“Night Swimming Governed By State Codes,” News-Press

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By: Joseph E. Adams

Q: Our homeowners’ association pool is only open from “dawn to dusk.” With the time change, it gets dark early. Residents who work are not able to use the pool during the week. Can the board change the pool hours or is “dawn to dusk” mandated by the state? (L.T., via e-mail)

A: The Environmental Health Division of the Florida Department of Health does not specify required hours for community swimming pools. The law only requires that the pool hours must be posted on the rules sign adjacent to the pool.

Generally, the board has the authority to adopt reasonable rules governing the use and operation of the common areas. Any changes to the rules governing the common areas would require 48 hours’ posted notice of the board meeting where the rule is considered, plus adherence to any particular requirements of the governing documents for the community.

Under state codes, regulated pools cannot be open at night (defined as 30 minutes before sunset to 30 minutes after sunrise), or when adequate natural lighting is not available, unless the pool and pool deck have proper lighting for the safety of patrons. These standards are found in Chapter 64E-9.006(2)(c) of the Florida Administrative Code. The lighting plan has to be certified as compliant by an engineer licensed in Florida and must be approved by the local building department after a professional conducts a field inspection. Following approval, the phrase “night swimming approved” will be noted on the Florida Department of Health’s pool permit.

Your board would need to determine if the community pool has compliant lighting before considering whether to change the pool’s hours of operation.

Q: Our homeowners’ association is looking to amend our documents to include an application process for new buyers. I am worried it will decrease the pool of potential buyers. I feel that the board has no right to interfere with the sale of my home. Do I have the legal right to bar

them from implementing this new “application process?” (L.L., via e-mail)

A: You certainly have the right to vote for or against the amendment.

What you describe is not at all uncommon. The vast majority of condominium associations in Florida (at least those I deal with in Southwest Florida) have a pre-sale approval process, as do a significant percentage of homeowners’ associations.

Personally, I do not believe that this decreases the pool of potential buyers given the prevalence of such requirements in planned communities. I suspect some may argue that it would increase sales prospects, as some buyers may feel more comfortable with knowing that some level of review is done in connection with new home purchasers.

As a practical matter, there are very few reasons under applicable case law as to when an association could deny a purchase application without matching your price, either through exercising a right of first refusal or furnishing a substitute purchaser, both of which are exceedingly rare.

Many documents allow the association to require criminal background checks on potential residents and permit disapproval for serious crimes, such as sex offenses and narcotics trafficking.
The law in this arena is a bit complicated. Your association should ensure that the proposal being put out for vote was prepared by an attorney who is competent in this field of law. Among other things, counsel needs to be aware of and advise the association regarding the interplay of approval provisions and applicable anti-discrimination laws.
