



Condominium Law Q&A

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Question - Our Building has a recreation lease and we would like to terminate it. What would be the proper procedure to proceed? Thank you. R.D.K, West Palm Beach

Answer - Have you approached the lessor about the possibility of purchasing it? With capital gains taxes going up, it is a good time for a holder of property to sell. Challenging the validity of a recreation lease on the theory of it being unconscionable is very costly and has uncertain results. Have a lawyer determine if your condominium documents contain what we call "Kaufman" language which incorporates future amendments to the Condominium Act.

Question - Last year, the board passed a rule that hurricane shutters or hurricane windows must be installed in every unit. Unit Owners had the option of which they wanted, as well as whether to allow the board of directors to hire the contractor for the entire community and pay their portion back to the Association, or hire their own company and pay them directly. This year, the board of directors approved having all shutters lubricated and inspected prior to hurricane season and accepted the responsibility for repairing newer shutters that were out of warranty, but not older shutters. On the one hand, the shutters belong to the unit and should be the unit owners' responsibility. On the other hand, the association taking on the responsibility for lubricating them to be sure that they are functional in the event of a hurricane is protecting the common elements (80% of our residents are only here in the

Winter). Can the Association take responsibility for this lubrication as a preventative measure, and if so, might this obligate them down the road for a shutter repair or replacement? Thank you. R.S., Fort Lauderdale

Answer - First, in order to make the installation of hurricane shutters mandatory, either of two conditions must be met: 1. you must obtain the approval of a majority of the voting interests of the condominium, not just a resolution of the board; or, 2. the declaration must provide that the maintenance, repair, and replacement of hurricane shutters is the responsibility of the association. Likewise, for the association to be responsible for the maintenance and up-keep of the shutters, the declaration must provide for same; this can be done through an amendment of the declaration. Without authority in the declaration, the maintenance and up-keep of hurricane shutters is the responsibility of the unit owner who installed the shutters.

Question - What is the law regarding condos that do have approval of 1 pet per unit, but one owner has stated that they have some kind of a rescue license and are allowed to keep more than 1 pet. Also, her residence is affecting the property, as the smell coming out the unit is terrible. You can smell it from the street. What can the property owners association do? They also let the pets out without a leash. Thanks for your prompt reply. R.T.

Answer - Even when pets are permitted in a condominium, they can be removed if they

constitute a nuisance, which can be as a result of constant barking, not being walked in designated areas on the common areas, or having a dangerous propensity. There is at least one case which held an association liable for a dog bite on the common area regardless of the fact that the dog belonged to a unit owner and should have been on a lease, but wasn't.

Question - I live in an ungated community with 180 homes. 100 homes were built in 1986. 80 homes were built in 1995. We've had a homeowners association since 1996. Without going into great detail, there are homeowners costing us a huge amount of money due to pets, foreclosures, fees etc. We are in so many lawsuits, it's unreal. The question I have is that every one of these problems is occurring in the 100 homes built in 1986. The 1995

properties have not one problem, yet we have to pay. Can this association be divided so that we can have our own association of 80 homes? How would we start, if we can? E.S.

The underlying covenants, conditions and restrictions (CC&R's), which bind together the entire subdivision, define the relationship between the two neighborhoods and the operating association. The question becomes one of whether there are shared amenities which necessitate keeping the community bound together. If not, theoretically, the CC&Rs can be amended by the requisite vote to be separated into two separate neighborhoods, each with their own association. It would require a survey delineating the property governed by each of the respective covenants and associations.

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