



Cleaning Up Property Not As Easy As It Looks

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Q: I live in a development that is governed by a homeowners' association. More and more, we are seeing owners "walk away" from properties they can no longer afford due to the poor economy. This leaves a void as to who is to care for their properties in their absence. Many times, the properties fall into disrepair, which causes potential buyers to think twice about purchasing in our community. Other owners are generally careful to maintain their properties, but it is those few abandoned properties that are scaring away potential buyers, and as a result, property values within our community have plummeted. Our association is considering taking on the task of fixing some of these abandoned properties to preserve property values and to make the community more attractive to potential buyers. Can we do that? **M.D. (via e-mail)**

A: You indicate that your community is a homeowners' association, presumably governed by Chapter 720 of the Florida Statutes, also commonly (although not officially) referred to as the Florida Homeowners' Association Act. If that is the case, then the answer to your question will depend on what your governing documents say.

Unlike the Florida Condominium Act, Chapter 718 of the Florida Statutes, which grants a condominium association the irrevocable right of access to each unit during reasonable hours for

maintenance purposes, the Florida Homeowners' Association Act does not expressly authorize a homeowners association to access an owner's lot, let alone to make repairs where the owner fails to do so. Thus, the authority to do so must be contained in the governing documents.

Especially with more modern, well drafted documents, you will often find a clause in your documents which says that when the homeowners fail to maintain their property, the association is authorized to enter the premises and make repairs at the owner's expense, after reasonable notice has been provided to the owner. Of course, what is "reasonable" will depend on the circumstances.

Unfortunately, your situation is far from unique in today's economic climate. Owners in dire financial straits often do not make their mortgage payments. The bank will eventually initiate foreclosure proceedings. Under these circumstances, the owner may feel there is no way to salvage their interest in the property, or it is just not worth it for them, and they simply "disappear." In many cases, it is difficult for the association to ascertain the whereabouts of owners who have abandoned their properties, and thus notify the owner of the association's intent to access the property and make repairs. Still, the association must make a reasonable effort to fulfill the notice requirement.

Where there is a mortgage and the bank has initiated foreclosure proceedings, it may also be appropriate to notify the bank of the situation. Banks are often unaware of the circumstances and upon being notified, may send someone out to maintain the property, since they have a substantial economic interest in it, and are usually conferred the right to do so by their mortgage agreement, or may seek court permission to do so. Other times, the banks are not equipped to have someone look after foreclosed properties, or they just do not believe it is worth the investment.

If your association is considering the task of caring for “abandoned” properties (if authorized by your governing documents), please be aware that there may not be a way to recover the expenses incurred. A property owner who is unable to make mortgage payments, or carry out any other financial obligations (such as paying assessments to the association), is also likely unable to pay the cost of repairs on their “abandoned” property.

I would recommend consulting with the association’s legal counsel to verify whether the association has the authority to enter the property and make necessary repairs. Your attorney should also advise whether this is a proper expenditure of association funds, especially if the prospects of ultimately recovering the money spent are dim. Entering else’s property without proper legal authority may give rise to a trespass claim, notwithstanding the laudable intention of preserving the property values in your community.

Q: I am concerned about the way my condominium association board is adopting a budget for next year. It is December, and they have not yet even sent notice for the board meeting to adopt the budget. There is no way that members will know what to pay on January 1, 2009. If this happens, are members excused from payment altogether? Apparently, the board is trying to confirm its insurance premium amounts for insurance that renews on January 1 and is also trying to determine the exact amount of a

landscape contract renewal that comes up in mid-January. **V.C. (via e-mail)**

A: If you talk to any property managers beginning in about mid-October and continuing through November and December, most all of them are scrambling to finalize budgets. I liken it to tax season for accountants. The fact is, putting together a budget for a condominium association is an exercise in estimating much more than it is a precise determination of the exact amount of expenses for the association in the upcoming year. You cited two examples, those being insurance premiums and the renewal of service contracts, that can throw a monkey wrench into the best budget plan. For an established association, historical experience and data should be helpful to make a close estimate of actual expenses. Unfortunately, in this economic climate, most boards must also factor in a potential “bad debt” amount to account for assessments that will possibly not be collected due to non-paying owners.

The good news is that the board is only required to make its best estimate of the upcoming expenses of the Association. In the event that the estimate proves insufficient, absent a contrary provision in the condominium documents, the board always has the ability to amend the budget during the year. In order to do so, the board must follow the same notice and budget adoption procedures as are required to adopt the original, annual budget. Moreover, if the association has an urgent need for funds during the course of the year, and again absent any limitation in the condominium documents, the board may levy a special assessment.

Your concern about the January 1 deadline and the due date for your first installment for next year is legitimate. However, even if the new budget is not adopted in time, most practitioners would argue that the association is legally able to continue collecting monthly assessment amounts based upon the prior year’s budget, although I am not aware of any case decisions on point.

Clearly, the board has an obligation to adopt a new budget as soon as possible and should rely on its ability to estimate the budget and not be overly

concerned about getting the budget amounts exactly correct.

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.

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