



## Condominium Law Q&A

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**Question** – We are comprised of four (4) homeowner directors, and 6 directors who represent three condominium associations all under an umbrella property owners association. I suggested a grievance committee to our board, yesterday, and would like to know how to proceed. I understand at least three committee members are appointed by board, but I am assuming there can be more. We have a manager that currently drives through areas once a week but only follows through with a letter when given board approval. (1) Can the committee members be only from homeowners areas? We have our own separate deed restrictions and covenants. (2) After the committee gives notice of hearing to the “offender” and a determination is made to fine/not to fine, does the committee then go to the board for final approval? C.S.

**Answer** – The question becomes “when the property owners association is comprised of both homeowners associations and condominiums does the Condominium Act or the Homeowners Association Act govern? The answer is the Homeowners Association Act. Insofar as the composition of the board, you must look to the covenants, conditions and restrictions and the Articles and By-Laws. For a fine to be levied there must be authority for same in the governing documents. Most authorities agree that the committee serves in a manner analogous to a jury; it determines innocence or guilt and recommends whether to levy a fine, and the amount. The board, acting as a judge, then imposes the fine in such amount as it deems appropriate.

**Question** – There are several condominium owners in our building who have run up substantial bills due to nonpayment of maintenance and/or special assessment fees. Some of these units are in foreclosure, and the banks or mortgage companies own them. They, too, have not paid the fees related to these units. Other than putting liens on these units, is there anything else we can do to collect the monies owed? Are we allowed to display on our bulletin board, a list of the names or unit numbers of the owners, along with the amounts owed? A.F., Jensen Beach

**Answer** – The problem your association is experiencing is epidemic throughout the State and Country. I know of common interest ownership communities where delinquencies are in excess of 35%. Most community associations today are forced to budget for “bad debt,” which translates into unit owners who are paying their maintenance also having to cover the obligation of the non-paying unit owners and their lenders, who refuse to take title in order to avoid having to pay assessments. Everyone should be outraged by what is happening, and Congress should not allow banks, which are not paying maintenance on units that are in foreclosure, the benefit of the bailout. So what can community associations do? They can foreclose their liens and take title to the units. In some cases, while awaiting the mortgage foreclosure, the association is able to rent the unit, thereby deriving some income. The association can obtain a money judgment against the unit owner(s), which when recorded in the public

records is good for twenty years. At some point, the association will be entitled to up to six (6) months of assessments from the foreclosing bank. That said, under no condition should the association post the names of delinquent unit owners on a bulletin board visible to non-owners. Doing so is a clear violation of the Federal Fair Debt Collection Practices Act.

**Question** – I live in a 55 and over senior community made up of manufactured homes. The rules and regulations prohibit residents, who own a motorcycle or scooter, from operating them within the community; not even with a noise limitation approved by management, nor even to drive to their place of residence. They must park at the gate entrance. The Division says they are not breaking any laws. Isn't there a certain judgmental unfairness to this rule? The owners in other communities will not allow pets over 25 lbs. One community won't

allow people who own pickup trucks. When does it all stop! What if they wouldn't allow obesity? There would be a lot of 55 and over retirees rejected there. What is your opinion? I will look for your reply. D.S., Ormond Beach

**Answer** – While some courts have upheld bans against parking commercial vehicles within residential communities, others have allowed pickup trucks and other hybrid vehicles, noting that times have changed and varying types of vehicles are no longer offensive to most residents. I am not sure what justification there is for banning motorcycles. In this age of energy efficiency, no doubt the day will come when seeing cars connected to an electrical plug will be as common place as the old T.V. antennas.

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