



## Condominium Law Q&A

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**Question** – We currently have a homeowner who has hired a contractor and has poured concrete for a project contiguous to his home. The pad measures approximately 25' x 25' and there is a provision for plumbing and electricity protruding from the poured cement. I took it upon myself to call the City and was told that this homeowner does not have a permit for his project. The city has posted the project and work has stopped. Meanwhile, the Architectural Review Board (ARB) met and wrote a letter to the homeowner requesting that he stop work on his project and follow the procedure required by the association documents. At the ARB meeting, the question was asked, "What will we do if he fails to meet the requirements of the documents?" That begs the question, what can we do? What powers does a homeowners association have to enforce the registered and approved documents? Incidentally, the same homeowner insists on parking two vehicles on the roadway in front of his home. We have asked him not to do this, but he refuses to change his parking "privilege." Our documents do not address the subject of street parking other than a casual mention in the ARB document. Is there something we can do about this? When confronted in the past, this homeowner has told the board that they are discriminating against him because of his ethnic background. This has frightened the board members even more. But, frankly, I find it unthinkable that such an accusation could be made. R.E., Titusville

**Answer** – The proper course of action to enforce the covenants, conditions and restrictions, as affirmed by a court of appeal decision, is an action to enjoin the conduct, compelling the unit owner to comply with the governing documents. Under the facts presented, there is no question but that a court will order the non-complying lot owner to remove the unauthorized improvements, restore the premises and pay the association's costs and legal fees. An interesting decision from another jurisdiction held that if the authority to do so is in the covenants, conditions and restrictions, an HOA can enforce parking restrictions on public roadways which abut the planned development. A classic example of this is where lot owners park commercial vehicles on abutting public streets to avoid a ban against parking commercial vehicles in a planned community.

**Question** – I live in a townhouse complex and want to ask you a question about the legality of the given reason for a recent increase in our monthly maintenance fee. This year our fee has been \$185 per month. We were recently notified that next year the fee would be raised to \$211 per month due to increases in service fees, which we certainly expected. However, yesterday, at this month's homeowners association meeting, we were informed that the increase would actually be to \$234 per month. The reason given for this second increase was to replace the deficit incurred due to some of our residents refusing to pay their maintenance fees

at all. I do not understand why those of us who pay our bills conscientiously on a regular basis should be expected to pay the extra cost for those who do not. Is this a legal move? If not, what can we do to put a stop to this plan? E.H., Palm Bay

**Answer** – The concerns you raise are legitimate, which is why I am troubled by a trend in legislation promoted by the AARP. Clothed in terms of a “Homeowners Bill of Rights,” AARP’s ten defined “rights,” the majority of which already exist within Florida’s common interest ownership acts (e.g., Right to resolve disputes without litigation; right to fairness in litigation; right to be told of all rules and charges; right to stability in rules and charges; right to individual autonomy; right to oversight of association directors; right to vote and run for office; right to reasonable associations and directors; and right to an ombudsperson.), contain one right which is very troublesome – “the right to security against foreclosure.” The language of the legislation drafted by proponents of the law provide that foreclosures shall only occur for significant unpaid assessments. Advocates of the proposed law have been successful in several states in enacting legislation which prohibits foreclosure of units due to unpaid

assessments and/or restrict the filing of a claim of lien and foreclosure on same, until a unit owner is six (6) months to a year delinquent in payment. What seem to be lost in the debate is the fact that the ability of the association to provide the services which are essential for the upkeep and betterment of a common interest ownership community is dependent upon the timely payment of assessments. Assessments are the lifeblood of common interest ownership housing communities, much like taxes are for the government. If a unit owner fails to pay his or her share of the common expenses, regardless of the personal circumstances causing same, the electric company, lawn maintenance company, pool service company, insurance carrier, security company, etc., do not say, “deduct from our contract the portion of the cost for which the association has not collected.” These vendors can cut off their services. The net effect is that the vast majority of unit owners who pay timely are also forced to cover the costs for the deadbeat owners. Those who feel strongly about this issue should speak with their State Representatives and Senators. There are several bills pending in Tallahassee which mirror the AARP proposed legislation.

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