Condominium Law Q&A

January 19, 2009

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Question – I live in a small HOA community of less than 150 single family homes. Cable TV assessments are included in our HOA quarterly assessments. Do I have the legal right to "opt-out" of receiving cable and ask our HOA to reduce my assessment accordingly? I know the HOA board of directors recently approved renewing the cable contract for a term of three years. I do not believe the HOA has the right to dictate my paying for cable TV service that I do not want. Satellite TV is allowed under our HOA guidelines, and I want to offset its cost by not paying for cable service I do not want. T.S., West Palm Beach

Answer – While the Condominium Act expressly empowers the board with the authority to enter into bulk cable contracts and/or contracts for satellite TV, the HOA is silent on the subject. Accordingly, one must look to the covenants, conditions and restrictions and the articles and by-laws of the association to determine whether or not the board has the authority to do so. One trial court (no appellate decisions) affirmed the association's authority to enter into a bulk cable contract and to charge the cost as a common expense. The court based its decision upon language within the covenants, conditions and restrictions, which spoke of providing for the recreation needs of the members. The Condominium Act allows unit owners living alone, who are sight or hearing impaired or who are receiving food stamps, to opt out of the bulk cable requirement. Keep in mind that the Telecommunications Act of 1996 allows all individuals, be they condominium unit owners or HOA members, to have a satellite dish installed on their lot or controlled common elements.

Question – Our condo association board of directors recently discovered that approximately 80% of a brick walkway, which was installed 3 years ago by the condo next door, is actually on our condo complex's property, and the next door current condo board admits that they know their walkway is on our property. Can our board make them tear it up? Is there a point in time that our condo's portion of the property on which the brick walkway sits would become their property, if the walkway is not removed? If the walkway is allowed to stay, what is our liability if someone slips and falls on it? I.O., West Palm Beach

Answer – The situation you described occurs more frequently than you might imagine; although most times it is fences being installed across the property line. I often recommend, particularly in the case of a planned development with multiple neighborhoods and shared roads, gates and other amenities, that each neighborhood have their property surveyed and permanent boundary markers installed. Do make sure the boundary markers are a foot or two above ground, otherwise, in short order, they will become hidden beneath grass and other brush. Why, you might ask, is this important to do? Because it helps define the boundaries of the property, not only for improvements, but also for liability purposes. Insofar as your concern that by not acting immediately to compel the removal of the brick walkway the neighboring condominium might have

a claim of title based upon adverse possession, you need not worry. Under the circumstances, it would be very difficult, if not impossible, for the trespassing condominium to perfect its claim of title. I would be more concerned with someone falling on the bricks and then, upon learning that the brick sidewalk is on your property, sue the association. I would recommend that the board take the appropriate action to compel removal of the sidewalk and its reinstallation back onto the property of the neighboring condominium.

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