

Sun-Sentinel

MONEY

November 30, 2011

Boards can't ban snowbirds

Can snowbirds serve on an association board? Can your association pick and choose which rules to enforce?

Sun Sentinel readers have questions, and we have answers, this week with help from South Florida community association lawyers Jed Frankel and Andrew Lewis of Eisinger, Brown, Lewis, Frankel & Chalet. Have a question?

Send an email to dvasquez@tribune.com, include your full name, city and type of community you live in – condo, homeowners or co-op.

Jerry Saia in St. Augustine says his homeowners association requires full-time residency to serve on the board and allows removal of a director for missing three meetings.

Does state law allow communities to prohibit snowbirds from serving on boards? Can a director be removed for missing meetings?

No, the law does not ban snowbirds from serving on condo and HOA boards.

A community rule requiring full-time residency as a prerequisite for membership on the governing board would likely be considered unreasonable by the courts.

Communities should not remove board members for missing a certain number of board meetings.

The Condominium Act only allows condo and HOA directors to be removed in a recall by a majority vote of all unit owners, although some statutes trigger automatic removal from the board, such as when a director becomes more than 90 days delinquent in the payment of assessments.

A reader in Boca Raton has been notified by his board that his roof must be cleaned.

The rules say a roof must be maintained in a "slightly" manner, but this homeowner, who didn't want his named used, said the board is not enforcing other rules, such as hedge heights and placement of basketball hoops. Are associations allowed to enforce some rules but not others?

Both homeowner and condominium associations are supposed to enforce rules evenhandedly.

Enforcing a rule arbitrarily can create a situation of “selective enforcement,” in which the rule in question might not be enforceable. If a board fails to require one unit owner to keep his roof clean and in good condition, that same rule should not be enforced against other owners. Associations can enforce some rules and ignore others without running into a legal problem of selective enforcement.