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SUSPENSION OF COMMON ELEMENTS USE RIGHTS

to serve on fining committees. Then, as a result of recent legislative changes to the Condominium Act, comes along the ability for associations to suspend the rights of an owner or the unit's occupant, licensee or invitee to use common elements, common facilities, or any other association property

As a result of legislative changes adopted in 2009, condominium associations in Florida earned the right to suspend the right of an owner or the unit's occupant, licensee or invitee to use common elements, common facilities, or any other association property in the event the owner of the unit is delinquent more than 90 days in paying a monetary obligation due to the association. However, as a result of the 2010 legislative session, a condominium association may also suspend, for a reasonable period of time, the right of a unit owner, or a unit owner's tenant, guest or invitee, to use the common elements, common facilities, or any other association property for failure to comply with any provision of the declaration, the association bylaws or reasonable rules of the association.

As with the imposition of fines, the suspension may only be imposed if the association provides the owner with at least 14 days' written notice and an opportunity for a hearing. If applicable, the unit's occupant, licensee and invitee must also receive such notice. The hearing must be conducted and held before a committee of other unit owners who are neither board members nor persons residing in a board member's household. Lastly, if the committee does not agree, then the suspension may not be imposed.

The wording of the newly adopted changes to the statute do not limit the portions of the common elements, common facilities or association property that may be suspended for failure to comply with any provision of the declaration, the association bylaws or reasonable rules of the association as is the case for suspensions based upon an owner's failure to pay monetary obligations for greater than 90 day. This distinction creates the argument that associations may be more aggressive in this type of suspension which may permit suspension of use of parking spaces, limited common elements, etc. - though conservative practitioners caution that this is necessarily the case. Additionally, the success of this type of remedy may depend upon various factors which include, (i) whether the community has the ability to enforce the suspension, (ii) whether there are community facilities that are worthwhile suspending and (iii) whether there are qualified owners willing to serve on the committee required to impose the suspension. Lastly, when implementing the suspension, board members should ask themselves what they will be willing to do to enforce the suspension once imposed in the event the suspended individual defies the suspension imposed.

In light of the above-described implications and procedural considerations related to suspension of use rights, we encourage board members and managers alike to work closely with their association's legal counsel to determine the best course of action suited to address violations in their community.

by Roberto C. Blanch, Esq.



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