Board Can Regulate Alcohol on Common Property

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By: Joseph E. Adams

Q: Our condominium association board recently made a rule that no beer, wine, or liquor can be brought into our swimming pool area. This came about because of one situation where some people got out of hand. Many of us enjoy socializing during "happy hour" around our pool. This seems like overkill and possibly illegal. What do you think? (K.M., via e-mail)

A: As the old saying goes, "one bad apple doesn't spoil the whole bunch." However, legally speaking, the decision is probably entirely in the hands of your board.

The Florida courts have held that a board-made rule regulating use of common property must be "reasonable." While this is a stricter test than the standard used to judge the provisions of your declaration of condominium, the courts do tend to defer to the "business judgment" of the board in deciding what is reasonable. In order for a rule to be found reasonable, it does not have to be the only choice, nor necessarily the best choice, or even the choice that the judge personally agrees with.

In the 1975 case of *Hidden Harbour Estates, Inc. v. Norman,* a Florida appeals court specifically upheld the legal validity of a rule made by the association board prohibiting the consumption of alcohol on the common elements of the condominium. The court noted that "restrictions on the use of alcoholic beverages are widespread throughout both governmental and private sectors; there is nothing unreasonable or unusual about a group of people electing to prohibit their use in commonly owned areas."

Your choices include asking for a meeting with the president and seeing if he or she will bring this matter back to the board for reconsideration. You could also seek to petition for an amendment to your declaration, which would supersede

a board rule. A final option would be to seek to remove the board from office, which can be done by majority vote, or campaign for a more sympathetic board in the next election.

Q: In a condominium association, is my vote for amendments to the condominium documents public information that other unit owners can see? (R.O., via e-mail)

A: Most likely, yes. In a condominium association, other than for the election of directors, owners cast their votes in one of two ways. For owners who do not personally attend the meeting where the vote is held, they can only vote by limited proxy in most matters. Since a proxy must be signed to be legally valid, and is part of the official records of the association, it can't be secret.

Owners who attend a meeting can vote by ballot or sometimes by voice vote. When ballots are cast at a meeting by members who are personally in attendance, I generally recommend that associations use signed ballots. That allows the votes to be verified in the event of a dispute, and to ensure those that have turned in proxies but also attend the meeting in person don't inadvertently vote twice. Some bylaws permit voting by secret ballot at members' meetings, but that is not common. It is my view that the board has the ultimate say in the type of voting documents used, absent specific requirements in the bylaws.

With regard to votes to approve amendments to the condominium documents, there are times where even if secret ballots are permitted, it is necessary to be able to verify which owners voted in favor of the amendments. For example, certain amendments regarding leasing are only applicable to those owners who vote in favor of the amendment, or who take title to their unit after the effective date of the amendment. In that situation, the association would have to be able to verify how each owner voted in order to determine whether the amendment was applicable to them.

For the election of directors in a condominium association, the statute requires the use of secret ballots. Secret ballots are also typically used in the election of directors for homeowners' associations.

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