

ARE YOU PREPARED FOR CONDOMINIUM OWNERSHIP?

Condominium ownership requires compromising habits, needs and behavior by individuals for the common good of the majority. In most cases the loss of some individual freedom enjoyed by single-family home ownership is offset by the many benefits of condominium living.

THINGS TO DO BEFORE YOU COMMIT:

You have the right before you purchase the resale of a condominium unit to view the Declaration of Condominium, Articles of Incorporation, Bylaws, Rules and Regulations, and a copy of the most recent financial data. You have three business days to decide whether a particular condominium will suit the needs of you and your family. Each contract entered into after July 1, 1992, for the resale of a unit in a residential community shall contain the following as per F.S. 718.504:

1. The buyer hereby acknowledges that buyer has been provided a current copy of the Declaration of Condominium, Articles of Incorporation of the Association, a copy of the most recent year-end financial information and the Question and Answer Sheet more than 3 days, excluding Saturdays, Sundays, and legal holidays, prior to execution of this contract; or
2. This agreement is voidable by buyer by delivering written notice of the buyer's intention to cancel within 3 days, excluding Saturdays, Sundays, and legal holidays, after the date of execution of this agreement by the buyer and receipt by buyer of a current copy of the Declaration of Condominium, Articles of Incorporation, Bylaws, and Rules of the Association, a copy of the most recent year-end financial information and Question and Answer Sheet if so requested in writing. Any purported waiver of these voidability rights shall be of no effect. Buyer may extend the time for closing for a period of not more than 3 days, excluding Saturdays, Sundays, and legal holidays, after the buyer receives the Declaration, Articles of Incorporation, Bylaws, Rules, and Question and Answer Sheet if requested in writing. Buyer's right to void this agreement shall terminate at closing.

Although changes in the declaration of condominium and bylaws usually need membership approval, the Board of Directors may adopt or change rules and regulations in most cases without the approval of the membership. To be effective and enforceable, rules and regulations should support Association documents and should not be used as a tool by Boards to overrule or take a position against Association documents which usually require a membership vote to change or amend.

RULES OF INTEREST TO MOST PROSPECTIVE OWNERS:

No Pets:

“The Federal Fair Housing Act also prohibits discrimination on the basis of handicap. Handicap discrimination includes a refusal to make reasonable accommodations in the rules, policies, practices, or services of the provider when such accommodations may be necessary to afford such person an equal opportunity to use and enjoy the dwelling. Accordingly, a condominium “no pet” policy may be required to yield certain exceptions mandated by the federal and state housing laws. A person requesting an accommodation (relaxation of the “no pet” rule) must demonstrate that either, they or a person they are associated with, has a physical or mental impairment that qualifies as a “handicap.” While it is relatively easy to understand how a service animal assists a sight impaired or a hearing impaired person, the Board must also be cognizant of the fact that the law protects mental impairments, which are not as readily discernable. (Pelican Press, May 3, 2001)

In the absence of handicap, properly promulgated and uniformly enforced pet restrictions are perfectly acceptable.”

No Trucks or Motorcycles:

“The Declaration of Condominium generally contains covenants and restrictions regulating the use of the condominium property. Both parking and vehicle restrictions are often addressed. It is important to draft these regulations carefully in order to avoid ambiguities. Under some circumstances arbitrators appointed by the Division of Florida Land Sales, Condominiums and Mobile Homes have interpreted condominium documents as only prohibiting commercial vehicles. Under other circumstances the arbitrators have held that it is not unreasonable for an Association to enforce a no-truck restriction against a pickup truck, while allowing a sport utility vehicle to remain on the property, regardless of whether the sport utility vehicle is built on a truck chassis.”(Pelican Press, May 3, 2001)

No Children:

Although The Federal Fair Housing Act and The Fair Housing Amendment Act of 1988 prohibits discrimination based on race, color, religion, sex, handicap, familial status or national origin, age restrictions may well be legal if your community qualifies as an adult community. Those Associations that restrict residents to 62 years of age or older and those Associations that restrict occupancy 55 years of age for at least one occupant for 80% of the units may well be able to restrict families with children as residents.

“Unless the housing community qualifies for an exemption pursuant to the Housing of Older Persons Act of 1995 and comparable state legislation, it cannot discourage or dissuade families with children from purchasing or renting a unit within the condominium. The Association simply cannot (whether through Board members, managers, agents, committee members, etc.) represent that a family will “not fit in” or not be “compatible” with the rest of the community.

Architectural Standards:

Although most association documents permit modifications and/or alterations to condominium property, these changes are usually allowed only with the permission of the Board of Directors or its designated agent. In some cases the modification and/or alterations require the approval of a percentage of unit owners.

Changes to common elements and limited common elements are usually not allowed unless allowed by a percentage of the membership. This usually also applies to changes to individual condominiums if these changes affect the architectural integrity or appearance of the community.

Condominium living entails compliance with the covenants and restrictions set forth in the Declaration. While the Board of Directors has a fiduciary duty to enforce the governing documents in a uniform, consistent and timely manner, doing so frequently gives rise to a negative perception of community living. Consequently, it is important not only for individuals to review the restrictions (rules and regulations) prior to purchasing or residing in a particular condominium but also for the Association to periodically review and update the use restrictions, to the extent possible, to meet the community's needs.

Ñ Walt Hammerling is a CAM and not an attorney. Please contact your Association attorney for information dealing with your Association. Walt Hammerling is the President of Argus Property Management, Inc. and the Broker of record for Argus Realty Group, Inc. He may be reached at either (941) 927-6464 or (941) 349-0917 or by E-mail at Walt@argusmgmt.com.