



Condominium Law Q&A

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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 without taking any action. The unit appearance directly impacts the overall aesthetics of your condominium, reducing property values. By allowing the owner 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, give 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.

Question – We are “snow birds” residing in New Jersey and have a winter get-away in Deerfield Beach, Florida. Since the condominium in Florida is a substantial investment, we are concerned that the board has breached our covenants. The declaration of condominium, upon which we relied at the time we purchased our unit, clearly says that units cannot be sold to families with children below the age of 16. Recently, the board approved the sale to a young couple with two small children, ages 6 and 8. The building is not designated as “over 55,” however, the covenants are clear, children below 16 are not permitted. An owner gave the board a copy of the pamphlet titled, “Laws Against Housing Discrimination.” We seem to have a conflict here, what controls, our documents or the housing laws? E.L., Deerfield Beach

Answer – In 1988, Congress passed an amendment to the Fair Housing Act [Florida followed suit], adding to the cloak of its protection, “handicap” and “familial status”. Accordingly, it is now unlawful to discriminate in the sale or leasing of housing based upon race, religion, sex, national origin, handicap or familial status. “Familial status” is the residency of someone below the age of 18 residing with a parent or guardian. The Act voided ab initio [from the beginning of time to date] all covenants, conditions or restrictions to the contrary. The only exceptions are communities which qualify as “Housing for older Persons,” which essentially are communities in which at least 80% of the units are occupied by at least one person who is 55 years of age or older, and which hold themselves out as a community for older

persons. Exempt communities must conduct a census every two years to verify that it continues to meet the threshold for exemption, and must register with Florida's Commission on Human Relations as an exempt community, every two years. While the Florida Fair Housing law could not, in and of itself,

void covenants in effect before the date of its enactment, due to the federal prohibition against a state enacting laws which impair existing contracts, federal laws are not subject to similar prohibitions and thus control.

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