



Gaining Access to Troubled Units

Knowing and Understanding the Documents and Laws

For the past two months, unit owners at Fresh Meadows Condominium have been noticing a foul odor coming from Unit 9. Additionally, unit owners have complained about the sounds of multiple cats screeching in the middle of the night. The rules of the Fresh Meadows Condominium Association allow unit owners to have a maximum of two cats. It has become all too obvious, however, that the owner of Unit 9, Kat Carrier, has gone far beyond the two-cat limit. The smell, believed to be cat waste, has become so nauseating that the adjoining unit owners have become physically ill. The executive board has sent multiple notices to the unit owner to clean the unit and to get rid of any cats over the allowed limit, but the requests have gone ignored. This is a serious health and safety concern for the condominium community, as well as a potential threat to the structural integrity of the building. What can the board of Fresh Meadows do?

The Rhode Island Condominium Act, Rhode Island General Laws Section 34-36.1, Article III, Management of Condominium at Section 3.02 Powers of the Unit Owners' Association states, after listing specific enumerated powers given to the unit owners' association, that the association may "Exercise any other powers necessary and proper for the governance and operation of the association." This catch-all provision charges the board with enforcing the rules and regulations of the condominium, and gives them the ability to take any and all reasonable and necessary steps to enforce those rules and regulations.

Rules and Reason

Most associations also have rules prohibiting nuisance and mandating cleanliness. In the case of animals, the requisite pet rules would be enforced.

To determine that there is a violation of rule, under Section 3.20 of the Act, the board must hold a covenant enforcement hearing and give the unit owner notice and opportunity to be heard as to whether they did in fact violate the rules. If violation is found, fines can be issued, at up to \$100/day plus attorney fees (\$500/day for a commercial condominium). Additionally, the association can require the unit owner to abate the violation, and if they do not, the association can do so and assess the costs back to the unit owner.

Further, at Section 3.07(a) of the Act, the executive board is also charged with upkeep of the condominium. Unless otherwise provided in the Declaration, the association is responsible for the maintenance, repair, and replacement of the common elements and the unit owner is responsible for the maintenance, repair, and replacement of his or her unit. The Act states:

"...Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his or her unit reasonably necessary for those purposes. If damage is inflicted on the common elements, or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof."


Almost all associations have in their documents their own provision regard-

ing access. Many provide for access with reasonable effort of notice, at any hour considered to be reasonable under the circumstances. Also, said provisions often allow for access without notice in the case of an emergency.

Don't Do it Yourself

In cases of uncooperative unit owners, a police officer or other peace officer should be present. When animals are involved, Animal Control should conduct the inspection. The building inspector should be notified in cases where the premises may be unsafe for human habitation. If condemnation proceedings are instituted, the association may be required to bring the unit up to code-compliant condition. These costs can and should be assessed back to the unit.

In the event of a tenant being the offender, the tenants are bound by the rules and regulations of the association and any act or omission by a unit owner's tenant would be attributed to the unit owner.

Based on the foregoing, the Board of Fresh Meadows can breathe easy (well, almost) because not only *can* they do something, but they have an *obligation* to do something. The Act and the Condominium Documents mandate that the board access Kat Carrier's unit and bring it into compliance with the rules. Failure to do so will result in the board's dereliction of its duty to properly manage the condominium. 

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