

Association's bicycle storage issue not up to scratch

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CONDO WATCH BY DAVID MACK

Q. *My association has a rule that states bicycles "should" be placed in the garage at the front end of unit owners' cars in their parking spaces. There has been no problem in 25 years regarding the theft or vandalism of any bike. But one unit owner has challenged the association on the notion of "should," claiming that it gave him a choice of whether or not to comply rather than requiring him to do so. Should the wording be changed to substitute the word "must" or "shall" for "should" to make compliance mandatory? People who bring their bikes into the building can scratch corridor walls or dirty up the carpeting.*

A. In Illinois law, "must" and "shall" are mandatory, while "should" and "may" are conditional, said lawyer Shelley Barnett of the Elgin law firm of Barnett & Goldberg.

When writing rules, some people, "do not like mandatory language as it sounds too harsh, so they get only conditional [limited] compliance," Barnett said.

Any litigation, therefore, over the issue of where to keep bikes probably would find the association on the losing side in view of the current wording of the rule.

Perhaps the board should look into an alternative site for the bikes. Cars can be scratched under the current policy.

Q. *I'm the treasurer of my 100-unit condominium association. We have a problem with a unit owner who is refusing to pay a bill. This resident had a leaky shower that allowed water to enter the unit below.*

There was slight damage to the property beneath him, but they resolved that issue. What has not been settled is the cost of the handyman, who plugged the leak and caulked the shower. The unit owner has refused to pay the \$75 charge. He claims he had just acquired the condo and the seller should be responsible for the bill.

To maintain a good relationship with the handyman, the association paid him and has sought reimbursement from the unit owner with the leak. The board voted to assess a \$20 penalty each month the bill remains unpaid. Can we obtain a lien against the owner for the \$75 and accumulating penalties?

A. It is the unit owner's responsibility to pay the handyman for his work, unless the association's governing documents say otherwise, which is not likely.

The owner could seek reimbursement from the seller, although his potential success in such an endeavor seems problematical. That would depend on whether the leak pre-existed the purchase and was not disclosed. The association would not be a party to that dispute.

The association does have the option under the law of filing a lien, but that would be a legal action requiring an attorney whose fee probably could be tacked onto the lien.

Whether the monthly \$20 penalty would be permitted is another question.

Is it worth so much trouble for \$75?

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