**CONDO BOARD IS REQUIRED TO ENFORCE THE RULES**

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

Florida’s condominiums are governed by both Florida’s Condominium Act and their own Declaration of Condominium and rules. The Act’s requirements must be followed by all condominiums. Each condominium is governed by separate rules and regulations unique to that condominium.

A condominium is governed by a condominium association. The Act requires each association created after 1976 be a Florida corporation. Even though there was no such requirement for earlier created associations, almost all of those older associations are also corporations. That means each has a board of directors and officers

Officers and directors of a condominium association have a fiduciary duty to unit owners. That means they are prohibited from self-dealing. It also means they must exercise their independent business judgment to manage the association and the condominium in accordance with its Declaration of Condominium and Florida law. Part of that duty is to enforce the rules applicable to that particular condominium.

Some of the rules of a condominium may be found in its Declaration of Condominium. Others may be adopted by the board of directors within the scope of its authority under the Declaration.

A purchaser of a condominium automatically becomes subject to the condominium’s rules and is presumed to at least have knowledge of those in the Declaration because the Declaration and any amendments are recorded in the Public Records. Rules adopted by the board are not as easily known, but the Act requires a condominium seller provide a buyer with a copy of the Declaration and all rules upon request. The buyer has 3 days to back out of the contract after receipt of those documents.

Availability of the Declaration in both Public Records and from a seller along with the buyer’s right to a copy of all rules means every buyer has opportunity to review ALL of the governing documents and rules before acquiring title. Opportunity to review the rules is important, as a buyer buying a condominium will become an owner subject to all of those rules. Obligation to follow the condominium rules is not just common sense or stated in a Declaration, it is also mandated by statute.

Section 718.303 of Florida Statutes provides that all associations and all owners, tenants and invitees must comply with the Declaration, the documents creating the association and the association bylaws. Documents creating the association generally empower the board of directors to adopt rules. Hence, the statute also appears to mandate condominium owners follow rules adopted by the board in addition to those in the Declaration.

The statute also provides that no provision of the Condominium Act may be waived if the waiver would adversely affect the rights of a unit owner or the purpose of the provision, but allows waiver of notice of meetings in writing if allowed by the bylaws. It is next to impossible to think of a rule that could be waived without affecting rights of other owners. Waiver would certainly violate the statutory mandate that all owners comply with the governing documents. That means the board of directors mandate to enforce rules is not only based on a fiduciary duty but also on statute.

Years ago, enforcing the rules meant going to court. Many associations did not want to spend money to do that. Others went to court but many thought these cases should be resolved without using the court system.

In 1991, Florida’s legislature amended the Condominium Act to require mandatory, non-binding arbitration in most disputes between an owner and the association. That process requires one party file a petition with the Florida Division of Condominiums, Timeshares and Mobile Homes. A decision will ultimately be rendered by an arbitrator employed by the Division. If one party is unhappy with the decision, that party can proceed to court where the dispute is heard as if arbitration never took place. If that party does not do better in court, that party pays the other side’s attorney fees.

That process worked pretty well for a while, but personnel at the Division began favoring mediation and a lot of these cases were referred to mediation by the arbitrators. Mediation means the parties meet with a mediator who tries to get them to agree on settlement. When mediation is not successful, the case cannot proceed with arbitration unless both parties agree to continue arbitration.

It is not uncommon for an owner to refuse continued arbitration as the owner thinks the owner will lose and that means the association must decide if it is willing to pay for an expensive court case to proceed. Many are not so willing and the case is left worse than before the statutory amendment, as the parties have often hired lawyers and taken time and money only to get back to where they started.

The statute was recently amended to give the parties the option of mediation as an alternate to arbitration as a prerequisite to suit. Many will now choose mediation. It is cheaper and since it appears to be what the Division personnel prefer, many associations will decide there is little point to starting with arbitration.

For decades, a few associations were using fines to enforce their rules. Most Declarations lacked fining authority, so fines were not an option for those associations.

Florida’s legislature adding fining authority to association powers in 2010, giving all associations the ability to fine as an additional option in rule enforcement. There are two shortcomings with fines.

First, the maximum fine is $100.00 per incident and up to $1,000.00 for a continuing violation. That is often considered a small price to pay to violate an association’s rental rules when there is money to be made from short term renters. Second, a fine is not a lien against a unit. That leads many owners to thumb their noses at the association’s fining process.

To enforce a fine, an association can pursue collection in court. Since fines are generally below the jurisdictional amount for Small Claims Court, these cases can usually be pursued at relatively low cost. Occasionally an owner will want to make a statement, punish the association by making it expensive, hire a defense attorney and demand a jury trial to make the association pay.

That strategy can backfire, since almost all of these cases are decided in the association’s favor. The statutes and most Declarations provide the loser in these cases pays the winner’s attorney fees and the owner ends up paying two lawyers. Most of the cases start because the owner did not like and refused to follow rules that were often in place before the owner even bought into the condominium.

To an owner who does not like a rule, the association’s action to enforce may seem arbitrary. To the association, enforcement of its rules is mandated by both statute and fiduciary responsibility. These disputes can most easily be resolved by an owner simply complying with the rules of the condominium the owner bought. Enforcement can prove expensive.

***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.***