



Condominium Law Q&A

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Question – In the middle of our neighborhood, there is a dedicated recreational area (a marked State of Florida Heritage Site) to which several condominium associations have easements for access and use. The area has always been used as tennis courts. It is now owned by a neighboring time share. The property was damaged by hurricanes in 2005 and sat unusable and unsightly for two years. Recently, three of the seven tennis courts have been repaired. A time share representative has informed us that, as of January 2008, access to the tennis courts will be limited to time share guests ONLY. This appears to be a violation of the easement rights of more than 700 units. Is there a Florida statute or case law addressing this problem? J.H., Pompano Beach

Answer – An Easement is a right in the owner of one parcel of land, by reason of such ownership, to use the land of another for a defined purpose. There are two parties involved when an easement is granted. The servient estate, which is the property over which the easement passes, and the dominant estate, which is the party granted the right to use the easement. The rights granted by the easement cannot be unilaterally extinguished by the servient estate.

Question – I live in a single family development with a property owners association. We are not gated, and the roads are maintained by the county. There are many homes being rented out, and many

more that, even when used as a primary residence, the owners do not speak English. Consequently, our board meetings consist of about 10 people in a development of approximately 60 homes. My question is how would the property owners association go about amending the bylaws if we can't get a quorum? Proxies do not work either. And, even going door-to-door produces problems because of the language barrier and absentee owners. The board doesn't even have a list of contact information for the owners, since an interview and approval is not required prior to purchasing a home. C.H., Boca Raton

Answer – The failure to obtain quorums sufficient to be able to conduct community association meetings is commonplace. Securing sufficient votes, in person or by proxy, to amend the documents or approve capital projects is even more difficult. That said, many communities are able to do so by mustering support throughout the community, forming phone/e-mail committees, and translating notices into the languages that are often spoken by the unit owners. Yes, it takes work, but it is doable, and without a quorum, no business can be conducted. Be advised that, in a homeowners association, the quorum, by law, is 33 1/3% of the voting interest, regardless of what the bylaws state. While condominium associations are stuck with the quorum established by the bylaws, which more often than not is a majority of the unit owners, when it

comes to electing directors, only 20% of the units need to cast a ballot for the election to be valid.

Question – I live in a cooperative in Miami-Dade County. Our bylaws currently state that there are no pets allowed in our building. The bylaw has been around since 1983. A resident who is a snowbird in our building brought their 7 lb dog from Canada, claiming it to be a service dog for his blood pressure and stress. I read thru the Florida Statutes regarding service animals but there are no laws regarding animals for companionship or emotional stress. However, the Federal Fair Housing Act says that disability can mean mental or physical and that we may be infringing upon the unit owners rights. There is also case law from around the Country that has agreed with the residents claiming that companion animals are recognized. What is the

right answer? Can the association realistically win this case? B.S., Miami

Answer – The Federal law which governs the question of allowing trained service animals and/or emotional support animals in a “no pet” building is the Fair Housing Act. Said Act provides that community associations must make reasonable accommodations in rules, policies, practices and services when necessary to give disabled persons equal opportunity to use and enjoy a dwelling. The Courts and the U.S. Department of Housing and Urban Development (HUD) have interpreted the aforesaid requirement to allow not only trained service animals, but also emotional support animals. Proposed HUD Rules on the subject will vastly expand the definition of those pets allowed to such an extent, that if approved, will pretty much eviscerate no pet restrictions.

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