

Board has the power to oust problem treasurer

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Q. Our board is experiencing a frightening problem. Our treasurer refuses to cooperate with the rest of the board. She doesn't attend meetings; it's next to impossible to reach her.

The other board members have to repeatedly request monthly treasurer's reports, which are always late and contain glaring errors. For example, assessment checks are deposited late each month and owners are charged late fees that are not warranted.

Because our checks require two signatures, she asked our president to provide blank checks. When he refused to sign blank checks without supporting documentation, she talked another board member into co-signing the checks.

What can the board do about this renegade treasurer who is holding our money?

A. The board of directors can remove the individual as treasurer by a majority vote. If the board determines that it is against the association's interests for her to remain as a director, board members can also initiate a vote of the ownership to remove her.

Once removed as the treasurer, she must turn over all financial records, checkbooks and other documents that relate to the association's financial operation. If she refuses to cooperate, the board should file suit and seek to enjoin or prevent her from keeping the records.

Association boards underestimate the importance of the treasurer's position. In addition to oversight for assessment collections and payment of expenses, the treasurer also supervises the budget process and insurance coverage. This is far too much responsibility to entrust to an individual who does not communicate regularly with the directors, and, most importantly, does not attend the meetings.

Q. About two months ago we discovered mold growing on the window panes of our condominium unit. We have taken appropriate steps to contain it, although it appears to relate to a defect created by the developer. Construction of our building was completed last year.

When we try to sell our unit, what obligations do we have regarding disclosure of this mold problem? Also, does the developer owe any obligations to us? The windows are supposed to be brand new and our warranties will be expiring soon.

A. Under the Illinois Residential Real Property Disclosure Act, the seller of a condominium unit is responsible to disclose conditions that are present in your unit. If you have repaired or eliminated the condition or material defect, you do not have to disclose this history to a prospective buyer.

A warranty from a developer means that you have a specific period in which to bring defects to the attention of your condo's buyer. For unit problems, that warranty period usually runs one year from the date of closing.

If you advise the developer of warranty problems within the applicable period, the developer must repair the defects within a reasonable time after notice of the problem. All notices should be in writing. If your window problem is common to many owners, the board may elect to assert this claim on behalf of the ownership.

Q. The board of directors of our condominium association in the northern suburbs tried to pass a referendum to restrict the right of owners to lease their property. It did not get the required votes last year. Following the vote, however, the board decided to change the bylaws, rather than the declaration, to prohibit renting for all current investors, as well as resident owners. The board told the owners that it has the unilateral right to modify the bylaws.

This action has caused a substantial financial burden for me, as well as the other 40 investors in our association of 240 units. Please advise what rights I have in this case.

A. The board of directors cannot amend the bylaws, but does have the right to prohibit leasing by an amendment to the association rules and regulations.

A rule is subject to challenge by an owner on two grounds. First, the rule is inconsistent with the recorded document, which may permit leasing; and, second, the rule may not be reasonable. Amendments to the declaration and bylaws are presumed to be valid; changes to the rules are subject to the ruling of a particular court.

The board has legitimate concerns when approximately 25 percent of the units are leased. This high leasing level may affect property values as well as the association's insurance rates. The board should determine, by a membership vote, whether the owners wish to change a major privilege of ownership.

The Association of Condominium Townhouse and Homeowners Associations will hold its winter conference and trade show Saturday, Feb. 26 from 8 a.m to 3:30 p.m. at the Drury Lane in Oak Brook. For further information, call the association at 312-987-1906.