



of Rights for Associations

The room was filled with a dozen interested and concerned residents. They had just completed their first board orientation. Kaye spoke up, "You just made our job easier. It's good to know we have rules and statutes to follow instead of getting caught up in trying to make emotional decisions. We just follow the laws. If we don't know what to do, we ask our manager or call our attorney."

That comment would be music to any manager's ears! Directors' jobs ARE easier if they can separate logic from emotion—but, easier said than done.

To complicate matters, when local news reporters get involved, they focus on the emotional issues rather than the laws. You often see reporters interviewing people on the street asking if they think the actions of the board are "fair." When a board is trying to fulfill its fiduciary responsibility by enforcing the covenants or foreclosing liens, "fair" is not the issue. It is biased reporting to play up the emotion, get outsiders involved who have no frame of reference for how a deed restricted community operates, and stir up public opinion against the associations.

While there are some abuses by association boards in enforcing the restrictions and rules, most are following the advice of their attorneys and fulfilling their statutory fiduciary obligations. Owners' rights should absolutely be protected, but so should the rights of the association. The Florida legislature has come a long way in protecting both sides.

In an article published by AARP and written by Andrew Kochera, AARP Public Policy Institute, July 2006, a Bill of Rights for Homeowners is offered.

Right No. 1 states:

The Right to Security against Foreclosure

An association shall not foreclose against a homeowner except for significant unpaid assessments, and any such foreclosure shall require judicial review to ensure fairness.

The only problem with this "right" is without it, the association has no way to collect delinquent assessments and protect itself. The Florida statutes give the association the responsibility of maintaining and operating the property and sufficiently funding it so it can carry out its operations. For most associations, their only source of income is the assessments. Since the documents and the statutes require equitable enforcement, if one owner is let off the hook for a payment, all owners must be relieved of their payments. Associations must continue to have the right to lien for unpaid assessments. The Florida Statutes make the foreclosure process a judicial one.

Right No. 4 states:

The Right to Be Told of All Rules and Charges

Homeowners shall be told—before buying—of the association's broad powers, and the association may not exercise any power not clearly disclosed to the homeowner if the power unreasonably interferes with homeownership.

More and more associations are adopting procedures for orienting prospective owners to the covenants, restrictions, and rules of the association before they purchase. New owners are given copies of the documents that outline the restrictions and what owners may and may not do and what is expected of them by the association. Unfortunately, owners are often overwhelmed by the paperwork and even though they sign statements saying they have read and understood the documents, they don't and they didn't. But, ignorance is no excuse. Just like being responsible for knowing the speed limit on the highways, and because association documents are part of the county public records, owners are presumed to know and understand them and agree to comply.

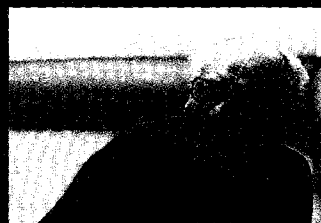


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Right No. 6 states:

The Right to Individual Autonomy

Homeowners shall not surrender any essential rights of individual autonomy because they live in a common-interest community. Homeowners shall have the right to peaceful advocacy during elections and other votes as well as use of common areas.

The Florida Condominium and the Homeowners' Association laws state the following:

- 718.123 Right of owners to peaceably assemble.—(1) All common elements, common areas, and recreational facilities serving any condominium shall be available to unit owners . . . No entity or entities shall unreasonably restrict any unit owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common elements, common areas, and recreational facilities.
- 720.304 Right of owners to peaceably assemble; display of flag; SLAPP suits prohibited.—(1) All common areas and recreational facilities serving any homeowners' association shall be available to parcel owners . . . No entity or entities shall unreasonably restrict any parcel owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common areas and recreational facilities.

While the Florida statutes give owners the right to peaceably assemble, owners do give up some of their constitutional rights to do whatever they wish with their homestead. In many cases, they will be restricted as to what they may place in their yards. It is not a religious issue when a homeowners association requires an owner to remove a cross or nativity scene from his yard. The association is simply enforcing one of its rules. The owner would have been required to remove the item even if it was a bird bath.

Owners may be required to use only one color of paint. They may not be allowed to hang wet towels or clothes on their balconies. They may not be allowed to grill from their patios. They may be required to use only certain sized numbers to identify their units.

By purchasing a home or a unit in the association, the owner is agreeing without force to give up certain rights in exchange for amenities, security, and services.

Associations need a bill of rights too. Our Florida Statutes provide one and it is three-fold:

- Membership in a community is mandatory. Waiver of use of any amenity is no excuse for non-payment of assessments.
- Associations may impose a lien for unpaid assessments. Liens may be foreclosed through a judicial process.
- The association documents bind the association to the owners and the owners to each other. By becoming owners, they agree to abide by all its covenants, restrictions, and rules.

Boards that use emotion and a scale of "fairness" will quickly make wrong decisions and violate their fiduciary responsibility. Keep it simple. Follow the documents. When in doubt, ask your manager or attorney!

Betsy Barbieux is a professional development coach with Image Inside & Out. For more information, you may contact her at Florida Community Association Journal, 1000 Nix Road, Little Rock, AR 72211; fax (501) 280-9233; or email Betsy@flcaj.com. ■