

Resident Rights

Knowing Them, Upholding Them

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Whether as a member of a cooperative or a condominium association, a shareholder or unit owner maintains certain rights within their chosen community. However, achieving harmony among neighbors isn't always easy. Rights aside, residents are also subject to governing documents that outline what behaviors are and aren't okay in the context of the community. Needless to say, differences of opinion and the interpretation of rules and bylaws can lead to a great deal of acrimony and strife.

Board Powers

"Boards can dictate what shareholders do in their own apartment up to the extent of the law, which is section 226-B of the Real Property Law, and the [proprietary]

lease," says Beatrice Lesser, a partner with the Manhattan-based law firm Gallet Dreyer & Berkey LLP. "Boards can govern how much noise someone can make; they can govern whether or not you can have a quiet profession, such as psychologist, but you can't give music lessons that might disturb your neighbor."

A recent common "control" amendment put forth by many co-ops and condos centers on a person's right to smoke in their apartment or unit. Ronald Sher, attorney and partner with the White Plains-based firm Himmelfarb & Sher, LLP, explains that many of his firm's clients are opting for this measure, but it's not with adhering to protocols.

"The board must receive the consent of the supermajority—generally two-thirds of three-fourths—of the shareholders to change the use," he says. "So the boards cannot dictate what shareholders/tenants can do in their unit, although the rules provide that tenants or shareholders cannot cause excessive noises [or] unreasonable disturbances—general rules of conduct."

Shareholder and Unit Owner Rights

Boards and management agencies commonly attempt to regulate the behavior of residents. For instance, they mandate what percentage of their floors must be carpeted to reduce noise or they forbid the display of signage on lawns or in windows. And the amount of control a board has usually depends on whether it is a co-op or a condo.

“Both types of boards are restricted by the applicable governing documents but without specific limitations they have rather broad powers to regulate conduct and behavior that arguably affects the common areas or the use and enjoyment of the units by their owners,” says Lorraine Nadel, attorney and partner with the New York City-based firm, Nadel & Ciarlo, P.C. “Condo boards tend to be less restrictive generally.”

Condo owners, she notes, aren’t required to undergo an “intrusive approval process,” but the condo board may have a right of first refusal, which must be given whenever a condo owner seeks to sell their unit.

“Condo boards are also subject to the business judgment rule, which permits them to make business decisions for the condo very broadly,” says Nadel.

From a general perspective, condo boards have “similar powers and authority” as co-op boards. The condo board, however, is governed by the bylaws of the condo, the Declaration of Condominium, and the offering plan.

“The Declaration is essentially a declaration of easements, covenants, restrictions and conditions and generally covers the common areas and not the unit itself,” says Nadel. “Condo boards also may implement house rules and regulations and without any restriction in the bylaws, the boards can generally easily amend the house rules.”

Whereas condo boards cannot evict a tenant for bad conduct, co-op boards can. Lesser says that in recent years condo boards have expressed interest in changing to co-ops. This is partially an effort to populate the community with more desirable neighbors who may be financial secure and do not view the property merely as an investment.

“The co-op’s board’s right to evict is an important right,” says Lesser. “All a condo board can do is bring forth an injunction in court to stop the resident from being a nuisance—and this comes up often as does condo owners suing each other. The co-op has much more powerful weapons.”

In a co-op, Nadel explains that policies implemented are not made specific to one person or shareholder as all shareholders are treated equally. However, she notes that the co-op board can have “broad” powers.

"In the house rules, the co-op board can impose a pet policy; a policy concerning how renovations and alterations are performed; a smoking policy; rules against intrusive behavior and nuisance; and, of course, illegal behavior," said Nadel. "The proprietary lease may contain these restrictions as well. The primary restrictions on the power of boards to implement these policies is that they are generally not retroactive and cannot take away a right that a shareholder already exercised." As an example, Nadel explains that a board that once allowed dogs cannot ask those same shareholders to remove the dog if a new policy is enacted by a new board.

Can You Let Your Freak Flag Fly?

Defining a shareholder's right to "free expression and assembly" is often subjective and respective to the governing bylaws, which are different from property to property. And when house rules are in opposition to an issue of personal freedom, conflicts generally arise.

"When a shareholder buys into a co-op, they are no longer the king or queen of their castle, they have to adhere to a set of rule to comply with," says Sher. "They can't do anything that impacts the health, safety and welfare of the other residents in the building."

Whether a shareholder or unit owner can display an Irish flag on St. Patrick's Day, decorate a hallway during Hanukkah, or a hang a flower planter outside the kitchen window is determined by the governing documents. While these rules are generally well-known by residents, there are often related issues.

"A potential buyer of a co-op must perform a certain measure of due diligence on how the board functions, its rules and regulations and the financials. There are any number of restrictions that boards may implement to the extent that it affects the common areas or the use and enjoyment of residents in their units," says Lesser. "A co-op board is empowered by a legal concept known as the 'business judgment rule,' which protects boards from liability if they can show they are acting in the general business interest of the co-op as a whole."

Unit and apartment conditions, such as strange odors, mental illness, or conditions deemed unsafe due to a fire hazard can cause board intervention. However, a co-op board has more power in these types of scenarios than condo boards, says Nadel.

"We have a huge problem with aging, mentally ill residents and hoarders who can no longer maintain their apartments—I get a lot of these complaints across my desk," says Nadel. "The co-op or condo board is often ill-equipped to deal with issues of people without families or relatives that are not in communication."

In recent years, Nadel has handled numerous evictions related to the aforementioned issues. The process is often cumbersome and taxing for all involved. If a case is heard in housing court, the process can take one to two years or more.

"If the lease has a provision for objectionable conduct, this places a huge limitation on a shareholder's right to cure," says Nadel. "One of the worst hoarding cases I had resulted in the tenant's church group cleaning out all the garbage and debris. She was able to maintain the apartment in a reasonable state after that."

Residential Rights and Recourse

Whether a building has 12 units or 120, neighbors come from different walks of life and often have differing opinions on what is considered "neighborly" or acceptable behavior. So when an issue arises, industry experts' recommend that board members should continually instruct shareholders and unit owners on best practices for reporting conflicts.

"The resident/shareholder's rights are set forth in the governing documents of the co-op or condo, and the proprietary lease in the cases of co-ops. If those rights are being infringed, the resident/shareholder may go to court to seek injunctive relief, such as a court order mandating that the board act or refrain from acting as the case may be," says Nadel. "To the extent that the resident/shareholder believes the restrictions or infringements are reducing the value of their apartment, they may also seek money damages as restitution for those losses."

In an effort to avoid escalating complaints to the courtroom, Sher recommends that a concerned resident first approach the managing agent or the board to officially lodge a complaint and to see if the issue can be resolved quickly.

“They should write a letter regarding their issues and request intervention or the cooperation of with the issue they feel impacted by,” says Sher. “In the end, if a condo resident still feels aggrieved, they should not withhold their payment of maintenance fees or common charges, but rather exercise their right to go to court with a breach or default of their board.” He continues. “If it is a co-op, they can go to their local municipal court. If they want to get an injunction against the board, they have to go to the state supreme court, which is more involved,”

W.B. King is a frequent contributor to The Cooperator.