

Chicago Tribune Q & A with Condo Advisor: Problems with Pets and Pools

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Community Associations Partner Howard Dakoff wrote an article featured in the Chicago Tribune titled, "Big dog and a sloppy lease leave renters facing eviction."

Q. I am renting a condominium unit and our lease states that we can have up to a 50-pound pet dog. In fact, we have a pet dog that is about 40 pounds. We just received notice from the association that we must remove our dog from the property because governing documents of the association have a 15-pound dog limit. Our landlord never gave us a copy of the association's governing documents, including pet rules and regulations, and the association has stated they will evict us if we do not comply. Can we prevent the eviction?

A. Section 18(n) of the Condominium Act states that condominium declarations, bylaws and rules and regulations are deemed incorporated into a lease as a matter of law. Therefore, tenants of a unit in a condominium association are obligated to comply with the condominium instruments whether they

received them from their landlord or not.

A lease agreement between a landlord and a tenant for a condominium unit that purports to grant tenants rights that are prohibited by the condominium instruments are not enforceable and will subject tenants to the remedies a condominium association possesses for violations of the governing documents. Pursuant to Sections 9.2 and 18(n) of the Condominium Act, the association does possess the right to levy fines against a unit owner for a tenant's violation of the governing documents, and evict a tenant for violations of the association's governing documents.

As a practical matter, tenants should discuss the issues with their landlord and the association to reach a reasonable solution to the situation, which might just be extra time to vacate the unit without the assessment of fines and legal fees related to an eviction. As far as the landlord failing to deliver the governing instruments of the association to the tenants, and the inconvenience that has caused, the tenants may have claims against the landlord for damages.

Q. We own a condominium unit in an association that has a pool. Our unit is currently vacant because we are remodeling the unit. We inquired with the managing agent to pay for a pool pass

because we are the unit owners; however, management advised us that individuals must live in a unit to be entitled to a pool pass and are refusing to give us a pool pass even though we have agreed to pay the required fees. How can this be?

A. Under the condominium declaration and bylaws and Illinois law, unit owners have a right to use common element amenities that are part of their condominium association. If the association has adopted rules establishing fees for such use, unit owners must pay such charges.

It is unenforceable for an association to prohibit off-site unit owners from exercising their legal rights to utilize the common elements merely because they are not residing in the unit, which may be a second home. In fact, off-site unit owners pay their pro rata share of expenses for maintenance, repair and replacement of common elements through their assessments.

If unit owners are leasing their units, such rights pass to the tenants of the leased units and the unit owners themselves cannot utilize the common element amenities in addition to their tenants' utilizing such amenities.

Q. I live in a condominium association. Our board issued notice of a board

meeting, which also stated that the board would be recessing for a closed session on a specific day and time that would not be open to the unit owners. The notice of meeting did not state the topics of the closed session. Please advise what information must be disclosed in a notice of meeting where the board intends to recess a closed session.

A. Section 18(a)(9) of the Condominium Act states that meetings of the board shall be open to unit owners except for portions of the meeting held to discuss a) litigation that has been filed or when such litigation is probable or imminent; b) information regarding appointment, employment or dismissal of an employee; or c) violations of rules and regulations for a unit owner's unpaid share of the common expenses. Thus, discussions of such topics in the closed session are allowed by law and the board may exclude unit owners from attending such sessions.

As far as the notice of meeting where a closed session is referenced, there is no requirement that the board disclose what topics will be discussed in closed session on the meeting notice. Of course, the board may only discuss the above-referenced topics to be in compliance with the Condominium Act.

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