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Community Associations Legally Permitted to Obtain Keys to Private Residences

Commentary by
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When one lives in a condominium association, residents and owners must be aware that an association has the legal right to obtain an emergency key for every unit so it may access a residence under specific circumstances.

EMERGENCY KEYS

Pursuant to Fla. Stat. 718.111(5), the association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit. Additionally, and regardless of whether authority is provided under the declaration or other recorded condominium documents, an association, at the sole discretion of the board, may enter an abandoned unit, as defined by the statute, to inspect the unit and adjoining common elements or make repairs to the unit or to the common elements serving the unit, as needed, provided that proper notification has been issued.

This Florida statutory provision gives condominium associations the legal right to mandate each unit owner pro-

vide an emergency key, which allows management to access a unit.

Procedurally speaking, emergency keys should be properly labeled and stored in a secure storage cabinet with limited accessibility. It is recommended that key access be limited to the director of security or managing security personnel and the property manager. Additionally, it is recommended that access to a unit via emergency key always be achieved in the presence of security and depending on specific circumstances, that the access be video recorded. The association should make every effort to coordinate access to a unit with prior notification to the owners and/or residents, even in the case of an emergency. If the association is unable to coordinate notifications prior to accessing a unit for whatever reason, notification to the unit owner/resident should be made immediately thereafter. Emergency keys should not be provided to anyone and should not be utilized for any other purpose than for the right of access granted in the statute and governing documents.

To the extent that an association's governing documents require that unit owners provide an emergency key to the association, it should consider enforcement mechanisms requiring compliance, including, but not limited to, the imposition of fines and suspension of use rights. It is important to know that there

are specific procedural mechanisms that must followed to impose such fines and/or suspension of use rights.

Additionally, to the extent that a unit owner fails and/or refuses to provide an emergency key, and access is required by force, the unit owner may be held liable for any and all damages, including damages to the unit's door if the association is required to force entry in the event of an emergency.

SPARE KEYS

As a preliminary matter, the Florida Condominium Act does not necessarily contemplate the maintenance of a spare key for the purposes of granting access to guests, visitors, housekeepers or workers. Our firm generally advises against a spare key policy, which allows unit owners to provide management and security personnel with keys to be utilized by third persons. It is our opinion that such a policy could present issues of liability for the association, as well as management or security vendors who handle spare keys.

The concept of a spare key policy is much different than an emergency key held by the association for purposes of emergency access and maintenance.

The chance for error in connection with the use of a spare key is great, particularly if a unit owner does not update their authorization in a timely manner or

there is a chance that protocols are not fully observed. We would recommend against a spare key policy and advise that the association not be responsible for maintaining spare keys for guests, housekeepers or vendors.

Notwithstanding the foregoing, to the extent that an association wishes to have a spare key policy, same should only be for authorized guests, visitors, housekeepers or workers. The policy should prohibit spare keys from being provided to anyone without prior written authorization and otherwise providing persons with access to a unit unless specifically authorized by the unit owner.

As with the emergency keys, we suggest that spare keys be maintained in a secured storage cabinet, with limited accessibility. It is recommended that key access should be limited to the director of security or managing security personnel and property manager. Likewise, should the board wish to maintain a spare key policy, we would recommend that the association have a standard form for written authorizations that must be filled out by owners, specifically setting forth the parameters of the spare key policy and requiring each unit owner to sign a release of liability.

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