



## Condominium Law Q&A

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**Question** - Upon my death, can any of my children, who will inherit my unit and are over 18 but under 55 years old, permanently occupy my condominium in a Community for Older Persons without a 55 year old residing in the unit. I read your July 21, 2008 answer to a similar inquiry but it did not specifically address my concern. Thank you for your kind attention. J.C. City unknown

**Answer** – It depends on whether the covenants, conditions and restrictions of the condominium or homeowners association restrict 100% of the unit occupants to persons 55 years of age or older (which is perfectly legal to do), or allows 20% of the units to be occupied by individuals below the age of 55 (which is also perfectly legal). The law looks at “occupancy” differently than “ownership.” Thus, even if your community restricts unit occupancy to individuals over the age of 55, individuals below 55 can still own title, but would have to lease the unit to individuals over 55.

**Question** - I so enjoy your weekly publications and was wondering what you thought of the following. We recently bought into a 36 unit condominium in Indialantic and were given our covenants, conditions and restrictions before we purchased the unit. Now, two and a half years after the purchase, the developer, who lives in the condominium, has made several changes to the governing documents without any owner input. The condo is still under developer control. I was under the impression that the contract I agreed to was for the governing documents as presented, but they are telling me that the developer

can make changes at will. Is this correct? Things like: tenants can only have a 20 pound pet, but owners are allow a 40 pound pet; children under 18 must be under adult supervision at the swimming pool; and, all windows facing the walkways must now have a certain kind of window dressing. Many of us have already purchased window dressings that no longer conform to the new requirements. B.C., Indialantic

**Answer** - Most documents reserve to the developer the right to make amendments to the documents during the period of developer control. The courts have ruled that such rights are limited to amendments which do not change the fundamental character of the community. The Courts have similarly held that amendments cannot be applied retroactively. Thus an amendment which imposes certain aesthetics for the type and color of drapes would not apply to those who have already installed drapes. Personally, I feel the rule requiring children in the pool to be under adult supervision would pass muster and be enforceable.

**Question** - I would like clarification of s.718.112.2.d.1, Florida Statutes, which states, “In a condominium association of more than 10 units, co-owners of a unit may not serve as members of the board of directors at the same time.” The board of directors permitted the president of the association to appoint her husband (and co-owner) as assistant treasurer. According to our bylaws, an assistant treasurer and an assistant secretary are officers. Our association requires a maximum of 5 votes for all

motions and, as of March 16, 2009, we have a president, vice president/secretary, treasurer and two directors, plus an assistant treasurer and an assistant secretary. I have two questions. First, if the assistant treasurer performs the duties of the treasurer when the treasurer is absent, can he also vote in her place? Second, is our association in violation of s.718.112.2.d.1, F.S.? M.K., Royal Palm Beach

**Answer** - You are mixing apples and oranges. The board is a policy making body, the officers carry out the day to day affairs of the association. You are

correct, the amended Condominium Act precludes co-owners from serving on the board at the same time in condominiums of more than 10 units. But, there is nothing in the law prohibiting a co-owner serving on the board and another of the co-owners serving as a non-board member officer. When the board meets, it is as a board, not as "officers." Thus, I assume you have 5 directors, no two of which are co-owners, and additional individuals, one or more of whom are co-owners, serving as officers. When the board votes, only the elected directors vote; the appointed officers do not.

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