



## Condominium Law Q&A

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**Question** – Thank you for your great advice on condo law. Our unit owners amended the declaration of condominium allegedly to bring it into conformity with state law. The new declaration gives the board of directors the authority to fine any “owner, resident, guest, or invitee for failure to abide by any provisions of this declaration, these bylaws, or the rules of the association.” This power to levy fines did not exist in the declaration before it was amended. The owners were told we had to approve the declaration because everything in it was required by law. I voted against it, because I did not believe everything in it was required by law. Everyone else voted in favor of it. Is there any law requiring that a provision giving the condominium board of directors the right to impose fines be included in a condominium declaration? A.C., Fort Lauderdale

**Answer** – No. The law mandates that, for the board or grievance committee to be able to levy a fine, the authority for same must be in the bylaws or declaration. This doesn't mean it must be in the governing documents, only, without it, the board of directors cannot levy fines.

**Question** – Our board is considering a ban on all contractor work, including moving vans in or out of our development (an HOA) on Sundays to maintain a day of peace and quiet. I think homeowners will only pay premium contractor rates on a Sunday in an emergency, and people should be able to move in or out whenever the movers schedule the move. The

proposed rule seems discriminatory to non-Christians. Isn't there a law against this? R.S., Stuart

**Answer** – Actually, it is quite common for shared ownership communities to promulgate rules restricting the hours of the day someone can do construction/repairs within their units and even move in or out of their units. Most of these rules apply to both Saturdays and Sundays. While there is no state or federal law which would preclude such a restriction, I hasten to add that laws which protect against discriminating conduct apply to government action not private deed restrictions. The reason that the archaic restrictions, which sought to keep individuals of particular races and religions from residing within a community were voided, was because the party seeking to enforce the restrictions tried doing so through a vehicle of government – namely, the courts.

**Question** – The 10 unit, 2 story condo I live in is 37 years old. The exterior and the grounds have been kept in reasonably good condition. However, the present rodent problem shows visible holes dug under the outside brick façade, which separates the rear glassed-in porches. Holes also have been dug through the bottom of the porch interior walls between the units. Management's solution last year was to fill the exterior wall holes with steel wool and expandable filler, plus large baited spring traps. Recently, new holes have been chewed through the

base of the inside wall between my unit and the adjacent unit, resulting in small pieces of steel wool and chewed D-con packs (which I had put down) in the track of the glass doors, so apparently that method did not work. I understand that damage done to the inside of the units is the responsibility of the owner. What is the responsibility of the board/management to protect owners from having to deal with rodents burrowing in from outside?  
B.H.D., Stuart

**Answer** – The primary duty of the board is to make decisions designed to maintain the common elements, to collect funds required to maintain the common elements, and to enforce the covenants and rules and regulations, all in furtherance of the fiduciary duty owed to the unit owners. Inclusive within these duties is the obligation to keep the property free from pests and criminal acts.

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