



Association Can Suspend Rights If Any Cash Due

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By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

Q: I own two condominium units under the same association. One unit is my primary residence and the other I have used as a rental property. I have always kept my assessments current on the unit I where I reside. However, because I haven't been able to find a tenant, I have not been able to pay my assessments since the beginning of this year on my other unit. Can the association suspend my common area use rights even though I am current on the payment of assessments for the unit I live in? **S.W. (via e-mail)**

A: Yes.

The right to suspend use rights is set forth in Section 718.303(4) of the Florida Condominium Act which states "if a unit owner is more than 90 days delinquent in paying a monetary obligation due to the association, the association may suspend the right of the unit owner or the unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the monetary obligation is paid in full." The right to suspend does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators. No hearing is required to suspend for non-payment, though suspension must be imposed at a duly noticed

board meeting, and the owner of the suspended unit notified of suspension in writing.

Although you may be current on the payment of assessments for the unit which is your primary residence, you are still a member of the association and are more than 90 days delinquent in paying a "monetary obligation due to the association" for your other unit. Therefore, it is my opinion that the association has the right to suspend your rights to use the common elements, common facilities or other association property, until all of your accounts are brought current.

Q: Is it true that the Condominium Act, Chapter 718, Florida Statutes, does not require a vote of the membership to approve and adopt rules and regulations? Does the Condominium Act authorize the board to take this action?

A: The authority of a condominium association board to adopt rules and regulations depends on several factors. It should be noted that the Florida Condominium Act does not mandate that the rules and regulations must be approved by the membership, but an association's specific governing documents can impose such a requirement. In order for a board-made rule to be legally upheld (assuming the association's governing documents grant the board rule-making authority), several criteria must be met.

First, as referenced above, the condominium documents must grant rule-making authority to the board. It is important to ensure that the board is granted both rule-making authority as to the “common elements” (common property) and the “units” (apartments). Some documents only grant rule-making authority for common elements.

Secondly, any board-made rule cannot be inconsistent with the superior documents (typically the recorded declaration of condominium, articles of incorporation, or bylaws), nor any right which is “inferable” from those superior documents.

Third, board-made rules must be “reasonable”, which is often at the heart of legal challenges regarding board-made rules.

Fourth, a board-made rule must be adopted and promulgated in a procedurally correct fashion. Rules regarding common elements are subject to 48 hour pre-meeting posting requirements. Rules regarding unit use are subject to heightened notice requirements, 14 day mailed and posted notice. Additionally, the condominium documents need to be consulted as to additional procedures. For example, some documents require that new rules be mailed out to unit owners 30 days before they become effective. If that requirement is in the documents, it should be followed.

If the association’s governing documents require membership approval, the board cannot adopt rules and regulations without first obtaining the requisite membership approval.

Joe Adams has focused his practice on the representation of community associations since 1987, and has provided legal counsel to well over one thousand community associations throughout the state. Joe has served as Chairman of the State Advisory Council on Condominiums and has written this column since 1995.

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.