



Owners, Investors Agendas Differ

Changes that limit rights call for vote

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Q: Our condominium association is considering limiting the number of investor-rental units. We would like to “grandfather in” our present rental owners, but limit rental owners by number or percentage in our association. Does Florida law specifically govern this action? What are the pros and cons? Thank you. **J.G. (via e-mail)**

A: Your question is a common one, and is a long-standing issue that has affected local condominiums.

Historically, developers have marketed condominiums to seasonal retirees (“snowbirds”), full-time residents, and “investors.” Investors typically buy units with the hope of their increasing in value and ultimate sale at a profit. In the meantime, investors will likely rent out the unit in order to pay for its carrying costs (mortgage payments, taxes, and association maintenance fees).

In my experience, those owners who look upon the condominium as their home tend to want more services, a higher level of maintenance, and some degree of control over the community’s collective behavior. Conversely, while investor-owners certainly want to see appropriate maintenance in order to protect their investment, they tend to be more focused on cost control and the ability to

easily place tenants in the units. Of course, these are not universal observations, since many condominiums (particularly beach-front resort condominiums) are geared almost solely to the investor-owner.

Generally speaking, changes aimed at limiting rental rights need to be pursued through an amendment to the declaration of condominium. This will typically require a unit owner vote and some level of super-majority approval, typically two-thirds or seventy-five percent of the unit owners, which may be based upon the entire membership or based upon those who vote, depending upon how your documents are written.

In 2002, the Florida Supreme Court issued a landmark decision called *Woodside v. Jhren*, which ruled that a proper amendment to a declaration of condominium could essentially eliminate leasing rights altogether. The Supreme Court’s theory was that when you buy into a condominium, all of your rights are amendable as set forth in the declaration of condominium.

Some people felt that the Supreme Court’s ruling placed an unfair burden on investors. In 2004, the Florida Legislature was convinced that it should enact a law that modified the Supreme Court’s ruling. Effective October 1, 2004, the Florida Legislature enacted what I call the “Rental

Amendment Grandfathering Law.” This law says: “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 that amendment.”

Accordingly, to the extent an amendment “restricts” rental rights, unit owners who do not vote in favor of the amendment (or those who do not vote at all) are automatically “grandfathered.” This would lead one to ask why anyone would vote in favor of such an amendment, since a favorable vote takes away rights that others retain. For this reason, many amendments aimed at rentals “grandfather” all existing unit owners.

As to the implementation of a maximum number of units that can be rented at one time, I have seen a few associations adopt such amendments. They require effort to enforce, and a fair system for deciding who gets the next turn for a rental.

The law for cooperatives and homeowners' associations is somewhat different, and the principles discussed above are limited to the condominium setting.

Q: Is a condominium association board under any obligation to read all owner correspondence aloud at meetings? **M.A. (via e-mail)**

A: No.

There is nothing in any of the statutes governing associations in Florida which require the board to read owner correspondence aloud at board meetings. There is also no law which prohibits it.

Whether it is a good idea depends upon a number of factors, including the size of the association and

the nature of the issue at hand. Letters sent to the association by owners are part of the “official records” of the association, must be maintained for a period of seven years, and are available for inspection by any other unit owner.

Q: Our condominium association board of directors does not replace trees that have died in order to save money. Isn't this a decision for the membership? **B.S. (via e-mail)**

A: First, particularly with newer developments (and by this, I mean those approved within the past decade), local governmental units (cities, towns, and counties) often require certain minimum vegetation requirements as part of the approval of the development plan. For example, I have seen development orders that require so many trees of a certain type, per acre. Generally speaking, these development orders require that the trees be maintained on an ongoing basis, and be replaced if they die.

Absent a governmental directive, your board of directors has a fairly wide degree of latitude with respect to landscaping decisions. While most changes to the physical appearance of condominium property are deemed “material alterations or substantial additions to the common elements” (and thus usually requiring a unit owner vote), more leeway is given with landscaping. That is because landscaping, by its nature, is always in a dynamic state (growing, dying, etc.).

However, there is some point in a continuum where unit owner approval for landscaping changes would be required. For example, if a condominium was originally designed with lush tropical landscaping and the board wished to change to a “Southwest desert look”, a material alteration would clearly occur.

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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