



Management Company Owner Also a Resident

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Q: I am a member of a homeowners' association. Our board recently hired a new management company. The owner of the management company is also a resident/property owner in our community. Some of us feel that this creates a conflict of interest. What is your opinion on this? **T.W. (via e-mail)**

A: As long as the owner of the management company is not also a member of your association's board of directors, I do not believe that conflict of interest concerns in the traditional legal sense are presented.

There is no legal prohibition against contracting with a property owner within your community. I have seen a few associations which have bylaw provisions which prohibit contracting with association members, but such provisions are certainly the exception.

There are a couple of different ways to look at this. Some may argue that because the owner of the management company also has an investment in your community, he or she will go "above and beyond" to ensure that the community's needs are served, thus protecting their own investment and keeping their friends and neighbors happy. Others would argue that contracting with an association member is a bad idea, because friendships and internal community politics could obscure the objective viewpoint the board should have in dealing with contractors.

Whether contracting with a neighbor or a total stranger, I always recommend that contracts between community association management firms and associations contain a liberal termination clause, with or without clause, upon reasonable notice (such as thirty days).

Q: I live in a high-rise condominium. Each year around the holidays, one of my neighbors, hosts holiday parties that often cause loud noise which reverberates through my unit. I have asked him on several occasions to keep the noise down and each time he apologizes, but the parties continue and so does the noise. Is there anything I can do to prohibit him from having these parties which ultimately keep me up for most of the night each time he has a party. Also, this same unit owner will often leave a trash bag full of trash outside the door of his unit rather than bringing the trash to the trash chute located at the end of the hallway. Eventually, the trash is thrown away, but it often remains in the hallway for a whole day or so. Is anything that can be done about this "trashy" situation? **B.M. (via e-mail)**

A: While you may not be able to require your neighbor to cancel his holiday parties, his actions regarding the noise and trash may give rise to "legal nuisance" or a claim of nuisance under your condominium documents, if there is such a provision. However, before considering any kind of nuisance action, I would recommend that you

make a more formal effort to solve these problems with your neighbor on both issues before escalating the situation. Neighbor-to-neighbor discussions can often cure the problem before considering legal action. If your attempts to resolve this verbally have not worked, you might wish to send the neighbor a letter outlining the specific incidents which you believe have created a nuisance. You might even consider having an attorney write the letter on your behalf.

If your attempts for voluntary resolution are not successful, then you may want to consider filing a claim for “legal nuisance”. Florida law says that a “legal nuisance” is the commission or an act or omission of a duty which either annoys, injures or endangers the comfort, health, repose or safety of the citizens, which unlawfully interferes with, tends to obstruct, or in any way renders unsafe or unsecure other peoples’ lives and infringes on their property rights. Generally speaking, a property owner may put his own property to any reasonable and lawful use so long as they do not deprive other owners of their right to enjoy their property.

Whether or not your neighbor’s conduct rises to the level of actionable nuisance will be determined by the standard of a reasonable, objective person. Therefore, if you are hypersensitive to noise for example, you may not be able to pursue a nuisance claim. Ultimately, the noise or presence of trash must be more than merely an “annoyance” to a reasonable person.

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.

Q: Our condominium association recently set up an election for seven positions. Five board members were to be elected from year-round residents, two were to be part-time residents. I am of the opinion that an owner is an owner, and that year-round residency status should not be a criteria in the election process. All owners should have the same rights and responsibilities. What is your view of this matter. **J.C. (via e-mail)**

A: The Florida Condominium Act states that “any unit owner” may file the appropriate papers to stand for election to the board. The law contains a couple of criteria for the disqualification of director candidates, felony convictions and a recent change in the law regarding unit owners who are more than ninety days delinquent in the payment of assessments.

Otherwise, it is generally said that any unit owner may run for the board. The state agency which regulates condominiums in Florida, known as the Division of Florida Condominiums, Timeshares, and Mobile Homes has previously ruled that residency requirements are not valid. In fact, reversing a previous ruling, the State has also held that term limits are not valid.

Co-owners of a unit are also now precluded from simultaneously serving on a condominium association board.

You should ask your association to review this issue with its legal counsel.