



## Condo Owner Wants Improvements Stepped Up

### Sub-association won't act on issues

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**Q:** I live in a fairly large community with a few sub-associations and a master association. Our sub-association, which happens to be a condominium, would benefit from several improvement projects. There are quite a few owners who would support better landscaping and other improvements, even if it meant spending a little more money than the regular monthly assessment. Our association already has adequate funds to complete several of these projects, but the board simply will not move these projects along. We thought that maybe the master association could step in and either complete some of these projects on its own, or somehow use its authority to require our sub-association to complete some of these projects. Can the master association help us?

**C.H. (via e-mail)**

**A:** There are a variety of reasons that a developer will develop a large parcel of land using a "master association" and several "sub-associations", often referred to as "neighborhood associations." Those reasons include legal, financial, and marketing considerations. In such cases, a master association's function is usually to own and maintain common areas that are for the use and benefit of all members of the various neighborhoods in the community. The best examples of master association common areas are gate houses, roads, community centers, and recreational facilities. In many cases, these master

common areas make up the vast majority of all common areas of the community.

In fact, I am aware of many neighborhood associations set up as HOA's that own or administer no common area property whatsoever. Instead, those associations usually have the limited purpose of enforcing architectural control standards and use restrictions. Condominiums, on the other hand, often include all of the real property within the perimeter boundaries of the condominium, and the condominium association usually exclusively administers that property.

Given all this, it is first necessary for you to determine whether the property that you and your neighbors wish to improve upon is a common area of the master association or property of the sub-association. If it is owned by the master association, then clearly it is appropriate to ask for the master association involvement. However, if the property is owned or administered by your neighborhood association, the master association likely has no authority to insist upon the improvement unless the desired projects involve cleaning up an unsightly or nuisance condition.

**Q:** Our homeowners association has a problem with feral (wild) cats. There seems to be increasing numbers of these cats in the community, and there have even been some incidents where

cats have approached people and acted aggressively toward them. One person was scratched. I have contacted the board of directors of the association about this issue, but several members of the board have questioned whether it is appropriate for the association to take any action. Can you advise whether other associations have addressed this issue, or similar issues? **C.J. (via e-mail)**

**A:** The first order of business is to determine the scope of your association's legal authority, including its spending authority. The governing documents, primarily the declaration of covenants, will usually spell out the association's authority. In some cases, the governing documents of a homeowners' association specifically limit the association's authority to owning and maintaining specified common area property. In such communities, spending association funds on issues or projects other than the maintenance of those common areas is improper. On the other hand, some governing documents use broad language that authorizes the association to spend funds on matters that "promote the health, welfare, and happiness of its members." Arguably, just about anything could fit under this broad authority.

If your association finds that it does have the legal authority to spend its funds on the feral cat issue,

you should be sure to consult with local government officials to determine what is and is not permitted. A brief search of the internet referencing both "feral cats" and various municipalities in Southwest Florida, quickly identifies several non-profit groups that are interested and active on this issue. You would be wise to contact some of these groups to become educated about practical tips to address your concerns, and to make sure you are aware of all laws relating to taking action. Ideally, if there is trapping and relocation involved, the association would be able to hire a qualified, reputable trapper who can ensure compliance with laws and protect the association through the contractor's insurance and an indemnification agreement.

Most association governing documents include covenants and restrictions that the board must enforce. Most well-written homeowners' association documents contain a general provision that prohibits creating nuisance conditions. I am aware that some people feed feral animals and it is my understanding that such feeding can contribute to the issue you are experiencing. I would expect that the association could, and should, take action to prohibit members who might be feeding these feral cats because that may be attracting them to your community and creating the nuisance situation you describe.

*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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