

“Can One Section Ban Rentals?,” Naples Daily News

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Q: I live in a condominium and there are several disruptive annual renters. There are six different sections but only one board. Each section is governed by their own declaration of condominium. Can one section approve an amendment to their declaration banning rentals even while other sections still allow rentals? G.P.

A: Your community is apparently set up as a “multi-condominium,” since each section (which is presumably a legally distinct condominium) is governed by its own declaration of condominium under the governance of one association. There is often no legal impediment which would prevent a section in a multi-condominium association from pursuing their own section-specific declaration amendment. It will depend on the language of the declaration itself.

However, I have seen declarations in a multi-condominium which require a vote of the owners in all condominiums to amend any declaration. Further, it has been my experience that most multi-condominium associations want to maintain uniform restrictions throughout the community, especially for “big ticket” restrictions, such as leasing restrictions.

You also need to be aware of the implications of Section 718.110(13) of the Florida Condominium Act which states that an amendment prohibiting unit owners from renting their units applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the effective date of that amendment. Even if your section does properly adopt an amendment to the declaration banning all rentals, this newly adopted leasing restriction would only apply to those owners who voted in favor of the proposed amendment and those owners who took title to their unit after the “effective date” (i.e. the date the amendment is recorded in the county official records) of the amendment.

Q: I live in a large homeowners association and our board, year after year, always waives having an audit of the association's finances prepared. Is a homeowners association required to have an audit prepared each year? J.A.

A: It depends. Section 720.303(7) of the Florida Homeowners Association Act requires every homeowners association, within 90 days after the end of the fiscal year, or annually on the date provided in the bylaws, to prepare and complete, or contract with a third party for the preparation and completion of, a financial report for the preceding fiscal year. The type of financial report that must be prepared is determined by the amount of the total annual revenues of the association. Audited financial statements are required for homeowners' associations with \$500,000 or more in annual revenues.

If your homeowners' association had annual revenues for the subject fiscal year which exceeded \$500,000, this statute provides the membership with the right to approve, via a majority vote of the voting interests, the preparation of a "lower level" financial report (e.g. report of cash receipts and expenditures, compiled financial statement or revised financial statement) in lieu of the preparation of an audit. This decision is reserved for the members, not the board of directors, however.

You will also need to review the governing documents for your homeowners' association, as some governing documents require an audit to be prepared every fiscal year regardless of the amount of annual revenues.

Q: A delinquent owner in my condominium association submitted his notice of intent to run for the board. Do you have to be current in the payment of assessments to be eligible to run for the board? D.T.

A: Section 718.112(2)(d)2 of the Florida Condominium Act confirms that a person who is delinquent in the payment of any "monetary obligation" due to the association is not eligible to run for the board. The term "monetary obligation" is a broad term and it includes not only assessments but also other types of indebtedness, including fines. What is "delinquent" is not addressed by statute and should be addressed in your declaration and bylaws.

The statute also states that any unit owner intending to run for the board must be eligible to be a candidate at the time of the deadline for submitting the notice of intent to run (40 days before the election) in order to have his or her name listed as a proper candidate on the ballot. If this owner does not pay the delinquent assessments in full by this deadline, he is not eligible to run for the board.

It should also be noted that there is another provision in the Florida Condominium Act which addresses delinquencies by sitting directors. Section 718.112(2)(n), Florida Statutes, states that a director or officer more than 90 days delinquent in the payment of any monetary obligation due to the

association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

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