



Condominium Law Q&A

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Question – Our homeowners association president/chairman ordered all directors to have their meeting comments placed on the board meeting agenda prior to the meeting. If not, they will not be able to speak at the meeting. He also ordered the membership to do the same thing. Is this legal or customary? J.C.Y., Deland

Answer – The board is required, by law, to establish and publish an agenda prior to the board meeting. And, unit owners are given the right to speak, for a minimum of three minutes, on each agenda item. There is a major difference between posting an agenda and requiring members of the board to similarly post their comments as part of the agenda. It is not required by law and quite frankly illogical. I assume a board member's comments will vary depending upon that which is said by the unit owner, other board members and independent professionals who are brought to the meeting to give insight on proposed agenda items.

Question – I live in a zero lot line home under the association's by-laws. There is a tree adjacent to my home which was planted by the builder many years ago. The roots are currently lifting up my walkway and my driveway. The driveway was recently cemented and is maintained by the master association. I fear the next problem might be roots creeping into the water source near the walkway. Is this tree my responsibility or that of the association? R.W., Delray Beach

Answer – If the branches of a tree or its roots intrude onto your property, you have the right to trim the branches at the point along the property line where it intrudes onto your property, and to remove the roots which threaten to undermine your patio, walkway and foundation. Quite frankly, if the tree is planted on the common areas, maintenance of which is an association obligation, the association should correct this problem before it creates further damages.

Question – I am researching how I can get approval for my younger sister, who resides in Jupiter Island, to have a very small dog as an emotional support. She owns a condo and they have a no pet rule. She suffers from depression and generalized anxiety disorder. All family and friends live in Chicago and I am in Michigan. I am a Legal Nurse Consultant and my husband is an Emergency Room physician and we are trying to help her in this situation from a distance. This is foreign to us and we want to start somewhere. Can you offer us where we need to start? A letter to the Board first? Buy the small dog then the letter? Submit an order from a social worker or medical doctor? To whom? We would appreciate any suggestions you have. M.M.G.

Answer – Let's start with the statement that as a general rule, "no pet" restrictions that are timely and uniformly enforced, are valid. Next, one needs to consider the Fair Housing Act which provides that a community association must make reasonable accommodations in rules, policies, practices or services when such accommodations may be

necessary to afford handicapped person equal opportunity to use and enjoy a dwelling. Among the accommodations required is to permit a unit owner to keep a service animal and, in some cases, an “emotional support” animal. The problem with the latter is that many unit owners abused the law by having doctors sign form letters prescribing a pet when in fact they were unable to show any correlation between the pet and the amelioration of the emotional illness. As a result, several recent court rulings have held that when someone seeks to keep a pet in a no pet building the association may inquire as to the nature of the illness, the background and training of the physician who prescribed the pet,

and how the pet will ameliorate the symptoms of the illness. I would strongly advise against buying the pet first. What should be done is send a letter to the association, along with a letter from a physician who is knowledgeable about your sister's illness and who has, in fact, treated her for same. The Board, in turn, may require additional information about the nature of the illness, the background and experience of the attending physician, and how the pet will ameliorate the symptoms. If the board rejects the request, a complaint can be filed with HUD which will investigate and determine if the board was justified in rejecting the pet.

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