



Condominium Law Q&A

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Columnist Note: The format of today's column varies from the traditional question and answer format to address several matters of concern to community associations:

1. With summer and swimming season quickly approaching, it is worth examining a recent release from the Center for Disease Control and Prevention (CDC):

The use of swim diapers and swim pants may give many parents and pool staff a false sense of security regarding fecal contamination. Little scientific information exists on how well they are able to keep feces or infection-causing germs from leaking into the pool. Even though diapers or swim pants may hold in some feces, they are not leak proof and can still contaminate the pool water. It is unlikely that swim diapers are able to keep diarrhea stools, the high risk event, from leaking into the pool and no manufacturers claim their products prevent leakage of diarrhea into pools. [Content Source: Division of Parasitic Diseases, National Center for Zoonotic, Vector-Borne, and Enteric Diseases].

What is the relevancy of the above finding to shared ownership communities? In 1988, Congress amended the Fair Housing Act to include under its

cloak of protection "familial status." Familial status is the residency of an individual below the age of 18 with a parent or guardian. Translated, for other than an exempt "housing for older persons community," an association may not pass a rule or regulation discriminating against children. In 1992, an Administrative Law Judge (ALJ) found rules at a South Florida condominium, which barred children under the age of five (5) from the pool, to be discriminating. The rule was enacted as a means of preventing fecal matter in the pool. The ALJ, in finding the rule discriminating, relied heavily upon the testimony of an environmental specialist from the Florida Department of Health and Rehabilitative Services, who testified that there is no health reason to exclude children of any age from a pool, and that a pool can be maintained in a healthful and clean condition, regardless of the age of those who enter the pool. These new findings by the CDC seem to reject this contention. Based upon the CDC's findings, community associations may wish to revisit rules barring anyone, adult or children, from swimming in a pool if they are wearing a diaper.

2. **H.R. 1106: U.S. Mortgage Modification Bill, a/k/a "Cramdown Bill"** defeated in U.S. Senate.

I'm pleased to advise that efforts to pass federal legislation, which would have adversely impacted community associations, was defeated in a vote on April 30, 2009 by the U.S. Senate. The language contained in the original "cramdown" bill, if adopted, would have allowed federal courts to

substantially alter mortgages in cases where a homeowner's property is worth less than their mortgage balance. It would have also given bankruptcy judges the ability to "cramdown" the original mortgage balance/monthly payments and wipe out unpaid community association assessments. The goal of the legislation was to eliminate vast sums of debt in an effort to stabilize the housing market. In recent weeks, efforts were made to add provisions to the bill to protect assessments which would have lessened the impact

on community association, but ultimately the bill was defeated.

3. **Adding Insult to Injury:** After relaxing lending requirements, thus allowing financially unstable individuals to buy units in shared only communities, FHA has now added insult to injury by passing new guidelines which prohibit FHA backed loans in communities where delinquencies exceed 15%.

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