“In-Law’s Right to Serve on Board Questioned,” News-Press

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By: Joseph E. Adams

Q: One of our HOA board members does not own the house he lives in, his parents in-law own it. Our documents state you must be a member of the association to serve on the board. He has given management a letter from an attorney, stating he is a trustee of the property. Can anything be done to change this? (M.H., via e-mail)

A: The Florida Homeowners’ Association Act, Chapter 720 of the Florida Statutes, defines a “member of the association” to include the record owner of legal title to a parcel and any person or entity obligated by the governing documents to pay an assessment or amenity fee. The record owner of legal title is the person or entity named on the deed recorded in the public records.

If title to a parcel is held “in trust,” the trustee holds legal title to the parcel and manages the property for the benefit of the trust beneficiaries, who hold “equitable” title. Beneficiaries of trusts who reside at the property are also eligible for board membership under Florida law.

A letter from an attorney is insufficient to establish a trust or place title in the trust. The deed of record controls. I would suggest that you bring your concern to the attention of your board of directors and request that they ask the association’s attorney to review the matter.

Q: My daughter is medically disabled and suffers from almost daily severe migraines. We were leaving the hurricane shutters on her two windows shut to keep the room dark. Of course, I got a violation letter from our association. The association has rules about keeping them open. Is there any way around this due to medical reasons? (K.S., via e-mail)

A: The federal and Florida fair housing laws require a community association to make “reasonable accommodations” from its rules, polices, practices, or services for persons with disabilities in certain situations. One such situation is to accommodate a person’s physical or mental disability that substantially impairs one or more of a person’s major life activities and requires a reasonable accommodation to address the disability. A community association is required to make a reasonable accommodation in situations where the disability is properly documented and the relationship between the disability and the need for the reasonable accommodation is provided. Reasonable accommodations do not include things that create a health or safety risk to anyone, including the person making the request.

As discussed in previous columns, hurricane shutters may also trap heat and smoke inside the structure, making it harder for emergency responders to get inside, and more dangerous when they do. If there are safer alternatives to keeping the hurricane shutters that provide the same relief from a disability, the community association may suggest same. For example, to the extent that “black out” curtains achieve the desired result in mitigating the effects of chronic migraines they may provide a safer, reasonable alternative to leaving the hurricane shutters closed and may not violate the governing documents.

Notwithstanding any hurricane shutter regulations in the governing documents, local codes and ordinances may regulate how long windows may be shuttered or covered when there is not an active storm (e.g., shutters or boarding must be removed within 30 days after a storm passes). If there are local codes and ordinances that require the shutters to remain open except during an active threat of a storm, the owner or occupant would need to seek a reasonable accommodation from the governing documents and from the local government’s requirements. If they are closed in violation of the community association’s governing documents and local codes, this would constitute a violation of the governing documents and could open the door to code enforcement action by the local government, unless a request for reasonable accommodation is granted.

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