question – I am the president of a small condominium association which operates six townhomes across the street from the beach. One of our owners is an absentee owner who only occasionally visits his unit. The unit has fallen into disrepair; the upstairs sliding glass door is broken and the back patio screen is torn. In addition, the unit owner is 5 months in arrears in his maintenance payments. We are unable to reach him since the number we have on file has been disconnected and the address is no good. How should we handle this situation? J.F., Cocoa Beach

Answer – There really is no good excuse for an association/board to permit the conditions you have described and not respond to them. The unit appearance directly impacts the overall aesthetic appearance of your condominium, reducing property values. And, by allowing him to avoid payment of

his assessments, you are imposing the burden of same on the other unit owners. There is little doubt that your declaration of condominium provides the board with the authority to compel the unit owner to maintain both the interior and exterior of his unit, and failing to do so gives the board the power to do the maintenance and charge the cost to the unit owner. The Condominium Act, as well as the

condominium documents, gives the association the ultimate power for dealing with unit owners who are delinquent in payment of their assessments – the right to lien and to foreclose. In this case, it is the board which is being derelict in failing to protect the rights and interests of all the unit owners.

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