

Owners have rights under developer's board

By Mark Pearlstein

Special to the Tribune

Published March 13, 2005

Q. I am a first-time owner in a small new construction condominium building in Chicago. The first unit in the building was sold almost a year ago and there are two units owned by the developer. Unfortunately, the two unsold units equal approximately 30 percent of the building.

Our developer has been delinquent on making several repairs and owes money to the elevator company that services the building. My fellow owners and I are afraid that our assessments have been misspent, and we mistrust the developer.

Although we are less than 75 percent sold, can we still petition to take over the condominium association?

A. On the board control issue, you are stuck. The developer does not have to relinquish control of the board of directors until 75 percent of the units are sold, or three years after the declaration was recorded, whichever is earlier.

While you should check the recording date of the document, I assume that the declaration was recorded on or before the first closing.

Owners are entitled to the same rights and disclosure of information even from a developer board.

The mandated disclosure includes an annual statement of income and expenses. This annual accounting should cover, from your question, the years 2003 and 2004.

If the developer has not paid assessments on unsold units, the unit owners have a right to file a lien for assessments due from the two remaining units. If the elevator company has not been paid, and presumably will not service this important component, owners may demand that the developer board raise sufficient assessments to pay this service provider.

The owners may petition for a turnover, but the developer does not have to grant this request. Your alternative, an expensive one, is a lawsuit in Circuit Court to force the developer to comply with these statutory obligations.

Q. I live in a town home association in the northwest suburbs. Our declaration states that the board must adopt a budget at least 60 days before year's end and give the owners 30 days' notice before final adoption. The board submitted a proposed budget to the owners 14 days before final adoption and prepared their initial draft only 44 days before year's end.

Can the owners refuse to pay assessments, which calls for an increase under the new budget, until it is legally adopted?

How does the management company fit into this?

Should they be familiar with these legal requirements and be held accountable with the board?

A. Owners do not have to pay higher assessments that are not properly adopted. Because the association cannot operate without the collection of monies, the board may continue to collect assessments at the prior rate in effect before the new budget. The directors will have to issue a new notice to the owners of a meeting to adopt the new budget 30 days before adoption.

Directors are the party primarily responsible for adopting the budget. Directors should read and review the bylaws to become familiar with certain basic requirements, including the budget adoption period.

Unless management failed to present a draft budget to the board within the time period required by their contract, the board has the statutory obligation to submit the budget to the owners at least 30 days before adoption.

Q. Our developer installed some external water faucet controls inside some units. As a result, we are at the whim of those owners when it becomes necessary to open the faucets to an "on" position for certain maintenance services.

In the past, we have not been able to obtain access to these units with external faucets when needed. We would like to require that owners permit the plumber entry to the unit.

What are the steps needed to complete this plan?

Does it involve sending a registered letter to the unit owners mandating that they be home or designate someone other than association representatives to provide access to their unit?

A. The situation you describe is not that unusual. While the mature approach is to work out an arrangement for access to the unit when needed, the Illinois Condominium Property Act does provide, in Section 18.4, that the board or its agents may have access to a unit upon reasonable notice for maintenance and repairs.

The board's concern is to obtain access to the water faucet when needed to perform certain maintenance functions.

The owner's concern is the consequences of strangers coming into a unit and the damage or loss that may result. The solution is for the board and management to send the owners advance notice of the date when access is needed to their units and have management personnel accompany the contractor to ensure that a breach of security and property damage does not occur.

Q. Does the Illinois Condominium Act allow an association to amend the declaration to change our monthly assessment from a percentage basis to a flat fee for all units?

We are a 60-unit association with four models and different square footage among them. Some units have two floors.

A. The only means to change the method of charging assessments from the percentage format is by unanimous consent of the unit owners. Given the variation in size of units that you describe, unanimous consent in this case seems to be unlikely.

Mark Pearlstein is a Chicago attorney 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.