Opinion: Condo Associations Must Set Clear Coronavirus Rules - and Enforce Them,” Miami Herald

April 1, 2020

By: Donna DiMaggio Berger

Shared ownership communities have heeded the call and have implemented COVID-19 protocol, reshaping their daily operations to better safeguard their residents.

In the past few weeks, the governor and Florida cities and counties have revised their emergency orders numerous times to take into account the pandemic’s growing threat. Many communities also revised and tightened their protocols as the need for heightened action became apparent.

Now that community pools, fitness rooms and other recreational amenities have been shut down, guest visitation has been severely curtailed and meetings have gone virtual, what can a volunteer board do when residents start violating those safety protocols?

Resident violations of COVID-19 protocol — particularly by people who are supposed to be quarantined due to exposure or an active infection in their household — are hardly a trivial matter. These individuals pose a foreseeable risk of potentially infecting other residents who come into contact with them. Even people who are not quarantined but insist on jumping the fence to sit at the pool or refuse to use heightened sanitization practices in the shared laundry facilities or elevators can easily spread the virus.

It should surprise no one that the ingredients of housebound people, closed common areas and amenities, a bleak economic forecast and an aggressive 24 hour news cycle are a recipe for noncompliance at best and a disaster at worst. A sense of entitlement or boredom could be the match that lights the fire in some communities.

Passing a comprehensive COVID-19 plan is only the first step your board must
take; consistently and uniformly enforcing that protocol is the second. If you have residents who are violating the rules and policies you’ve put in place, your board should not delay in contacting legal counsel to determine your best enforcement options.

Many boards and community association managers understandably believe that local law enforcement will step in and address the violation given the health safety concerns involved; however, that has not been the reality. Some local health departments have said that they will contact the police if they are notified that a person is violating a quarantine order while others have indicated that they will not. Certainly for residents who are not under a quarantine order but are nevertheless violating your association’s COVID-19 protocols, the association is on its own to devise an enforcement plan with legal counsel.

The enforcement process begins with a notice to the violator of the behavior that must stop. Given the stakes involved with COVID-19 protocol, this is not the time to send out notices directly from the association or the manager. It will likely be more effective for the violator to receive the first notice from the association’s attorney.

While fines and suspension of use rights are useful tools under ordinary circumstances, they are not with regard to COVID-19 violations. First, the common areas are all closed down so a suspension is redundant and second, fines do not reflect the urgent nature of the violation although finesse could be used in addition to legal action not in lieu of same.

Some violations will stop once the resident receives a legal demand letter and understands the serious nature of what he or she is doing. For the more recalcitrant violators, the next step might require an emergency injunction.

Contact your Association counsel to assist your board in:

1. Distinguishing between those residents who are subject to quarantine requirements (people who have been exposed to the virus, have recently arrived from a hot spot or who have tested positive) and those who should be subject to quarantine requirements (members of a household which includes people who have been exposed to the virus, have recently arrived from a hot spot or who have tested positive).
2. Contacting the Health Department and law enforcement to address the behavior of those who were ordered to self-quarantine and are not doing so.
3. Making sure your emergency protocols are clearly stated and are not subject to procedural challenges.
4. Proceeding with immediate enforcement action against COVID-19 violators including emergency relief from a court when necessary.

As with most violations, residents will be looking to see how tenacious the board is when enforcing its rules. It should not take more than one example to
remind the members that violations of the community’s COVID-19 protocols will not be tolerated.

Donna DiMaggio Berger is a Board Certified Specialist in Condominium and Planned Development Law, a Shareholder at Becker Law and the Executive Director of the Community Association Leadership Lobby.

*This article was originally published in the Miami Herald. View the full article here.*

© 2020 Becker & Poliakoff

beckerlawyers.com