



Condominium Law Q&A

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Question – My husband and I have spent 31 happy years in our Florida condominium. My husband is 88 and I am 83. At this stage in our lives we find it difficult to maintain both an out-of-state residence and our Florida condominium. We have been trying to sell our Florida condominium but are meeting with buyer resistance when they learn that, as a condition of buying our unit they must buy an equity interest in either the golf or tennis club. Is that legal? H.B., Lake Worth

Answer – There was a time when almost every condominium was sold conditioned upon the buyer entering into a 99 year lease of recreation amenities which ran the gamut from little more than a swimming pool to immense clubhouses, golf courses and other recreation amenities. Attacked in the courts and legislature, the tying of the purchase of a condominium unit to a recreation lease has largely gone the way of the horse and buggy. In its place large scale country clubs and golf course communities have arisen. In these communities, membership in the country club is either mandatory, with golf and tennis memberships being optional, or membership in the country club, golf and tennis is elective. If the former, such an arrangement is perfectly legal, as those buying into the community knew of the obligation at the time of purchase and agreed to be bound by it. A new advent, as individuals who acquired units in planned developments with country club and golf being elective have aged in place, is that fewer members are being forced to carry the burden of country club/golf course maintenance, causing some of the

clubs to go into disrepair. To bail out the equity members, some clubs have been sold for development, causing the loss of the open space and country club living environment. Others have sought to preserve the clubs and golf courses by requiring all unit owners to become members of the country club and to share the cost of operation and maintenance as a common expense. Several courts have voided the imposition of compulsory club membership on those who, at the time of purchase, were not required to join, on the theory that it was a substantial change in the character of the development. In summary, if at the time you purchased, country club membership was compulsory, there is little you can do. On the other hand, if it was imposed on you subsequent to purchasing, there are court decisions saying you cannot be forced to pay.

Question – Our condominium association has been having a lease problem with a unit owner. Our declaration of covenants and restrictions states that no portion of a dwelling (other than an entire dwelling) may be rented. All leases shall be on forms approved by the association and shall provide that the association shall have the right to terminate a lease upon default by the tenant in observing any of the provisions of the declaration, bylaws, rules or regulations, etc. With reference to the above, the owner of dwelling in question has been asked by phone, e-mail, and letter to obtain a signed lease from the owner/renter and sent it to the association. This has gone on for a number of months. My question to you is - - what are our options, if any,

without involving lawyers, courts, etc.? P.A.M., Melbourne Beach

Answer – There are basically four means of enforcing covenants and rules and regulations. The first and most preferable is persuasion. Speak to the offending unit owner and explain the importance of everyone working together in harmony and abiding by the restrictions which everyone agreed to be bound to at the time he/she purchased the unit. Second, is the levy of a fine. All three common interest ownership Acts (Condominium, Cooperative and Homeowners Associations) authorize the levy of fines after notice, an opportunity to cure, and a hearing before a grievance committee made up of impartial owners, provided it is authorized by the

governing documents. In condominiums, prior to initiating litigation, certain types of violations must be arbitrated by the Division of Florida Condominiums, Timeshares, and Mobile Homes. Those issues which must be arbitrated are the authority of the board to: (1) require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto; (2) alter or add to a common area or element, and, the failure of the board to: (1) properly conduct elections, (2) give adequate notice of meetings or other actions; (3) properly conduct meetings or (4) allow inspection of the books and records. If all else fails, litigation is the last alternative. In the case of a homeowners association, a demand to participate in pre-suit mediation is a prerequisite to litigation.

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