**FINES AND THE UNRULY CONDO TENANT**

**BY: WILLIAM G. MORRIS, ESQ.**

Close living quarters of condominium living can magnify nuisances. What might not be a problem due to separation of single-family homes can reach the annoying and even intolerable level in a condominium.

Perhaps the most problematic condominium resident is an unruly tenant. The tenant does not own the unit and may have little concern for action that could be taken by neighbors or even the condominium association. The tenant can move without the tie of unit ownership. That can lead the condominium association to focus on the unit owner as creating a problem when the owner rents to an unruly tenant.

The owner may believe the tenant is a gem because the tenant is polite and courteous to the owner and timely pays all rent. When the association tells the owner the tenant is a problem, the owner may think the association is simply picking on the tenant or is opposed to rentals. If the owner will not take action, the association may have to use its arsenal of enforcement tools in Florida’s Condominium Act.

The association wants the owner to stop the tenant from being a problem, but Section 718.1255 Fla. Stat. mandates disputes between the association and the unit owner requiring an owner to take action involving the owner’s unit be submitted to mandatory non-binding arbitration rather than court. Fortunately for the association, there is an exception when the dispute involves eviction or other removal of a tenant. Because the association is not a landlord, it is unable to pursue eviction as a landlord under Florida’s Residential Landlord and Tenant Act. That does not mean the association is powerless to act.

The association can pursue an injunction against the tenant to stop nuisance or damage, but most tenants simply continue and many do not have funds to reimburse association legal costs. The association knows that.

As another option, the association can pursue an injunction prohibiting the owner from continued leasing to or occupancy by the tenant. To obtain an injunction, a plaintiff must normally establish that there is no other reasonable relief available to recover for or stop damage and that allowing action to continue will result in irreparable injury. That could be hard when the injury is an unruly tenant.

Section 718.303 Florida Statutes solves that problem by providing an association may pursue action for injunctive relief for violation of that statute. Section 718.303 Florida Statutes provides an association may bring an action against a unit owner or a tenant for failure to comply with the provisions of Florida’s Condominium Act or the association’s governing documents. The association may pursue an action for damages or for injunctive relief, or both. The prevailing party in such action is entitled to recover reasonable attorney’s fees in addition to any other relief.

Seeking an injunction can be expensive and there is no guarantee of victory. The association might lose and end up paying the owner or tenant’s attorney fees. Even when attorney fees are awarded, it is rare that a court awards all of a party’s attorney’s fees and costs. That can make an association reluctant to go to court. The association might decide to fine the owner or tenant as a cheaper option.

It used to be that an association could not impose a fine unless it had fining authority in its governing documents. Florida’s Condominium Act was amended so that all associations now have authority to levy fines under Section 718.303 Florida Statutes. Associations also have the power to suspend use of association property.

An association may levy reasonable fines for failure of the owner or the unit occupant to comply with the declaration of condominium, the association bylaws or reasonable rules of the association. A fine may not exceed $100 per violation or $1,000 in the aggregate for a continuing violation. The association can also suspend, for a reasonable time, right of the owner or the tenant to use common elements and common facilities, except for limited common elements intended to be used only by the unit and common elements needed to access the unit.

A fine or suspension may not be imposed unless the board of directors provides at least 14 days written notice to the person sought to be fined or suspended and opportunity for hearing before a committee. The committee must be at least 3 members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The role of the committee is limited to confirming or rejecting the fine or suspension levied by the board. If the fine or suspension is approved by the committee, the fine is due 5 days after the committee meeting. The association is required to provide written notice of the fine or suspension by mail or hand delivery to the owner and, if applicable, to the tenant.

The statute provides a fine is not a lien against the unit. Knowing that, some unit owners thumb their nose at the association and refuse to pay. That is almost always a bad choice. The association can go to court and obtain a judgment for the fine and that judgment can be a lien against the unit. The association can also refuse to approve rentals or sale of the unit until the fine is paid.

If the unit owner is more than 90 days delinquent in paying any monetary obligation due the association, including a fine, the association can suspend the right of the unit owner or the tenant or anyone visiting the unit to use common elements, except limited common elements intended to be used solely by the unit and common elements needed for access, until the fee or fine is paid in full. The association can also suspend the voting rights of the unit owner for non-payment of any fee or fine which is more than $1,000 and more than 90 days delinquent. Suspensions of common element use for 90 days delinquency or voting are not subject to the 14-day notice and hearing requirements and may be imposed by the board at a duly noticed board meeting.

Section 718.112(2)(d)2 Fla. Stat. adds one more penalty to the delinquent owner. A person who is delinquent in any monetary obligation to the association may not run for the board or continue to serve as a director if the delinquency arises during his or her term in office.

Condominium associations have many options for dealing with problem tenants. Dealing with the tenant directly is often unavailing. When a problem continues, the association invariably turns its focus to the unit owner. Penalties against the owner can be significant. For that reason, condominium unit owners should pay attention to complaints about their tenants and not dismiss them without thorough investigation.

***William G. Morris is the principal of William G. Morris, P.A. William G. Morris and his firm have represented clients in Collier County for over 30 years. His practice includes litigation and divorce, business law, estate planning, associations and real estate. The information in this column is general in nature and not intended as legal advice.***