Condominium Law Q&A

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Question – I'm a faithful reader of your column. Thank you for all your advice over the years. I own a unit in a 40 unit condominium in South Daytona. I have lived here several years and served on the board. My question is, what can be done to force a "do nothing board" and their "do nothing management company" to follow the declaration of condominium? There is no policy for sales and rentals. There are 15 absentee owners using the property for rental income. Over the years, I've tried to muster up support for a policy requiring criminal background checks and credit checks for renters and buyers to no avail. The place is becoming a slum. Short of several lawsuits against the owners and several board members, what can one unit owner do? I feel every rental unit decreases my property value. A.O., South Daytona

Answer – Your question raises several distinctive issues, such as, whether a common interest ownership community can prohibit transient occupancy and rentals, what can be done to compel boards to fulfill their fiduciary duty and enforce the covenants, conditions and restrictions, and how to energize co-owners to take a more active role in the operation of their shared property. First, historically, courts affirmed the right of condominiums, cooperatives and planned developments to place restrictions on rentals, including to ban them altogether. This remains the case in cooperatives and homeowners associations; however, due to a legislative enactment, effective October 1, 2004, condominiums, which did not already have leasing restrictions, were barred from adopting leasing restrictions without the consent of the current owners. These newly adopted leasing restrictions are binding on unit owners who consented to the adoption of the restrictions or who purchased after the restrictions became effective. Members of the board who lack the will to carry out their fiduciary duty and to do all that's necessary to maintain the property and the integrity of the covenants, conditions and restrictions should be replaced with individuals willing to do so. Which leads me to the final point: how to garnish the support of your fellow unit owners in achieving your objective of ensuring that your community maintains its appearance and property values. This takes leadership. Speak to as many of your co-owners as possible, share with the them the vision of the community which they bought into, how it has changed, and how, by working together, it can be restored to what it used to be.

Question – My wife and I reside in a high rise condominium on Hutchinson Island. Last November, in the middle of the night, we heard a loud "pop." An investigation revealed that a large section of the wood outer layer of the front door had separated from the body of the door. (the front doors are interior doors, not outside catwalk doors.) Two engineers who reside in my building saw the door and advised me that this separation probably occurred due to the build up of heat and humidity

that accumulated in the building due to extended periods of time following the hurricanes without air conditioning, which caused the wood to expand and separate. The association bylaws state that if the door is damaged due to a circumstance beyond the control of the owner, the association must pay for the cost of repair or replacement. The bylaws also say that if the damage is due to normal wear and tear, the owner is responsible. The cost of replacing the door was $2,600, and under the clause cited above, I asked the board in writing to reimburse me for half, or $1,300. The board voted 3 to 2 against my request. They stated this was normal wear and tear and that this would open up a huge problem where all owners would want money for their doors. The 2 votes on the board in my favor were an engineer and a building contractor who spoke forcefully that this is not normal wear and tear. Do I have remedies? A.C., Jensen Beach

Answer – Yes, but, regretfully, the cure (litigation) is worse than the ailment.

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