



Resolutions Helpful for Association

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Editor's Note: This column is reprinted from previous years, at the request of many readers.

The New Year marks a chance to reflect on past successes and failures. Of course, the customary way to shoot for success in the upcoming year is the New Year's Resolution. Here are ten proposed New Year's Resolutions for community associations, five for owners and residents, five for the Board.

For the owners and residents:

- **Remember that the association is not a landlord and the board members are not the building superintendent.** They are volunteers. They are human beings who will make mistakes.
- **Volunteer to do one thing for your community during the upcoming year.** Whether it is typing up an edition of the community's newsletter, or serving on a committee, every little bit helps.
- **The next time you get upset about something that has happened at the association, wait twenty-four hours to address it.** It is amazing how a night's sleep sometimes puts a new perspective on things.
- **Follow the rules.** There is at least one rule in every community that some resident despises, or thinks is silly or outdated. However, that rule may be very important to your next door neighbor. If you

feel a rule is outdated, advocate for change in a respectful manner.

- **Sit down and read the association's governing documents.** In the flurry of activity involved in buying a new home, very few people have the time or inclination to read through a thick stack of condominium or homeowner's association governing documents. One of the most common complaints I hear from boards when a dispute erupts in a community, is that the problem would have never happened if the owner would have read the documents.

Now, for the board:

- **Remember that an owner questioning what is being done, or suggesting another approach, is not necessarily an attack on the board.** Great ideas sometimes come from the most unexpected sources.
- **Try to create an environment that encourages community participation.** Sometimes it is easier and faster to just do things yourself. However, the more your association is perceived as a partnership, the smoother things will go.
- **Read your governing documents.** Owners are not the only ones guilty of not knowing the community's governing documents. If there are archaic or un-enforced rules, it is time to look at changing them.

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- **Review all of your relationships.** Take a look at each vendor providing goods and services to your association. Are they meeting your expectations? Keeping in mind that you often get what you pay for, the cheapest is not always the best.
 - **Don't sweat the small stuff.** While board members should take their obligations seriously,

some things just are not life and death matters. Keeping things in proper perspective and good balance (admittedly easier said than done), makes board service much more rewarding.

If you are like most of us, it probably will not take long to break some of these resolutions, but it is worth a try. ■

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.

Pool Ban Can be Tailored to Cover Diapered Kids

Question: Is it illegal to keep a 10 month old baby out of a condominium swimming pool even though the child is wearing a swim diaper and/or swimmers? Our board of directors just voted to allow babies in the pool, but some of the residents want to sign a petition to keep them out saying that it is unsanitary? S.L. (via e-mail)

Answer: Although it seems reasonable to be concerned about swimming pool sanitation, condominium boards must be cautious about liability for discrimination based on “familial status” (ie. having minor children), which is now a protected category under state and federal law. If a condominium is not a “55 and over” condominium, it cannot discriminate in the terms and conditions of housing for families with children, and the association needs to ensure that its rules related to pool usage, as well as its other recreational facilities, are tailored to serve a specific purpose related to health, safety, or welfare.

For example, if an association is concerned with potential drownings of young swimmers, a rule might be enacted to require that an adult accompany persons under a certain age and that the adult supervise the activities of the young people. If an association’s concern is with loud noise and horseplay, a rule might be enacted specifically to prohibit, regardless of age, horseplay, running, diving, jumping, loud noise and other activity that may detract from the peaceful enjoyment of the pool by others.

If the main concern is sanitation, I believe an outright prohibition on children under a certain age using the pool could be attacked as discriminatory. However, since the concern is the health risk associated with waste matter in pools, I believe that a rule prohibiting anyone, regardless of age, lacking good function control from using the pool would

be upheld as non-discriminatory since it applies to persons of all ages and appears to be tailored narrowly enough to a specific purpose. In fact, both the American Academy of Pediatrics, and the Canadian Pediatric Society have recommended that children in diapers be prohibited from swimming in pools.

Question: I am under the impression that our condominium association is obligated to allow rentals for those who are “grandfathered”. However, our documents have rental restrictions that limit the number and duration of rentals per year. Who do the restrictions apply to? B.M. (via e-mail)

Answer: I am not sure if your use of the word “grandfathered” relates to a specific “grandfathering” provision contained in your condominium documents, or if it relates to a relatively recent amendment to the Florida Condominium Act. It is possible that your condominium documents were amended to limit the number and duration of rentals per year, and a part of the amendment contains some type of “grandfathering” language indicating that the new restrictions do not apply to anyone who owned their unit prior to the amendment. It is not uncommon for such “grandfathering” provisions to be drafted into amendments so that current owners are not affected by the change.

You might also be referring to an amendment to the Florida Condominium Act which became effective on October 1, 2004. That section of the statute deals with amendments to documents. The new law added a provision stating that any amendment restricting unit owners’ rights relating to the rental of units applies only to unit owners who consent to the amendment and unit owners who purchase their units after the effective date of the amendment to the documents.

Any rental restrictions contained in your condominium documents will be subject to any “grandfathering” provisions specifically written into the restrictions, and if the restrictions are based on an amendment that was passed on or after October 1, 2004 they only apply to those owners who consented to them or purchased their unit after the amendment became effective.

Question: There is a tenant in my condominium that is storing some kind of fuel in his unit. There appears to be a large quantity, judging from the number of containers. He is keeping the fuel to power his generator in the event of a hurricane. Is this legal? G.C. (via e-mail)

Answer: You should check your condominium documents to see if they specifically prohibit storing fuel or other flammable materials. If they do not, a nuisance (for example odors or fumes) or a demonstrable threat to safety would have to be established to prohibit such items.

The National Fire Protection Association’s (NFPA) Life Safety Code also provides specific requirements for areas requiring special hazard protection, such as those used for the storage of combustibles or flammables. I would recommend that your board check with the local fire official to determine whether or not the storage of large amounts of fuel in your unit types would violate the NFPA Life Safety Code. ■

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