



Posting of Deadbeat Lists Is Dangerous Practice

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Q: We recently saw a notice posted in our community regarding a “fining committee” meeting. Under the agenda item “new business” we saw a number of community house addresses listed. When I spoke to one of my neighbors (her house was one of the ones listed), she told me that it was because she was late with her dues. Does the association have the right to publish the owners’ addresses in the notice? **R.L. (via e-mail)**

A: It seems like your association is a bit confused.

Section 720.305(2) of the Florida Homeowners’ Association Act allows the board to suspend certain rights when a parcel owner is more than 90 days delinquent in the payment of monetary obligations to the association, including assessments. The board has the right to suspend certain common area use rights (such as recreational amenities) and voting rights until the account is current.

Conversely, fines are levied for violations of governing documents, and usually include issues such as unauthorized alterations, parking violations, noise and pet violations, and the like, which I typically refer to as “behavioral violations”. A homeowners’ association may also suspend common area use rights for “behavioral violations”.

There is no requirement for a hearing to suspend use rights or voting rights for non-payment, and no need for this issue to be taken up by a “fining committee”. Conversely, if an association intends to fine or suspend use rights for behavioral violations, the law does require that a hearing be held before an independent committee before the fine or suspension may be imposed.

Posting identifying information regarding those who are allegedly delinquent to the association in the payment of assessments is a potentially dangerous practice. Among other things, the Florida Consumer Protection Practices Act, found at Section 559.55 of the Florida Statutes, generally prohibits the collection of debts through means designed to embarrass a debtor, including the posting of “deadbeat lists” and the disclosure of debts to third persons when there is no legitimate business need for the information. Owners in your community are entitled to delinquency information about other owners through inspection of official records. I would strongly recommend against postings of this nature.

Q: The condominium association where I rent, has a bylaw which says that motorcycles are not allowed. Unfortunately, two of my adult children have motorcycles. They are not allowed to come visit me if they ride their motorcycle into the condominium. I think that’s absurd. These are

small motorcycles and neither has a loud exhaust. Is this legal? **F.K. (via e-mail)**

A: The validity of the restriction in question depends very much on where the prohibition on motorcycles appears in the governing documents and upon the exact language used. The governing documents of the association are the declaration of condominium, the articles of incorporation (sometimes called certificate of incorporation or charter), the bylaws, and the rules and regulations (sometimes called house rules, association policies, and various other names). The hierarchy (order of importance) of the documents is the declaration, then the articles, then the bylaws, then the rules.

You state that the prohibition upon motorcycles is located in the bylaws. That prohibition is valid unless it contradicts a provision of the declaration or a right which is inferable from the declaration. For example, if the declaration contains a provision either allowing motorcycles or prohibiting certain types of vehicles but not prohibiting motorcycles,

then it is possible that the prohibition on motorcycles in the bylaws is not enforceable.

If not, however, then you must look at the specific language of the bylaw provision prohibiting motorcycles. If the bylaws simply state that motorcycles are not permitted and there is no exception made for visitors, then the provision is likely enforceable. Failure to abide by the bylaws may subject you to a fine or other enforcement action by the Board.

While you may feel that the motorcycle rule is “absurd”, this is the essence of condominium living. Someone else may think that a rule against owning five dogs is “absurd” but you may have chosen to live there because it is a “no pet” condominium. That is why the governing documents of a condominium association are typically recorded in the public records, and the rules and regulations should be readily available even if they are not recorded.

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.