



Condominium Law Q&A

May 7, 2007

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Question – I seek your opinion regarding action taken by the Board of Directors of the Florida Homeowners Association of which I have been a member for several years and to the terms of the covenants and restrictions to which I agreed when I purchased my property. The document was recorded June 14, 1984. The document stated, in part: “The covenants and restrictions of this declaration shall run with and bind the land ... for a term of twenty (20) years from the date this declaration is recorded.” And “... the amendment of this declaration, the covenants, restriction, easements, charges and liens of this agreement may be amended, changed, added to, derogated, or deleted at any time and from time to time upon the execution and recordation of any instrument executed by owners holding not less than three-quarters (3/4) vote of the membership in the Association.” Although no authority to amend the documents, including extending it beyond 20 years, was given to the board of directors, the following motion made by a member of the board on October 16, 2003: “I hereby make a motion that we as the board of directors of the ... homeowners association pass by acclamation the renewal and extension of the current HOA documents and covenants, a negative vote by either a board member or a homeowner objecting to this motion shall personally assume the responsibility of gathering the 51% of all homeowners objections to this decision ...” The motion passed without objection from the board. Except for a few members present at the October meeting, no notice of the board’s action has ever been provided to the other 306 members of the

association and neither I nor any other member with whom I have discussed this matter has been given a copy of the re-recorded document. R.M., Port Orange

Answer – All covenants, conditions and restrictions of planned developments face the threat of being extinguished by the operation of Florida’s Marketable Record Title Act, if older than 30 years. To ensure against this happening, the Florida Legislature amended Chapter 718.05, Florida Statutes, to allow board’s to extend expiring covenants before they expire, and the lot owners to re-instate extinguished covenants by following the procedures set forth in the Act [See s.720.401, Florida Statutes].

Question – I live in a 30 unit condominium. Many unit owners, including myself, purchased in the condominium because of its “no pet” provision. For the past 2 years, a group of residents has been trying to amend the documents to permit pets. Most want cats, but several want dogs. Last year, the amendment was soundly defeated. Once again, the amendment is back on the agenda. To assist with its passage, the board is also asking the unit owners to amend the provision which establishes the vote required to amend the declaration from 3/4th to 2/3rds of the units. Is all of this legal? P.E., Fort Lauderdale

Answer – I am currently dealing with a situation at a condominium where the association, in the span of a month, received two letters, one from a unit owner

and the other from an attorney for a unit owner. Both threatened litigation. The first demands that the association relax its “no pet” restriction to permit a pet for the purpose of alleviating a unit owner’s depression. The other demands that the association strictly enforce the provision due to the unit owner’s allergies to pets. Which is the association to do? The demand for an accommodation in the prohibition against pets is made pursuant to the requirements of the Federal Fair Housing Act, which requires community associations to make reasonable accommodations within its covenants and rules and regulations when necessary to ensure that a handicapped person has an equal opportunity to use and enjoy a dwelling. Doctors’ routinely write letters for individuals suffering from everything from depression, anxiety, sight and hearing impediments, arthritis, loneliness, etc. prescribing a pet to alleviate the ailment. I have written articles about the phenomena in which I refer to the pets as “prescription pets.” Needless to say, pets with

special training designed to assist with sight and hearing impaired owners is a no brainer and must be accommodated. I recently saw a documentary on monkeys trained to assist the handicapped by fetching items. I don’t question their value. The gray zone consists of animals with no specialized training. And, while the U.S. Department of Housing and Urban Development tends to side with the unit owner when presented with these complaints of denial of “prescription pets” from associations, the court cases are less clear, and tend to side with those who advocate that the unit owner seeking the accommodation demonstrate specialized training for the pet. The debate is ongoing. Insofar as your board seeking to reduce the vote required to amend the covenants, and to reintroduce the amendment to permit pets, it is totally legal to do so. The no pet advocates need to remain diligent and continue to participate in the process to ensure that their views and rights are also protected.

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