



How Can You Ensure That Rules Will Be Followed?

Options Include Fines, Eviction, Arbitration

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Q: I live in a condominium that has been established for quite some time. We have a set of rules and regulations that has been re-written over the years to keep up with the times. The only stipulation in these rules as a consequence of breaking them is a statement that failure to abide by the rules may lead to eviction. Many people do not follow the rules and regulations and the board of directors sends occasional letters addressing some of the infractions, but never seems to follow through. What can be done to enforce the rules?

D.M. (via e-mail)

A: Eviction is usually not available to associations in addressing violations of rules and regulations. Eviction is a right of a landlord to remove a tenant from the premises. If rules are being broken by unit owners or persons other than tenants, there is no legal basis to evict.

Some condominium documents do permit associations to evict tenants who break the rules and regulations. Although I am not aware of any court decisions on point, most attorneys seem to agree that if eviction is set forth in the condominium documents as a remedy for a violation of rules, it will be upheld. However, most condominium documents do not contain such a clause.

Even when eviction is an available remedy, there are a series of pre-eviction notices and procedures that must be followed in the landlord/tenant relationship, and which probably also need to be followed if an association does seek to evict a tenant. Basically, with the exception of certain egregious infractions, the tenants must be given written notice of their transgressions and an opportunity to stop their objectionable behavior.

In general, the remedy available to condominium associations for violation of rules and regulations is what is known as “injunctive relief”, or sometimes referred to in laymen’s terms as a “court order.” Injunctive relief, as opposed to a judgment for money damages, is an order from a court which orders a person to do something, or stop doing something. Violations of injunctions are punishable by contempt of court, including imprisonment.

Most disputes between associations and unit owners must be submitted to a state-run arbitration program before the parties can go to court. Because the State and Federal Constitutions guarantee the right of access to the courts, the arbitration is not binding. However, arbitration does result in a final resolution of some ninety percent of condominium disputes, at least according to the last statistics I read that were put

out by the state agency which administers the arbitration program.

Perhaps the most significant “penalty” affiliated with both arbitration and court proceedings is that the winning party is entitled to recover their attorney’s fees from the losing party. In even the most routine cases, attorney’s fees will run in the thousands of dollars, and a hotly contested case can easily run into the tens of thousands of dollars. I have found that the possibility of being assessed for the other side’s attorney’s fees serves as a strong incentive for both the association and the unit owner to review their position before the matter moves through the legal system. The goal should always be to resolve disputes as early as possible.

Another option for enforcing rules and regulations is the levy of fines. The Florida condominium law permits an association to levy a fine of up to one hundred dollars per violation, with a maximum fine of one thousand dollars for an ongoing or continuing violation. The authority to levy fines must be contained in the condominium documents. Further, if fines are to be levied, the person who is going to be fined is entitled to certain notices, and an opportunity for a hearing. The hearing must be held before a committee of non-board members (and cannot include family members or co-occupants of board members). If the independent committee does not agree with the fine levied by the board, the fine cannot be collected. Fines work for some types of violations, not for others.

Before an association can take legal action (go to court or file for arbitration), the offending party must generally be given written notice of what they are doing wrong and an opportunity to correct their behavior.

Q: I have a question regarding the new insurance law. Your recent article states that the association is supposed to be a “loss payee” under my private insurance policy. How is it that an entity without a vested interest should be listed on the policy as a “loss payee”? I would like to see

myself listed as a “loss payee” on the association’s master insurance policy. J.F. (via e-mail)

A: You might be interested in knowing that the Florida condominium law stated for many years that the unit owners were considered “additional insureds” under the association’s master policy. “Additional insured” status was removed by a 2004 amendment to the condominium statute.

I do not necessarily agree that the association does not have a “vested interest” in the fixtures to be insured by unit owners within the condominium property. There is some benefit to an association in knowing that every unit owner will have the means to make their unit habitable after a substantial casualty, like a hurricane or a fire.

However, the insurance industry shares your concerns about naming condominium associations as “loss payees.” There are already a couple of bills floating around Tallahassee (although the Legislative Session does not start for another couple weeks) which would eliminate the provisions of the 2008 amendment to the statute making the association an “additional insured” and “loss payee” under unit owner policies. Stay tuned.

Q: Our developer recently turned over the community to our property owners’ association. We have a three-member board. If any of the two of us get together to go over files, blueprints, or otherwise review the community’s documentation, must we post notice of this gathering 48 hours in advance? **A.T. (via e-mail)**

A: The law applicable to homeowners’ associations defines a “meeting” of the board as any gathering of a quorum of the board where association business is conducted. Although the courts have not interpreted this law in the HOA context, there is a fair amount of case law applicable to public boards which can be reviewed as precedent.

It would seem that the concept of “conducting business” is very broad. While it is clear that two

board members can play golf or eat dinner together (as long as they do not discuss association business), it is likewise clear that formal votes do not need to be taken in order for a “meeting” to

occur. In my opinion, it is better to err on the side of the “sunshine” and post notice of the gatherings you have described.

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.