



Condominium Law Q&A

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Question - Our master association and our homeowners association documents state the same about commercial activity. "No commercial activity shall be conducted on any lot with the exception of the developers' real estate sales office or agent." We have one person who was cited for violating our truck rule and is under court order to not violate the 4 hour rule for pickups, or not park in the driveway at any time with his commercial sign on the truck. This person has a pressure cleaning and painting business and stores his equipment in his garage. He therefore loads his equipment as early as 5:30 am and unloads any time in the afternoon to early evening, and even late night. Sometimes the truck has the commercial sign on while this is going on. He also works on and cleans the equipment regularly in the garage or on the driveway. This occurs every work day and I feel this violates the commercial activity clause. Our HOA Board is hesitant to take action, saying we would then have to go after realtors who make calls from their homes. I disagree with this comparison and would like to know how can I make the board accept responsibility and take action against this violation of our documents, both master and subdivision. Thank you. T.R., Lake Worth

Answer - Regulation of home business is a difficult task for community associations, given that it has become more prevalent as more and more business is conducted over the Internet. Most associations draw the line with commercial activities that bring

traffic into the community, be it customers or delivery trucks. And, most associations do regulate commercial vehicles with signs on them. If the Board has the authority in the covenants to levy fines, it may want to go that route with a notice of violation, an opportunity for a hearing, and if found to be in violation, the levy of a fine. The only other option is a civil suit to obtain an injunction against the unit owner storing his equipment in the garage, which certainly presents a fire hazard.

Question - In an Internet search on Chapter 720, Florida Statutes, I saw a brief question and answer section by you. It indicated you were involved in the legislation regarding Section 720.3075, F.S. I wonder if you might be able to answer a question regarding legislative intent. One of the public policy items says that the developer cannot unilaterally change any HOA documents following transition, and another which says the developer cannot have more than one vote per property. Was the intent of the legislature that this also means the developer cannot unilaterally PREVENT changes to the HOA documents? I am asking because we have a situation where the covenants of my HOA (of which I am presently on the Board of Directors) give the "Declarant" (developer) the right of refusal for any changes voted on by the residents (seemingly having unlimited votes to overthrow a vote by even a super majority of homeowners). Even worse, the Declarant can transfer Declarant rights to another developer, continuing serially until 2018. We

currently have 1,108 voting lots and fewer than 20 unbuilt lots in the land plan; transition having occurred about two years ago. I would appreciate any response you could give. J.L.J., Spring Hill

Answer - The covenants, conditions and restrictions (CC&Rs) of the community are contracts. As such, the United States Constitution's prohibition against impairment of contract rights applies to legislation passed subsequent to the contract being entered into; that is, unless one can show that the legislation is

remedial, not substantive, it would not apply to existing covenants. Translated, the first hurdle which you must overcome is to show that the legislation you inquired about applies to your community. Even assuming that it does not, there is a whole body of case law which holds that even when a developer reserves the right to make unilateral changes to documents, he cannot do so when an amendment substantially changes the character of the development.

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