



Condominium Law Q&A

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Question – I am a newly elected president of an homeowners association development that is fairly new and was turned over by the developer over 3 years ago. Financially, we are okay with our funds in our operating, reserves and general maintenance. We watch our expenses closely, but we now have approximately 18 units that are in foreclosure. Of those 18 units, there are 5 units that either are owner occupied or have a tenant living in them. Our homeowners association fees included the usual landscaping, common area maintenance, clubhouse and pool janitorial service (3 days a week), house and fire alarm monitoring, pool access and use of the gym, plus water (bulk rate) and basic cable for each unit (317 units). The people living in these foreclosure units are either not paying rent or paying a discounted rent to the owner, who is not paying the homeowners association quarterly dues. We have already taken the resident's name off the community directory at the front gate for guest access. Some of the tenants do not have updated leases filed with the homeowners association, thus they are living on a month to month basis. We have sent letters notifying the owners that we need an updated lease (no response), and within the last 1 ½ weeks, we have instituted a rider for any new renters that, if the owner of the unit becomes delinquent in paying the homeowners association dues, the homeowners association has the right to ask the tenant to pay the homeowners association fees, and the balance left will go to the owner towards the rental agreement. This document is signed off by

the new tenant and owner. This has been working but a few tenants were here before we instituted this procedure. Does the homeowners association have the legal right to cut services like cable and put a lock on the individual unit, cutting off the flow of water to the unit? Again, the homeowners association pays for the water, the unit owner is collecting unclaimed money in their pocket, and the rest of the community has to suffer the consequences. Any suggestions? Oh, and access to the pool and gym are by a special entry key which cannot be duplicated. It is difficult to get these keys back from a tenant. They can find ways to access these areas without a key. So what can be done, or are we in a Catch 22? Thanks, and I look forward to your response. L.V., Palm Beach Gardens

Answer – When the authority for the Association to collect rent being paid to delinquent unit owners is contained within the recorded covenants, such provisions have been upheld by the courts. I would recommend, particularly in the current economy, that every SOC (shared ownership community) amend their covenants to do likewise. In addition, several trial courts have ruled that a receiver can be appointed to collect the rent when unit owners, who are delinquent, are collecting rent but not paying their assessments. In such cases, the receiver pays the past due assessments and remits the overage to the unit owner. I highly recommend this practice as well. While most authorities would concur with the association's right to cut off cable and restrict access

with clickers, I do not recommend cutting off water or electricity, or denying refuse or pest management.

Question – I am a condo manager working for a management company. The board president, for the most part, has almost completely abdicated his fiduciary/legal responsibilities by turning just about everything over to his non-board member wife, and the board chooses not to intervene. The president says, "what can I do, she's my wife?" E.g., she recently ordered me to spend a large amount of money for a capital expense but the association can't possibly afford it. What are my company's potential consequences by following her orders, and what are mine? (licensure) B.D., West Palm Beach

Answer – A licensed community association manager, similar to the officers and directors, is a fiduciary of the unit owners, who he or she serves.

As such, the manager is charged with the obligation of complying with both the governing documents and the law. Policy is established by the board; the day to day operations carried out by the officers. While the president has the tacit authority to act on behalf of the board, that is unless the party dealing with the board knows the president to be acting outside the scope of the president's authority, clearly, a non-elected individual, be they a spouse or otherwise of an officer or director, has no authority to issue dictates to anyone, other than his/her spouse, assuming that is their relationship. I would politely inform the president's wife that decisions concerning capital expenditures can only be made by the board, and then, in compliance with the dictates of the documents. Under no condition would I follow her directions unless instructed to do so by the board.

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