

## **FALL 2014 NEWSLETTER**

### **HOMEOWNER'S ASSOCIATION Q & A**

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#### **The Texas Condominium Act and the Texas Uniform Condominium Act**

**Q: What is a condominium?**

A: A condominium is defined as a form of real property ownership that combines separate ownership of individual apartments or units with common ownership of other elements. TEX. PROP. CODE § 81.002 (3).

**Q: What kinds of rules and regulations is a condominium owner subject to?**

A: A unit owner's rights are subject to reasonable rules and regulations as adopted by the condominium association's board. *Holleman v. Mission Trace Homeowners Ass'n*, 556 S.W.2d 632, 635 (Tex. Civ. App.—San Antonio 1977).

**Q: What happens if a unit owner wants to challenge the actions of an association's board?**

A: A unit owner can sue to challenge the actions of an association's board, but the court uses a reasonableness standard when judging the actions. *Gulf Shore's Council of Co-Owners, Inc. v. Raul Cantu No. 3 Family, Ltd. P'ship*, 985 S.W.2d 667, 670-71 (Tex. App.—Corpus Christi 1999, pet. denied). It is understood that a special form of property interest is created by a condominium regime in which a unit owner gives up certain rights in order to avail themselves of the benefits of living in a condominium. *Weldy v. Northbrook Condo. Ass'n, Inc.*, 904 A.2d 188, 194 (Conn. 2006); *Hidden Harbor Estates, Inc. v. Norman*, 309 So. 2d 180, 181-82 (Fla. App. 1975). Generally, if a board enacted rule is reasonable, is consistent with the law, and is enacted according to the appropriate procedures, then a court will enforce the rule. *Dulaney Towers Maintenance Corp., v. O'Brey*, 418 A.2d 1233, 1235 (Md. Ct. Spec. App. 1980).

**Q: How does the court determine if an action is reasonable?**

A: In determining the reasonableness of an association's actions the court looks to whether the action was arbitrary, capricious, or discriminatory. *Gulf Shore's Council of Co-Owners, Inc.*, 985 S.W.2d at 671. In order for a board's actions to be deemed arbitrary, capricious, or discriminatory the court requires evidence that the board acted "without a reason related to the sound governance of the entire condominium" regime. *Gulf Shore's Council of Co-Owners, Inc.* 985 S.W.2d at 673. Rules enacted

by the board should relate to “the health, happiness, and enjoyment of life of the various unit owners.” *Holleman*, 556 S.W.2d at 636.

**Q: When has it been determined that an associations actions were arbitrary, capricious, or discriminatory?**

A: One way in which a board’s actions have been deemed to be arbitrary, capricious, or discriminatory is when an association undertakes selective enforcement of a rule to only certain unit owners. *King v. Chism*, 632 S.E.2d 463, 466 (Ga. App. 2006). However, a unit owner cannot prove that he is being discriminated against by the association by simply showing that he is the only unit owner being affected by the application of a rule, since it is possible that the one unit owner is the only individual who is in violation of the rule. *See Gulf Shore’s Council of Co-Owners, Inc.*, 985 S.W.2d at 673.

**Q: Where does a condominium association’s board get its authority to act?**

A: A condominium association’s board has two main sources of power, its governing documents, i.e. its declaration, by-laws, amendments, and rules and regulations, and statute. The applicable statutes to all condominium regimes in Texas are the Texas Condominium Act and the Texas Uniform Condominium Act.

**Q: What is the Texas Condominium Act?**

A: The Texas Condominium Act was codified as Chapter 81 of the Texas Property Code in 1983, and applies to condominium regimes created before January 1, 1994. A condominium regime created before January 1, 1994, is also governed by Chapter 82 of the Texas Property Code as provided in Section 82.002.

**Q: What is the Texas Uniform Condominium Act?**

A: The Texas Uniform Condominium Act was codified as Chapter 82 of the Texas Property Code in 1993, and applies to condominium regimes created after January 1, 1994. A condominium regime created before January 1, 1994, may be exclusively governed by Chapter 82 if the unit owners vote to amend the declaration to have Chapter 82 govern the regime, or if a declaration or amendment that was recorded before January 1, 1994, stated that Chapter 82 would apply in its entirety on January 1, 1994.

**Q: Is there any provision of either the Texas Condominium Act or the Texas Uniform Condominium Act that would allow a condominium association, acting through its board, the right to pass a rule prohibiting a registered sex offender from residing in a condominium community?**

A: Yes, Chapter 82 of the Texas Property Code provides that “the association, acting through its board, may...adopt and amend rules regulating the use, occupancy, leasing or sale, maintenance, repair, modification, and appearance of units and common elements, to the extent the regulated actions affect common elements or other unites.” TEX. PROP. CODE § 82.102.

**Q: Does that provision only apply to condominium regimes created after January 1, 1994?**

A: No, Section 82.002 states that section 82.102 (a) (1) - (7) will apply to “a condominium in the state for which the declaration was recorded before January 1, 1994.” TEX. PROP. CODE § 82.002. 82.102(a)(7) is the provision which grants the board the authority to regulate the use and occupancy of a unit. TEX. PROP. CODE § 82.102(a)(7).

**Q: May the board of a condominium regime, acting on its own, amend the regimes declaration?**

A: No, A condominium’s declaration “constitutes the basic rules for governance” of a condominium regime. *Gulf Shore’s Council of Co-Owners, Inc.*, 985 S.W.2d at 671. It is said to be the condominium’s constitution. *Weldy*, 904 A.2d at 194; *Beachwood Villas v. Poor*, 448 So. 2d 1143, 1144 (Fla. Dist. Ct. App. 4th Dist. 1984). As such provisions of the declaration prevail over and will invalidate a conflicting rule or regulation. *Beachwood Villas*, 448 So. 2d. at 1145. The board does not have the authority to amend the declaration by passing a rule, since the power to amend the declaration is explicitly reserved to a vote of the council of co-owners. *See Beachwood Villas*, 448 So. 2d at 1144; *Fishman v. Vantage Point Ass’n*, FSTCV054004288S, 2009 Conn. Super. LEXIS 328, at \*11 (Conn. Super. Ct. Feb. 11, 2009).