



It's Not All About You

There is no "I" in Team, and There is No "Me" in Condominium

[by Mary Joy Howes, Esq.]

The executive board at a condominium association in Providence, R.I., decided to remove the community picnic tables that had been on the common area for the past five to 10 years. The tables were not used much, had begun to get worn and unsightly, and management was having a tough time keeping up with the pigeons that used them as target practice. The board made a decision that they were not worth the cost or trouble and had them removed.

A few weeks later, Ms. Erble, a very vocal yet non-participatory unit owner, sent a threatening letter to the board. Ms. Erble's letter stated that she regularly sat at the picnic tables, and that the board had no right to remove *her* tables. According to the letter, Ms. Erble had a right to have picnic tables in the common area, and if they were not replaced within the week, she would file a lawsuit against the board.

Scenarios like the one above happen all of the time. Unit owners often believe that they have the right to dictate what occurs on the common property based on their individual desires and preferences. What many unit owners fail to understand is the meaning behind the word "common"—and what it means to live in a community.

In *Star Trek II: The Wrath of Khan*, Spock says, "Logic clearly dictates that the needs of the many outweigh the needs of the few," to which Captain Kirk replies, "or the one." Spock's statement is based on the theory of utilitarianism, which states that actions should be predicated based on the result that will serve the greatest good for the greatest number of people. Spock can teach us a lot about condominiums.

THE GOVERNMENT OF CONDOS

A condominium is like a mini government. There are "state laws" (the statute) and



"local ordinances" (the declaration, which includes the rules and regulations) to follow. This democratic process represents a forum where, while all can participate and have a say, the majority will rule. The personal preferences of the individual do not have much place in a condominium setting. While this may seem draconian, it's a necessary evil of maintaining order and uniformity in a condominium setting. The declaration and the Rhode Island Condominium Act anticipate the reality that strangers cannot live together without disagreement. A strict form of governance is necessary because, for lack of a better term, the tail cannot wag the dog.

This is not to say that there are not exceptions, and safeguards provided for in the declaration and the act, which is a consumer protection statute. In Rhode Island, in addition to a few other items, unanimous consent of the unit owners is needed to change the use of a unit and also to change the percentage interest allocation (Section 2.17). There is also the obligation of good faith that applies to all individuals having business pursuant to the Act (Section 1.11). Anti-nuisance provisions are also found in most declara-

tions that protect a unit owner's right to reasonable quiet enjoyment. (For example, a unit owner can expect a reasonable degree of peace and quiet, even in a community setting, and should not have to accept the playing of drums at 1 a.m. in the morning.)

So what about the example with Ms. Erble? The answer here is simply that decisions regarding use of the common areas rest with the board and do not require approval by the unit owners. Common elements are owned by all owners and controlled by the association by and through its elected board. While the board must always exercise good faith in its judgments, the board does have a great deal of power and discretion pursuant to the act.

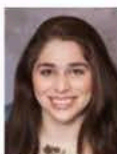
AUTHORITY AND RESPONSIBILITY OF THE BOARD

Section 3.07 of the Act, "Upkeep of Condominium," states that the association is responsible for maintenance, repair, and replacement of the common elements. Further, pursuant to Section 3.02 of the Act, "The Powers of Unit Owners' Association," the board has the statutory right to: "...(6) Regulate the use, maintenance,

repair, replacement and modification of common elements; (7) Cause additional improvements to be made as a part of the common elements; ... (9) Grant easements, leases, licenses and concessions through or over the common elements; (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in § 34-36.1-2.02(2) and (4) and for services provided to unit owners; ... (17) Exercise any other powers necessary and proper for the governance and operation of the association....”

Unit owners are often upset about decisions adopted by boards at their condominiums. Unit owners, however, can influence the governance of their condominium association by attending all association meetings, fully participating in their associations, and even running for the board themselves. The hard truth is that living in a community association does not come with the same freedoms and entitlements as living in a single-family home. Condominiums are different, and one does surrender a bit of themselves when they choose to join a community living situation.

To reference Spock again, in *Star Trek: The Original Series*, Season 3, Episode 7, he stated, “May I say I have not thoroughly enjoyed serving with humans? I find their illogic and foolish emotions a constant irritant.” I think he was saying, not everyone was meant to live with other people. Community associations are wonderful options for many different kinds of people. There will, however, always be those individuals who refuse to compromise their own wants and desires to align with the majority. The reality is that living in a condominium requires one to follow and accept the rules and decisions that are in place to accommodate the many, and not the few, or one. **RM**



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