

Dubious deck project stirs anger of residents

Q About eight months ago, our condominium association passed an amendment to our declaration. The amendment created a class of limited elements for three-fourths of the units in the form of roof decks.

After the amendment was passed, the board began collecting assessments to pay for the design and construction of the decks. The project is not moving forward as was expected. It does not appear that the decks will be installed until next year.

One of the owners discovered that the board did not register or record the amendment with the county recorder and wants to stop the project.

The board explained that because our declaration requires the mortgage and lien holders to receive notice of the amendment, they decided not to record it.

Apparently, the process of informing the mortgage and lien holders of an amendment is lengthy and expensive. The board decided that it would save money.

Is the board acting legally? Do we have to pay the assessments? What can the board do to recover from this situation?

A A condominium board too often can be penny wise and dollar foolish. In this case the failure to engage in a notification process, which is not that lengthy or expensive, has made the amendment invalid.

Section 17(a) of the Illinois Condominium Property Act is very clear when it states that no amendment of a declaration or by-laws shall be valid unless it is set forth in an amendment and the amendment is duly recorded.

The board can obtain copies of mortgage holders from your insurance agent, because the association insurance agent prepares a certificate of insurance for every mortgage.

The alternative approach is simply to ask the owners to deliver a list of their mortgage holders to the association.

Section 22(c) of the law states that within 15 days of the recording of a mortgage or trust deed against a unit, the owner must inform the board of managers of the identity of the lender, together with a mailing address.

If the owner refuses to provide the name and address of the lender, the owner is liable to the association for all costs incurred by the board as a result of this refusal.

The board was not acting legally by failing to record the amendment. Owners do not have to pay assessments until the amendment is properly recorded. To recover from this mistake, the board should request mortgage information from all owners by advising them that it is their legal obligation, and record the document.

Q Our association of 72 individual residential units is governed by covenants stat-

ing that no "For Sale" or "For Rent" signs or other advertising displays may be on the property or any residential unit. Is this a violation of freedom of expression?

A No. Courts have distinguished between the right of associations to prohibit political signs and the power of a governing association board to prohibit signs on common property or individual units.

These decisions have validated restrictions on advertising signs as not being a form of expression, but, rather, signage on areas that the association may regulate.

Q Our development has, since 1973, consisted of 17 small condominium buildings ranging from 5 to 14 units, incorporated under the Illinois Not-for-Profit Corporation Act.

Over the years, the board has acted like a condominium board at times and at other times like a master association board. We have different opinions from several lawyers as to whether we are a master association or a not-for-profit association.

The association has no money. The treasurer pays the bills for each condominium as authorized by the majority of the owners.

There are three pieces of property that are common elements to all 17 buildings, and the association has the responsibility to maintain them. What is the legal standing of the association?

A I am not sure what you have other than disorganization, but let's try to sort it out.

A master association is defined as a declaration or set of covenants that provides that association's powers are to be exercised or delegated to a non-profit corporation or unincorporated association that exercises these powers on behalf of one or more condominiums.

It appears that you have an informal organization that operates like a master association by maintaining common areas for the condominium buildings.

Until a declaration is recorded, you have a voluntary agreement among associations that will last as long as all 17 buildings continue to cooperate.

The members of the condominium associations must agree to record the master association declaration. The safest approach is to obtain unanimous consent of every owner in each of the 17 buildings. Obviously, there was a lack of forethought in the formation of this property.

Mark Pearlstein is a Chicago lawyer who specializes in condominium law. Write to him c/o Condominiums, Real Estate section, 4th Floor, Chicago Tribune, 435 N. Michigan Ave., Chicago, IL 60611. You may e-mail questions to realestate@tribune.com. Sorry, he can't make personal replies.