



Condominium Law Q&A

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Question - We closed on a Tuscan Townhome in September 2008, which we purchased from Mercedes Homes. The project was supposed to have 142 units – 12 have been built. Eight are sold. The homeowner association fee was set at \$120.00 each month for the amenities: cabana, pool, irrigation, and ground maintenance. The recreation area we were told was scheduled to be finished in December 2008. These amenities were part of our purchasing price. It is now almost May 2009 and there is no recreation area – no pool or cabana – they were started but never finished. The pool sits there with dirty ground water in it – the cabana is a shell only – the grass was only cut twice (both times in March) since the beginning of 2009. There are no mail boxes on the premises. We have to drive to a temporary box which is located on another Mercedes Home property. We are still a construction site. Since Mercedes Homes went into bankruptcy, we have no warranties on anything and must pay our own repair bills even though they relate to construction issues. The people who purchased after the bankruptcy have warranties with the receivership company. The question is: Do we have to pay the full \$120.00 when nothing has been finished that was promised? The builder shed his responsibility. We were told the association documents and Florida Statutes provide the authority for the association to enforce payment. We are willing to pay an homeowner association fee, but do not feel we should have to pay the full amount for something we do not have. Can you tell me what rights we have under the Florida Statutes and what obligations? I.K., Daytona Beach

Answer – There are hundreds of "Tuscan Townhome" developments spread across Florida and the nation. Similar to your development, the developers are likewise in bankruptcy, promised amenities, which went unbuilt, and there are a handful of lot owners being asked to pay not only their share of the common expenses, but also to contribute for the bad debt of others. No doubt the value of the home you purchased has fallen, and in many cases is worth less than the mortgage which encumbers it. There is no State agency with oversight authority, and the counties, by their own admission, are overwhelmed with foreclosures and lack the funds or manpower to handle their case loads in an expeditious manner. While the President and Congress have focused their attention and efforts on failed and failing banks, and individuals upside down on their mortgages, few officials have expressed concern with the thousands of homeowners having to deal with the dilemma you described. To add insult to injury, if you stop paying your share of the common expenses levied against your lot, notwithstanding the fact that the promised amenities were not built, and in some cases will never be built, you can anticipate a lien being filed against your home and eventually it being foreclosed. While there are benefits in a stable economy to buying a new home in a planned development, in today's economy, I strongly recommend buying in a built-out development; and even then, only after first ascertaining the number of delinquencies and whether the association maintains operational reserves for deferred maintenance and capital improvements and uninsured casualty losses.

I generally wish I had an answer for the nightmare you find yourself in, but I don't, and I see no solution in the near term.

Question – I enjoy your column and find it most informative. A while ago, you wrote that Florida has a nuisance law, that has been upheld by the Supreme Court. My question is: what is the procedure for having this law enforced? Who, or what local authority, is responsible? And, do we need legal representation, to determine whether we have an issue, and if so, how to get it resolved?
M.D., Jupiter

Answer – My new book, *New Neighborhoods, The Consumer's Guide to Condominium, Co-Op and HOA Living*, co- authorized with my son Ryan, begins with a true story of a unit owner who was forced to sue another unit owner to enjoin his

landing of his helicopter around the condominium property; thereby creating a nuisance. While the book defines a nuisance as a source of annoyance that interferes with the peaceful possession or proper use of the property by its residents, rights afforded to unit owners who are impacted by the conduct of others arise not only from statutory and common law, but also from contractual law. The declaration of condominium, for instance, is a contract. There is usually found within the declaration of condominium a provision which prohibits use of a unit in a manner disturbing to others. Such was the case of the noise created by the helicopter. The unit owner was able to enjoin the conduct within the framework of the documents, without having to prove the common law elements of a nuisance. The proper venue for the relief sought is the Circuit Court.

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