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## *Community Associations Newsletter*

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## The Trials and Tribulations of Condominium Unit Enforcement Cases

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Our condominium clients often seek advice on how to effectively manage what has become a rather frustrating enforcement case pertaining to conduct or conditions within a condominium unit. While the common elements of a condominium are typically easily accessible for board members or managers to observe and regulate, what is occurring or not occurring behind the four walls of a unit is often not. And, some may ask, why would you want to make such observations?

Ultimately, a condominium association is obligated to ensure compliance with the provisions of its condominium instruments. And, in many cases, the terms of the condominium instruments have implications upon the conduct or conditions that exist within a unit. For example, bylaws often dictate quiet hours, pet restrictions, floor covering requirements, structural alteration approval, and maintenance and repair obligations for items that exist within a unit.

The enforcement challenges faced in a condominium association can be unique and, in some cases, more acute because of the nature of condominium-style living. Residents live in close proximity to each other, for better or for

worse. What residents do inside their unit, can have an impact upon their neighbors. The struggle is real for managers and boards to balance the terms of the condominium instruments and the privacy of residents, while avoiding turning into a private investigator or personal mediator of resident-on-resident disputes.

One of our first recommendations to address unit enforcement matters and to help avoid conflicts is to ensure that your rules and regulations are clear and appropriately published to the membership so that residents are reminded of their obligations. In some cases, we suggest implementing policies that specifically address the more difficult conduct issues that occur within a unit by creating more objective standards that trigger enforcement procedures. For example, some communities have policies that require noise or other complaints about a specific unit be reported by more than one unit owner or else the association will not typically interject except to notify the subject of the complaint of the reports. These sorts of policies can help deter frivolous complaints and bolster a decision that the complaint was in fact reasonably objectionable. We also suggest that managers and boards do their best to explain to complaining parties that

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the authorities of the association may be somewhat limited. The association staff and board members can require compliance with the condominium instruments if they can reasonably determine a violation exists, but they do not have the ability to enforce common courtesy amongst residents.

In some cases, the board may be able to fine or suspend privileges, but they need to have a reasonable basis for exercising this right. The word of one resident against another, without corroborating evidence, is generally not such a reasonable basis to take enforcement action. Further, residents may be better suited to address conduct-type complaints against their neighbors, either through reporting to the local authorities or through commencing lawsuits, as they have witnessed the conduct directly. In certain instances, the resident may be the only party with legal standing.

Condominium associations typically also have a right of access to units to investigate and remediate prohibited conditions within a unit, upon some form of advance notice, except in emergencies when no notice may be required. This right is typically utilized more for inspections related to maintenance, repair and alterations to the unit versus conduct. In any instance, the right of access should not be utilized without reasonable grounds to do so. Additionally, if a unit owner denies access for an

inspection, the circumstances may be such that the association should not take such steps to access the unit except by court order. Entry without the expressed cooperation of the resident may not be a violation of the condominium instruments, but it can certainly create conflict between the involved parties.

Lastly, in some cases, the local authorities may be able to assist in unit enforcement matters when unit conditions pose health and safety issues in violation of local ordinances. A county's code compliance division may have the power to address unpermitted construction, maintenance issues, and overoccupancy concerns. Additionally, other divisions or task forces may exist in your community's jurisdiction for specific property conditions such as hoarding conditions.

Condominium associations are frequently presented with significant challenges related to enforcement cases occurring within a unit. However, not all situations may fall within the purview of the association's enforcement ability and a board or resident may need to seek the assistance of local authorities or the court system in order to obtain relief. If your association has questions on implementing policies to communicate your association's role in unit enforcement matters, please contact one of our community association practice group attorneys.

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