



Oh, What a Tangled Web

The Importance of Following Governing Documents

[by Frank A. Lombardi, Esq., CCAL]

As I've written in this column many times, whenever there is an incoming flurry of condominium operational problems, there must be something in the water. These past two months were no exception.

First, I had a condominium that historically allowed unit owners to extend their decks and patios without any reallocation of percentages for the increased footprint and without obtaining the necessary approvals of the unit owners. The practice just continued for 25 years. The problem is that expanding on common elements to create a limited common element or to extend the unit footprint by definition decreases other unit owners' use and enjoyment of that common element, and as such, there

must be proper procedures followed: for example, a proper vote from the unit owners, a reallocation and assumption of maintenance of the extended deck or patios from the association by the requesting unit owner. If not, ultimately, another unit owner may complain that he is paying for someone else's deck.

At that point, the board would be faced with some difficult choices: amend the governing documents to conform to the existing practice, which in essence would be a ratification by requisite amount of unit owners. Or it may be faced with a lawsuit by the unit owner seeking strict compliance with the governing documents and asking for damages in the form of a refund of the additional amounts he was assessed to take care of

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extended decks. Many other options exist, all difficult, but the point is the board could have avoided this issue long ago by following the path set out for them in the governing documents.

A board member from a different condominium came in with a differ-

ent fact pattern, but the issue was the same: not following the documents, or properly amending the documents to reflect what was happening in that project. Specifically, for over 30 years, this four-unit condo never kept a budget, never assessed. Instead, at the end of the year, one unit owner would collect the bills he paid over the past year and bill his three neighbors their share. As the board member explained, it was never a problem, until now. That is, when a unit owner wanted to sell his unit.


I was asked to resolve the matter to the satisfaction of the buyer's attorney, which essentially amounted to doing a series of backward somersaults legally to straighten the "books" out, have a unit owner meeting wherein an actual board could be formed and a real honest to goodness resale certificate issued. Obviously, this was a time consuming and expensive endeavor that could

have been avoided had the unit owners simply followed the procedures set out for them in the bylaws.

My last example is of a developer who owned two apartment buildings, each containing 12 units. Twenty-five years ago, he converted the apartments into a 24-unit condominium. Simple, right? Not exactly, as it seems the developer sold all 12 units in one building and kept the remaining 12 in the other building. The problem is that the 12 separate units operated as a condominium, but the other developer-owned units did not share expenses for the whole condominium, and worse, were never assessed properly. They acted totally independent of one another.

Because of the unique configuration of the two lots, parking, and access ways, all went well technically, that is, until the developer passed away, leaving his widow and, of course, me

with a condominium that really wasn't a condominium. A third party wanted to purchase the second building, and that's when the curtain rose, so to speak. The workaround chosen was to partially terminate the condominium, which required the input and assent of all the unit owners, their lenders, the title company, and the town authorities. Again, all of this could have been avoided had the developer simply followed the provisions of the very same documents he used to create the condominium.

Can't wait to see what's in the water next month. 



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