



Condominium Law Q&A

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Question – Past columns have dealt with the very perplexing issue of whether unit windows and sliding glass doors are the maintenance responsibility of the unit owners or the association, and whether damage by a casualty alters the opinion. At the time my wife and I purchased our unit, all unit balconies were open, enclosed only by movable screens. Since that time, all the units except a couple, have been enclosed with glass, sometimes with approval and other times without. How does enclosing the unit balconies change your opinion? Do such enclosures, done without approval, differ than those done with approval. Does the presence or absence of board “approval” change the outcome? H.K., Fort Pierce

Answer – The jury is still out on the question of whether the association or the unit owners are obligated for the cost of repairing or replacing unit windows and sliding glass doors damaged by a casualty. This is so regardless of whether the association or the unit owners are responsible for routine maintenance. The debate isn’t over the question of repair when there are sufficient insurance proceeds to cover the cost, it is solely a question when there are insufficient insurance proceeds to cover the damage. The Division currently takes the position that it is a common expense. Most authorities disagree, taking the position that the shortfall must be funded by the unit sustaining the loss. The question is currently being argued in the courts and before the legislature. You

add a new twist. Does it matter whether or not the glass enclosing the balcony was an improvement added by unit owners, with or without approval? I am of the opinion that if the approval was given by the board, the enclosure would fall within the same category as any other association covered improvement. Quite frankly, given the board’s failure to require those unit owners who enclosed their balconies without approval to remove same, even those improvements would fall within the association’s coverage. The real question will eventually be, what position the insurance carrier takes on this matter.

Question – The association bylaws of our condominium restrict owners to having one dog, weighing less than 15 pounds, per unit. Of late, there have been several owners who have dogs that exceed the weight restriction. When we questioned the president on this issue, he stated that because a realtor had not advised the owners about the dog rule, the president made a special dispensation and allowed a 40 lb. dog to reside at the complex. He stated it was voted on at a board meeting. Before I pursue the issue, is this legal? I was under the impression that when we receive the association documents, it is our responsibility as owners to know the rules. If we choose not to read the documents and move in with a 40 lb. dog, can the president pick and choose who must abide by the dog rule? N.C., Palm Coast

Answer – Every buyer acquires real property with actual or constructive notice of all matters of public record. In addition, all purchasers of condominium units, either from a developer or a unit owner on a resale, are required to be given copies of all the condominium documents. Included within the documents are all the use restrictions governing use of the unit, as well as policies on renting of units and keeping pets. Every unit owner, new buyer or otherwise, are subject to the restrictions contained within the recorded documents and reasonable rules and regulations promulgated by the board. It is really not up to the board to decide which covenant or rule they wish to enforce; their job is to establish policy for the maintenance and operation of the condominium, to timely and uniformly enforce the covenants and rules, and to maintain the architectural aesthetic quality of the community. If the covenants and/or rules need to be revised, input and approval of the membership, when required,

should be obtained. That said, it is virtually impossible for society to enforce all the restrictions which have been imposed on the citizens by the Federal, State and local governments, and such is the case when it comes to common interest ownership housing communities. Accordingly, just as the authorities are forced by the limitations of time and resources to focus on the most heinous crimes and misdemeanors, which potentially harm others, association boards must weigh the consequences and determine from a cost benefit perspective, which covenants and rules are the most critical and therefore have to be enforced, and those which are less consequential and can be allowed to slide. Whether allowing a 40 pound dog, when the documents restrict pets to a weight of 15 pounds, is something which the board will have to address after receiving input from the unit owners.

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