



## Condominium Law Q&A

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**Question** – Regarding owner and tenant registration forms: What information is the board required to have? What information is the board allowed to request? Can the board ask for the names and ages of all children? How can the board get the owners and tenants to comply with the request for information? (do you suggest fines if the form is not filled out and returned?) Writer Withheld Name and City.

**Answer** – First, I am of the opinion that an association has the right, if not the obligation, to identify every resident, their guests and invitees, who come into the community. The reason is, plain and simple, potential liability. Community associations are constantly being sued by victims of crimes, who allege that the association failed to take the necessary precautions to prevent the criminal conduct. Courts have held association's liable for dog bites on the common elements, as well as nuisances created by the manner in which residents use their units. The degree to which an association can prey into what otherwise might be considered one's privacy, depends upon whether the covenants, conditions and restrictions grant the association the right of approval or first refusal on the sale or rental of the unit, or if the inquiry is made pursuant to a board promulgated rule and regulation. If the former, the association can require a prospective owner/tenant to complete an extensive questionnaire; one which includes both evidence of financial responsibility and character references. Information solicited in furtherance of rules and regulations will be more general in nature, such as

ones' name and who they are visiting. In either situation, I feel it appropriate for the association to require photo identification. Enforcement can be through either fines, arbitration or court action.

**Question** – Our HOA community has suffered two felony crimes recently against individuals or homes of our residents. Both were linked to unrelated persons living with homeowners. What can the board require of homeowners who have extended stay, non-relative guests living with them in their home? When do the guests become "tenants" Can such guests be asked to register so that background checks can be conducted? Should our neighborhood watch be informed of the location of such guests? Homeowners must have some rights of self-protection. Thanks for your response. W.D., Palm Beach Gardens

**Answer** – Community Associations do have a duty to take reasonable precautions to protect the residents from both criminal activity and potential injury on the common areas. In addition, the association's failure to act can lead to liability where it is shown that the association's negligence contributed to the injury. The degree to which the association must act depends upon a number of factors, including known criminal activity within the community and its environs. At issue is potential liability for drowning in bodies of water (lakes and pools), slips and falls, hazard conditions and the lack of security. Courts have even held association's liable for dog bites on the common areas, even though the dogs were not owned by the association.

The Court's rationale was that the association had control over the common areas. Of course, this is why it is essential that the association maintain adequate hazard and liability insurance. And, "yes", an association has the right to know who is residing in every unit and who is visiting the community. While some claim it to be an "invasion of privacy" I am of the opinion that an association can require photo identification of all visitors, registration of all pets, and identification of all residents.

**Question** – What are the legal steps to follow to fire a board of directors in a condominium? R.B., City Unknown

Answer – There are two (2) methods for recalling the board. The easiest is a petition signed by a

majority of all unit owners. If you are seeking to recall multiple board members, there must be a separate petition for each director sought to be recalled. Given that the board fills the vacancies created by a recall, in a situation where a majority of directors are recalled, the Condominium Act provides that the vacancies created by the recall must be filled in the manner prescribed by the Division; which basically states that an individual be designated on the recall petition who will fill the vacant director's position. The other option is to call a special meeting of the membership to vote on the recall. I always recommend use of the petition for recall, not a membership meeting.

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