

LEGAL



Can the Board Remove a Unit Owner from the Condominium?

BY MARK FRIEDMAN, FLORIDA BAR CERTIFIED AS A SPECIALIST IN CONDOMINIUM AND PLANNED DEVELOPMENT LAW

Sometimes Boards do not adequately screen new owners, or sometimes it is simply that the new owner looks good on paper (no criminal or financial issues in his/her past), but the individual causes trouble in the condominium from the moment he or she arrives. Such behavior may be something as annoying as a noise nuisance or as dangerous as criminal behavior.

Can the Board remove a unit owner for egregious behavior?

This issue was decided in the case of Kitel-Glass v. Oceans Four, 648 So.2d 827 (Fla. 5th DCA 1995). In this case, the unit owner owned a unit in the Oceans Four Condominium. The Association filed a counterclaim in a lawsuit brought by the owner claiming the unit owner had “breached the declaration of condominium by engaging in multiple acts of assaultive, disruptive and indecent behavior on the condominium premises, was consistently intoxicated thereon, and had been arrested on the premises for such behavior on a number of occasions.”

The evidence at trial established that the unit owner committed a multiplicity of disorderly acts on the condominium premises that included: indecent exposure, public intoxication, reck-

less display of a firearm, and assault and battery. Twenty-two police reports were presented detailing the unit owner’s misconduct. Evidence was also introduced that an Association subcommittee had found that the unit owner violated multiple rules and regulations of the Association and had assessed her a large fine.

The court concluded that if in fact the unit owner violated the terms of the temporary injunction, she would be guilty of contempt. “The remedies available to the trial court in such instance include fines, and incarceration. The remedies do not include what the final judgment effectively adjudicates; a judicially forced sale or lease of the owner’s unit.” The Court referred to another case for the proposition that eminent domain power can only be exercised by governmental entities to which the state has delegated that power.

Based on the foregoing, no matter how egregious the behavior of the unit owner, removing him/her from the unit is not something that the Association, through a court, is permitted to do. Note that this does not apply to renters.

What can the Association do?

If it is a criminal act, law enforcement should be contacted. The association only deals in civil actions. The association has no police powers.

The association could demand that such actions cease and desist, assuming there is a provision in your governing documents which makes such actions a violation. Remember, you can only enforce your governing documents, not state laws or county ordinances. If the behavior persists, then depending on how often it occurred and other factors you should discuss with your attorney whether an injunction or restraining order would be warranted. However, if law enforcement has arrested the person for the underlying acts, then that may not be necessary, especially if the unit owner is incarcerated. You should also consider tightening up your “good cause” reasons for denial of applicants to include criminal convictions (to the extent permitted by HUD), as most people do not become non-law abiding overnight. If the unit owner is not paying assessments, then a lien can be filed against the unit and foreclosed, thereby removing title to the unit from the unit owner after the judicial foreclosure sale.

Mark D. Friedman, B.C.S. is recognized by the Florida Bar as a Board Certified Specialist in Condominium and Planned Development Law. This article is meant for educational purposes only and not as legal advice. You must consult with your own attorney if these issues arise.



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