



Condominium Law Q&A

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Question – What are the Florida laws concerning a board’s responsibility to enforce the property owners’ association’s covenants and rules? Our 22 year old neighborhood with 184 single family homes looks worse than neighborhoods nearby with no property owners associations. Our board insists that it has no power to enforce the rules on property owners that refuse to comply. Our neighborhood looks like an RV, boat, trailer and hunting buddy storage facility. Homeowners park more vehicles (including these) in driveways and side yards than allowed (i.e., nine vehicles at one home). Their overflow is even parked on the swales and on community property, even though the rules only allow parking of passenger cars on the swales. Some vehicles are not even properly registered. Many homes suffer from exterior neglect. Some lawns have not been mowed in six months, the shrubs and trees are overgrown or dead, and many of these properties need pressure washing and exterior paint. Homes are being rented to undesirable tenants without board approval, and the board states that they have no recourse. We are frustrated when the board recommends that we should contact city code compliance and/or police or that we should just ignore the situation. Can you respond to our plight with an answer I can present to our board? P.S., Boynton Beach

Answer – The primary purpose for covenants, conditions and restrictions and the operating associations is to enforce the covenants and restrictions along with the rules and regulations, in order to preserve the architectural character of the

community and maintain property values. Absent an abridgment of fundamental rights or the arbitrary and capricious application of rules, courts will enforce the covenants, conditions and restrictions and more often than not, award attorney’s fees and costs to the prevailing party. The board is dead wrong about the nature and extent of its authority, but then again it sounds like it’s the homeowners who are at fault for both ignoring the restrictions which they agreed to abide by when they purchased and permitting a non-caring board to remain in office.

Question – My homeowner’s association, through its attorney, recently filed a mechanic’s lien against my unit, purportedly for failure to timely pay my quarterly assessment. Prior to filing the lien, demand was made of me by the association’s attorney that I pay the assessment, plus a penalty of \$25.00 and a collection lawyer’s fee of \$250.00. I subsequently paid all charges, save the lawyer’s fee. At no time was notice furnished me prior to forwarding the amount claimed to a collection lawyer. A little later, I timely paid my subsequent assessment, leaving solely the original lawyer’s fee of \$250.00 still unpaid. My questions are: Inasmuch as the collection attorney represents the homeowner’s association – not me – am I bound to pay such legal fees even though he is not my attorney – nor does any writing or instrument exist, or signed by me, mandating I do so? If so, what are the penalties to the Association and/or the attorney for such an exaggeration? What steps must I

undertake to right this wrong. W.P.A. North Palm Beach

Answer – Assessments are the life blood of common interest ownership communities. When an owners fail to timely pay their assessments other owners are forced to pick up the slack, otherwise, essential maintenance and services might be curtailed. Recognizing the importance of timely payment of assessments, associations are given, statutorily, a lien against every unit, which lien, if the assessments are not paid, can be foreclosed, resulting in one's property being sold. That said, to

protect unit owners against over zealous boards and attorneys, Congress enacted the Federal Fair Debt Practices Collection Act [there is also a State version], which lays out specific guidelines which must be followed prior to an association being allowed to lien a unit or foreclose it. Under Federal law, a delinquent unit owner must be given 30 days notice. A recently enacted amendment to Florida's Condominium Act requires 45 day notices. The law does allow for reasonable attorney's fees and costs, and administrative late fees, be charged to a delinquent unit owner.

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