Condominium Law Q&A

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Question – Is there no recourse for homeowners associations, other than filing a lien and foreclosing, when a unit owner is making money renting his unit but not paying his assessments? Can we shut off the water as any municipality would do to a non-paying owner? R.M.G., St. Lucie West

Answer – The current state of the economy, exacerbated by unit owner delinquencies, backlogs in court foreclosures, and lenders not foreclosing units or contributing toward the common expenses, is causing many shared ownership communities to curtail services and non-defaulting owners to pick up the bad debt of the defaulting owners. While the Homeowners Association Act does allow the association to suspend the voting rights of a member for non-payment of regular assessments that are delinquent in excess of 90 days (big deal), and possibly cut off cable services (Cable companies, particularly those delivering bundled phone and Internet services, refuse to cooperate.) and suspend the member's right to use the shared amenities, there is no authority to cut off electrical or water services. The magnitude of the problem is so great that some courts have fashioned some relief by allowing the appointment of a receiver to collect rents being paid to delinquent owners, and to compel lenders to expedite their foreclosures. As more and more associations file for bankruptcy, and the threat of shared ownership communities (SOCS) becoming blighted communities is a reality, the deafening silence from the White House to the State House on how to address this problem remains unacceptable.

Question – I am a small business owner that does custom work for residents at various gated communities. At one community, we were given a pamphlet informing us that all personnel entering the community for the purpose of conducting business must purchase an ID card for $35 and any non-driver (helper) must pay $15. We must also provide social security numbers and have a background check conducted by the Florida Department of Law Enforcement. This would jeopardize our right to work and make it unaffordable if other gated communities adopted these rules, which, if allowed, would certainly follow suit. Is this legal? If they do not require this for UPS and FED-X wouldn't that be discrimination? Also this would be financially profitable to the HOA. Is this legal? L.C.P., West Palm Beach

Answer – Private residential communities can pretty much set the ground rules under which vendors are permitted within their communities. There are a number of cases where community associations were sued for negligence as a result of homes being burglarized by individuals doing work within the community. I don't see a problem with exceptions being made for easily identifiable delivery trucks like UPS, FED-X, Postal Services, and franchised cable providers when their drivers wear company uniforms.

Question – Our homeowner association of 26 homes started in 1988; therefore, our covenants and restrictions were written in the eighties. Obviously, many things have changed since then and, probably, half of the verbiage deals with the developer, who is long since gone. There's a provision that says the covenants and restrictions may be rewritten, however, it requires 70% of the then owners (which is fine), but also requires "all the Institutional Mortgagees" to agree. Getting just one lender to read and agree to a proposed rewrite seems difficult. Getting over twenty would be impossible. Any ideas? P.L., Jupiter

Answer – I am aware of homeowners associations whose covenants, conditions and restrictions require the approval of 100% of the unit owners and 100% of unit mortgagees. Needless to say, their covenants, for all practical purposes, can never be amended. The problem is so acute that the Condominium Act was amended to provide that, as to mortgages recorded after October 1, 2007, mortgagee consent can only be required if an amendment adversely affects the priority of the mortgagee's lien, or otherwise materially affects the rights and interests of the mortgagees or changes unit appurtenances, the percentage of owning the common elements and sharing the common expenses. There is no comparable provision in the Homeowners Association Act, which is further evidence of the need for uniformity in the planned ownership laws.

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