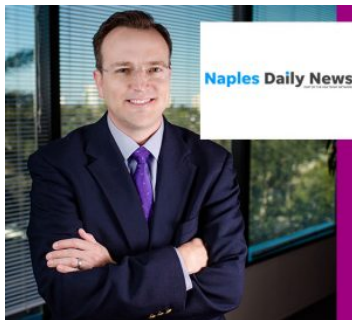


# “Adopting Short Term Rental Restrictions,” Naples Daily News

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**Q: My homeowners association is struggling with short term rentals in our community as many owners are using online providers to rent their homes for very short periods of time (sometimes nightly). It is my understanding that the board for a homeowners association can set any non-discriminatory rental policy it wants, including minimum and maximum length of rental. Is this true in Florida? J.T.**

**A:** The answer to your question is “probably not.” A review of your governing documents might result in a legal opinion that your board has that power, but that would be the exception to the rule.

Rental restrictions for a homeowners association are most commonly found in the declaration of covenants. Most declaration of covenants can only be amended by approval of the owners. Usually the approval of some type of super-majority is required, with either two-thirds or seventy five percent of the owners being the most common thresholds for amendments.

The board is most often granted authority over the administrative details of rentals (such as the right to require use of a specific application or registration form) in those communities where rentals are subject to association regulation.

**Q: Can a condominium association in Florida prevent owners from renting their units? L.S.**

**A:** The Florida Supreme Court addressed this issue in the 2002 landmark decision of *Woodside Village Condominium Association v. Jahren*, which my firm had the privilege of arguing before the Court on behalf of the association. In that case, a condominium association amended its declaration to severely limit rentals by

prohibiting annual and other long term rentals and basically only permitting seasonal rentals.

Certain unit owners complained that they bought their condominium units with the specific intention of leasing them annually, a practice permitted by the declaration when they bought their units. These owners sued the association on the theory that they had lost vested property rights when the amendment was passed. The trial judge and an appeals court sided with the investors. However, the Florida Supreme Court ultimately found in favor of the association, ruling that when condo owners buy their units they are on notice that the contract that spells out their legal rights, the declaration of condominium, can be amended by the vote specified therein.

After this decision, investor groups lobbied the Florida Legislature for a change. In 2004 the law was amended and now provides that an amendment prohibiting unit owners from renting their units or altering the duration of the rental term or specifying or limiting the number of times unit owners are entitled to rent their units during a specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the effective date of that amendment.

If your condominium was developed before 2004, there is some room to debate the retroactive effect of the statute. However, most associations follow the law.

**Q: I often hear allegations that my condominium association board of directors has violated the “sunshine laws.” What does this refer to? D.A.**

**A:** The Florida “sunshine law” applies only to certain governmental entities and agencies. It is found in Chapter 286 of the Florida Statutes, and with few exceptions, generally prohibits any two members of a covered board or commission from meeting outside of a noticed and public meeting.

On the other hand, the notice and open meeting requirements that apply to community associations are found in specific statutory provisions of the Florida Homeowners’ Association Act, the Florida Condominium Act, and the Florida Cooperative Act. Many attorneys, managers, and board members use the term “sunshine laws” when referring to these provisions, but really in a more colloquial or “industry slang” manner of speaking.

Section 718.112(2)(c) of the Florida Condominium Act contains all of the “sunshine law” provisions regulating notice and meetings for condominium associations. You must also check the governing documents of your condominium association because they may contain additional requirements that must be met as well.

Unlike the Florida “sunshine law” which applies to governmental entities, association board members who constitute less than a quorum may meet at any time and discuss association business. Obviously, without a quorum, formal decisions cannot be made.

When an allegation of “violating the sunshine law” is made in the community association context it usually means that an owner is alleging that a quorum of the board of directors has improperly met without noticing the board meeting and without allowing owners to attend. That being said, there are two exceptions to the general rule that any time a quorum of the board meets the board meeting must be noticed and owners are permitted to attend. The first exception is if the

board is meeting to discuss personnel matters. The other exception involves meetings with the association attorney to discuss pending or threatened litigation. These “closed” board meetings must still be noticed, however, but owners are not permitted to attend.

Attorney David G. Muller is a shareholder with the law firm of Becker & Poliakoff, P.A., Naples ([www.beckerlawyers.com](http://www.beckerlawyers.com)). The information provided herein is for informational purposes only and should not be construed as legal advice. The publication of this column does not create an attorney-client relationship between the reader and Becker & Poliakoff, P.A. or any of our attorneys. Readers should not act or refrain from acting based upon the information contained in this article without first contacting an attorney, if you have questions about any of the issues raised herein. The hiring of an attorney is a decision that should not be based solely on advertisements or this column.