# "Use Rights Suspended for Virus Protocol Violations," News-Press

**May 26, 2020**

**By: Joseph E. Adams**

**Q: My homeowners' association recently posted new rules concerning the use of our community pool in response to the coronavirus pandemic. The board stated that if the rules are violated, the association has the right to suspend the owner's right to use the pool. Because the pool is a community pool owned by all the owners, does the association have the right to suspend an owner's right to use the pool? (I.E., via e-mail)**

A: Yes. Chapter 720 of the Florida Homeowners' Association Act, states that the association has the right to suspend an owner or the owner's tenants, guests, or invitees right to use the common areas and facilities of the association for the failure to comply with the provisions of the governing documents of the association, including the rules adopted by the association. While many community pools remain closed, it is my view that the board can (arguably must) establish use protocols which will typically include density limits below normal loads and social distancing requirements.

The statute requires that the association provide the person to be suspended 14 days' notice of the opportunity for a hearing before an independent committee. The committee can either confirm or reject the board's suspension. The statute states that the suspension may be for a reasonable period of time.

Section 718.303 of the Florida Condominium Act contains similar provisions.

**Q: At the base of the exterior stairs in our condominium building, there is a storage closet with three separate storage areas. The storage area is not in our deed although when we purchased the unit the previous owner said this was our dedicated space.**

**Not all units have storage areas, some have storage such as ours, some have carports and storage, and others have no storage space at all. A**

**new board voted to take back the storage areas such as ours. The board claims that it is because they need the space for insurance purposes. They did not take back the carports' storage space. Can the board do this after the space was used by us for 20 years? (P.R., via e-mail)**

A: You must look at your declaration of condominium. “Condominium property” has two components, “units” and “common elements.” The common elements are all portions of the condominium property not included in the units. A subset of common elements is known as “limited common elements.”

Section 718.103(19) of the Florida Condominium Act defines limited common elements as those common elements which are reserved for the use of a certain unit or group of units as specified in the declaration. If the declaration states that the storage units are limited common elements, and that space has been assigned to your unit, it cannot be “taken away” from you without your consent.

It is possible that these particular spaces are not defined in the declaration as limited common elements, while the carport spaces may be.
If these storage spaces are not your limited common elements, and depending on other provisions of your condominium documents, it would generally be my opinion that the board has a fair degree of latitude in deciding how they are used. I do not believe there are any claims to adverse possession or “squatter's rights” that arise from a permissive use, regardless of the duration. If the board believes the spaces are needed for storage of association equipment and you have no legal right of exclusive use, this would appear to be a proper basis for the board to act. It is unclear what the “insurance” concerns would be.

If you consider the use of the storage space to be an important and valuable property right, it may be worth the investment of obtaining the services of an attorney who is experienced in Florida condominium law and asking for an opinion.

---

**© 2021 Becker & Poliakoff** 