

LEGAL



Access to Units

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“I’m not giving you the key to my unit and I’m not letting you in” said the new Condominium unit owner to the Board member.

“But you have to,” said the Board member.
“Why?” asked the unit owner.

I empathize with the unit owner’s feelings in this scenario, as many years ago, before I knew the law, I felt the same way. But as I’ve learned, the law does not take feelings into account.

Section 718.111(5)(a), Florida Statutes, provides: “The association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit.”

Key

The right of access granted by this statutory section has been held by arbitrators to be broad enough to support a requirement that unit owners must provide keys to their units to the asso-

ciation. I also strongly recommend that the requirement for a key be added to your Declaration of Condominium and/or rules and regulations to emphasize the point. In one case where a unit owner refused to provide a key, the arbitrator held that fear of damage to or loss of property and distrust of the association must be denied as reasons. The unit owner must provide the Association a key and the Association must take all steps necessary to ensure that the keys are protected and only used for proper purposes.

Access

The right of access is irrevocable and numerous excuses for failing to provide access have been rejected including distrust of association personnel, fear that property will be damaged or stolen by persons gaining access, and even the claim that the owner keeps national defense secrets secured in his unit. The Association must have a proper purpose in keeping with the statute or the Declaration of Condominium to require access, but once established access must be granted.

While the statute does not include a notice requirement, unless entry is required due to an exigent circumstance such as water pouring out of the unit, smoke, or a horrible smell coming

from the unit, then notice should be provided to the unit owner, in advance, to advise when access will be required.

The Fourth District Court of Appeals has held that the fact that an individual gives up a measure of personal freedom in order to accommodate the interests of a majority of the community is inherent in the concept of condominium ownership. In *Sterling Village Condominium, Inc. v. Breitenbach*, 251 So.12d 685, 688 (Fla. 4th DCA 1971), the Court held that:

... Every man may justly consider his home his castle and himself as the king thereof; nonetheless his sovereign fiat to use his castle as he pleases must yield, at least in degree, where ownership is in common or cooperation with others. The benefit of condominium living and ownership demands no less.

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