



Condominium Law Q&A

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Question – I am the president of a 161 lot residential homeowners association in West Palm Beach. We recently renewed a contract with our cable provider for seven (7) years. Because of the recent housing market, approximately 30 homes within our association are past due in paying their monthly assessments of \$121.00 per month. As part of the monthly assessment, we provide basic cable television to our residents at a cost of \$33.00 per month. Our association is required to pay the bulk cable fee of \$5,400.00 per month for all 161 accounts. I understand and accept this condition of our contract. I have asked the cable provider to cut off the cable connection to the homes that are past due in paying their assessments. Our association will pay the standard shut-off fee, on and above our monthly contract payment, to have the service discontinued. Our board of directors considers this service a luxury and not essential to our non-paying residents. To have the service turned back on, the resident must obtain a certificate from our association stating that all back assessments are paid, and the resident must pay the cable provider the cost of restoring the cable service and an administrative fee, if necessary. The cable provider has refused my request. It stands to make money from this arrangement, and the contract is silent concerning this issue. Why should the residents that are paying their monthly homeowner fees be required to pay for cable television for the non-paying homeowners? Again, Comcast would be paid all its contractual and regular fees. L.C., West Palm Beach

Answer – While the Homeowners Association Act does provide the right for the association to suspend, for a reasonable time, rights of a member or member's tenants, guests or invitees, to use common areas and facilities, provided the authority for same is in the governing documents, it is less clear if the right extends to cutting off cable services for not paying assessments; although there are a number of authorities who feel the association can. Readers may find a recent decision of a Florida Appellate Court informative on the subject of cancellation of cable contracts. The court held that Section 718.302, Florida Statutes, can be used to terminate a cable agreement entered into prior to turnover. Section 718.302, F.S., states that any contract made by a developer prior to turnover that provides for the "operation, maintenance, or management of a condominium association or property serving the unit owner ... may be cancelled by unit owners other than the developer .. by concurrence of the owners of not less than 75% of the voting interests other than the voting interests owned by the developer." [See *Comcast of Florida L.P. v. L'Ambiance Beach Condominium Association, Inc.* (No. 4 D08 – 2326 (FL 4th DCA, August 26, 2009))].

Question – What are the uses of limited common elements according to Florida Statutes, Chapter 718? If my courtyard, a limited common element, can be accessed by all the unit owners above me for their needs, how will my interests be protected? What are my options? The condominium property manager and attorney advised me that the owner above me can "access" my courtyard to install impact

windows. Several workmen with heavy equipment would stage the project in my congested courtyard, in which I have invested over \$15,000. As an option, I confirmed that window companies commonly install windows from inside the unit whether on the 2nd, 4th or 25th floors. This would protect my space and accomplish their needs, but they refused. I am reluctant to comply with the order that I feel jeopardizes my investment and privacy. P.S., Jupiter

Answer – A "limited common element" is a common element which is reserved for the use of a certain unit or units to the exclusion of other units. The most common limited common elements are parking spaces, storage bins and balconies. The fact that a portion of the common elements are reserved for the exclusive use of an owner doesn't mean that there are not rights vested with the association to enter a limited common element, particularly when necessary to repair the common elements or a unit. In fact, most declarations of condominium expressly grant the association such rights.

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