



Condominium Law Q&A

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Question – We belong to a homeowners association and, recently, we were notified through the newspapers and other sources that one of our owners is a convicted sex offender. Presently, this gentleman is incarcerated and does not present a threat. After a recent board meeting, the president of the board and the property manager both were approached and asked why this situation was not addressed at the meeting. They advised that there is nothing they could say or do officially since the incident involving this person is a matter of public record through our local law enforcement authority. I questioned the liability exposure of the board in not notifying all of the homeowners but both of them said the board is absolved without such notification as it is a matter of public record. It goes without saying that not everyone has a computer and that not everyone is aware of this situation. If not legally, I feel the board has a moral imperative to notify all of the owners. Am I correct? S.R., Daytona Beach

Answer – Where do you draw the line? Should the association do criminal background checks on all unit owners and tenants? Must it send notice of convicted felons, prostitutes, murderers, embezzlers, psychopaths, etc. who might own units in the community? While an association may owe a duty to protect the residents from known hazards and criminal activity, I do not feel that the obligation extends to the backgrounds of the residents. Quite frankly, I agree with the manager, everyone, at their

leisure, can peruse the posted websites, which display sexual offenders and other deviants.

Question – In one of your columns, you stated, “in a homeowners’ association, the quorum, by law, is 33.3 percent of the voting interests, 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...” Please clarify this for me. We live in a gated community of single family homes. Our bylaws state two different voting criteria – two thirds of the qualified voters (one owner per house), and a quorum, which “shall be a minimum of 30% of the qualifying members.” Also, the homeowners association board has denied house improvements such as screen doors with glass panels and vinyl or glass windows inside of screened porches and screened entrance-ways creating airlock entrances. The 2007 Florida Statutes, Title XI, Chapter 163, state that homeowners association boards cannot prohibit the conservation of renewable energy. Do these laws apply here? The homeowners association board ignores any suggestions that there may be laws that protect us homeowners. I’m sorry for asking so many questions but I’m sure this is a serious issue for many homeowners. G.S., Palm Bay

Answer – First, I inadvertently said that the quorum for homeowner associations is 33 1/3%; it is actually 30% of the total voting interests. A quorum is the

minimum number of members who must be present, in person or by proxy, to conduct a meeting. Having a quorum present does not ensure that action can be taken. The covenants, conditions and restrictions, along with the articles and bylaws, establish the vote required to take action. For example let's assume that the vote required to amend the covenants of your community is two-thirds (2/3rds) of the total voting interests. In a 100 unit community, only 30 units need be present to conduct a meeting, but 67 units need to affirmatively vote "yes" to amend the documents. In response to your second question, Florida Statutes, Section 163.04(2), Florida Statutes

(Energy devices based on reasonable resources), does provide that "no deed restrictions, covenants, or similar binding agreements running with the land shall prohibit or have the effect of prohibiting solar collectors, clotheslines, or other energy devices based on renewable resources from being installed on buildings erected on the lots or parcels covered by the deed restrictions, covenants, or binding agreements." Yes, the law applies in Palm Bay as well as throughout the State. And yes, homeowners do have rights.

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