



Condominium Law Q&A

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Question - I hope you can answer this question for me. I was arrested before for possession of cocaine. The case is closed and adjudication was withheld. I am not a convicted felon! Can HOA's and/or condo associations discriminate against renting to me? Just because I couldn't afford a lawyer to fight and win my case, does that mean I can't get a place to live? Thank you.
K.T.

Answer - First and foremost, the association must have the right to approve leases in the recorded documents. Second, that right must have been recorded in the public records before October 1, 2004. On October 1, 2004, a new became effective which said that restrictions against leasing had to be approved by all existing unit owners, otherwise they would only apply against future unit owners and those existing unit owners who approved the restrictions. In most cases, the association has what is known as a "right of first refusal," as opposed to an outright "right of approval." That is, the association must furnish an alternative buyer or tenant, not just reject the application. Chances are that, if you apply to rent in a community which allows renters, the issue will not even come up.

Question - We will be painting our building, and it will cost \$500K, a major capital expenditure. There was a preliminary discussion of color, but now the board president's wife is picking the colors and proceeding. There has never been a sample of the

schemes or paint color on the building for the owners to review. There has not been due diligence on the part of the board to let the owners review the color decisions. Is this allowable? C.L.H., Orlando

Answer - An appellate court has held that changing the color scheme of a building is a material alteration of the type which requires the prior approval of 75% of the unit owners.

Question - I'm a condo owner in Fort Lauderdale. We are not snow birds, just vacationers a few times a year. We do not rent our unit but leave it empty when we're not in residence. Last year, we found an infestation of termites in the bedroom door molding that had spread to our triple dresser. Obviously we had to dispose of the dresser immediately and had remedial action taken by a termite control company. Is the association responsible for this damage both to my unit and the furniture? M.M., Fort Lauderdale

Answer - IF the termites are found to have invaded the separation walls within the unit and those separating the unit from the hallways or other units, then it is an association problem. IF the termites are self contained within the unit, it is a unit owner problem.

Question - We are a new HOA with only 29 lot or homeowners. We are barely solvent, but collecting is going well except for 4 homeowners who have not

paid their association fees. Because we are a small community, 4 members greatly affect the quorum requirements and a two-thirds voting ratio mandated by our bylaws. The covenants state that an owner must be in good standing to vote, and that, in order to remain in good standing, fees cannot be more than 60 days delinquent. (Our violators have been delinquent for over a year, but our developer never collected. Our HOA has now given proper notice and filed liens.) Two questions: Do the 4 owners who are delinquent still have a right to vote on covenant changes? If not, is the total number of votes needed for the majority vote reduced by 4? The above is especially important to us because we

are also considering a special assessment for improvements that requires a 2/3rds vote. K.W., Miami

Answer – The question you asked is a good one. Unfortunately, neither the Courts nor the HOA Act give guidance in answering it. I am of the opinion that notwithstanding the suspension of the unit voting right due to their delinquency, when determining a quorum and the votes required to amend the documents, it is still based upon the total number of units, including those which have their voting rights suspended.

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