Changes to Leasing Restrictions May Not Apply to All Owners

December 2, 2018

By: Joseph E. Adams

Q: Recently there was a discussion in my condominium association about amending our declaration to increase the minimum lease term from 30 days to 6 months. Many of our owners are in favor of this change, but we have been told it would not apply to current unit owners and would only apply to future owners. Shouldn't the association be able to require 6-month leases? (N.A., via e-mail)

A: Generally, properly adopted amendments to the condominium documents apply to all unit owners, regardless of when they acquired title to their units. However, amendments which change rental rights are different.

The Florida Condominium Act, in Section 718.110(13), Florida Statutes, limits the ability of a condominium association to amend its documents to impose new rental restrictions. The statute states that "an amendment prohibiting unit owners from renting their units or altering the duration of the rental term or specifying or limiting the number of times unit owners are entitled to rent their units during a specified period 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."

Accordingly, if your association wished to adopt an amendment which increased the minimum lease term from 30 days to 6 months, it could do so pursuant to the amendatory procedures contained in the declaration of condominium. However, such an amendment would only apply to those unit owners who voted for the amendment or to unit owners who take title to their unit after the effective date of the amendment. Therefore, any unit owners who do not vote for the amendment would be entitled to lease their units pursuant to the current 30-day lease minimum. While this is the rule for condominium associations, Chapter 720, Florida Statues, the Florida Homeowners'

Association Act, does not contain a similar provision.

Q: Recently, my condominium association adopted its budget and at that meeting there was a membership vote to waive the funding of reserves. My condominium association waives reserve funding every year. However, isn't there a legal requirement to have some minimum amount of money in reserves? (B.C., via e-mail)

A: Not if the association properly waives reserve funding on an annual basis.

Pursuant to the Florida Condominium Act, Chapter 718, Florida Statutes, a condominium association is generally required to adopt a budget with fully funded reserves. Pursuant to Section 718.112(2)(f)2.a., Florida Statutes, the association must have reserve funds for roof replacement, building painting and pavement resurfacing and reserve accounts for any other item that has deferred maintenance or a replacement cost that exceeds $10,000. Further, the statute states that the reserve funding must be computed using a formula based on the estimated remaining useful life of the subject asset and the estimated replacement cost or deferred maintenance expense for each reserve item.

As such, the default under the statute is that condominium associations must, on an annual basis, adopt a budget with fully funded reserves, based on the statutory requirements discussed above. However, the statute also provides that the association may waive or reduce reserve funding on an annual basis by a membership vote.

Therefore, if the association has properly voted to waive reserve funding, the association is not obligated to have any specific minimum reserve balance. However, if the association does not properly waive reserves, going forward, the association would have to adopt a budget with fully funded reserves as required by the statute.

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