

Ask the HOA Expert: Question and Answer

Question 1: Some of our members want to control the number or percentage of units, which may be rented. Their concern is that having a relatively large number of rental units will change the character of the condominium and reduce property values. Can't the HOA enact a rule or bylaw restricting rentals?

Answer 1: The HOA can enact rental restrictions, but it should be carefully thought through. The ability to rent one's property is considered a basic right. And it's not just investors that rent their property. Someone that has lost their job, a down real estate market, and military deployment are all valid reasons for needing to rent. Any rental restriction policy should provide for exceptions like these. Having a large percentage of rentals can affect lender financing options and reduce resident owner appeal. Avoid having a policy that allows some to rent and other not. If a restriction against rentals is desirable, it should apply to one and all. To do otherwise grants a privilege to some not enjoyed by all and inevitable conflict will ensue. To achieve uniformity, allow, say, up to a one-year grace period for those currently renting out their property to comply. Finally, the board should not enact a rental restriction policy on its own. It should be done by an appropriate majority of members. Once amended, the governing documents should be recorded to put all potential purchasers on notice of the restriction.

Question 2: Recently, I received a proxy attached to a meeting notice to vote on a governing document amendment. The notice stated that if the proxy was not returned, the board would vote on my behalf. Can the board do that?

Answer 2: The board cannot take or use someone's voting right just because they don't respond to a proxy request. A proxy should be provided to every member well in advance of the meeting – whatever the governing documents require – to be completed, signed, and returned. A member may designate whomever they choose – a neighbor, a family member... anybody – to represent them at the meeting. That person, of course, must be able to attend the meeting. If the proxies aren't returned within several days of the meeting, the board needs to round them up by making calls, going door to door to pick them up, or whatever it takes. At the meeting, if the required quorum is not represented by the proper number of members and their proxies, a legal meeting cannot be held. This is how the proxy process works. Don't let the board ramrod any proposal through, especially a bylaw change, without proper member representation.

Question 3: We have problems with our landscape company providing the services it contracted to perform. Most of the board members want to keep them regardless. Does the president have a right to fire the company or should the matter be put before the members for a vote?

Answer 3: If the board majority wants to retain the landscape contractor, the president should not go contrary to the majority or go looking for the support of homeowners. If, however, it must be done, the board is authorized to do so. But changing landscape contractors should not be done lightly. In fairness to the contractor, there are usually some identifiable problems that he should be made aware of in writing and given a reasonable opportunity to correct. To track performance, appoint a landscape supervisor – could be a board member or another resident – to monitor the contractor’s work. The contractor would then be instructed to leave a job slip detailing work performed on the landscape supervisor’s door when the crew has finished. The landscape supervisor would then inspect the work and give thumbs up or down within 24 hours of completion and inform the contractor. If the contractor fails to correct the deficiencies, the board would have the ammunition it needs to terminate the contract.

Question 4: Our Rules Enforcement Committee is overwhelmed with parking violations. Do you have any sample citation forms, warning notices for windshields, etc.?

Answer 4: Rather than plastering offenders’ cars with notices, try an information campaign explaining the need for parking regulations and compliance. Advise that fines and towing are a possibility if residents and their guests fail to comply. Get the message out through meeting minutes, newsletters, and parking rules signs. Move the signs around frequently so they don’t get the stale. After 30 days, assess the effectiveness of the campaign. While most will comply, some won’t. Identify those who haven’t and send them a personal letter explaining, again, the reasons for the regulations and the need for compliance. Cite the fine and towing alternatives, which will begin on a certain date. On the designated day, place signs at the community entrances, which explain the tow-without-warning policy. Arrange a contract with a local towing company. Have residents self-help by calling the towing company directly if someone is parked in their personal parking space. This will reduce the work load for the committee. The committee can authorize for any car parked in fire lanes to be towed. Tow offending cars. The owner will have to pay the tow charge to get the car back. Usually, towing someone’s car once is all that is needed for them to get the message. Let residents know in the newsletter that cars were towed for violating parking regulations. Towing will become rare as the message gets out. The system works.