

## HOMEOWNER AND CONDO ASSOCIATION DOCUMENTS

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Before you purchase your dream home or condominium, beware of the association documents and deed restrictions that come with it. The law presumes that once you sign the contract to purchase, you are put on notice as to the restrictions placed upon your property as to how you may use it. Ideally, when you purchase real estate you may be given a 15 day reprieve to inspect the property with the right to terminate the purchase for any reason. This reprieve would give you enough time to read the restrictions and understand them thoroughly as to what you may use the property for. To understand the importance of this, let's review a typical scenario.

Suppose you want to spend 6 months in Florida and the remaining time back North. During the time you are in the North, you want to be able to lease your property. The restrictions of the development may not allow you to exclusively do that. A recent case in point will provide you with the knowledge of why clearly understanding the restrictions is so important.

A buyer purchased a condo with the idea of being able to lease the property. The declaration of condominium stated that the owner had an unrestricted right to lease, sell or transfer his property to family members. It did not say the buyer could lease the property to persons who were not family members. However, the local rule stated that an owner could lease his or her property but was silent on to whom it could be leased. It simply stated that if the property were leased that it must be for at least one month or more. The buyer then leased the property but for less than one month.

The buyer argued that the local rule contradicted the Declaration of Condominium in the ability to lease property with no restrictions. The Court held otherwise stating that the Declaration and local rule did not contradict one another. The end result was that the buyer was limited to the rule stating that pre-approval needed to be done for any lessee and the lease must be for greater than one month at a time.

The message to be derived from the above case is to be sure to check the rules of the association and restrictions of the community you are buying into. If there is a particular objective you want to use the property for, review the restrictions to see how (if any) the restrictions will impact your objectives. Then turn to the local rules to see if there are any restrictions of the same kind that may impact your objectives as well. Compare the two and read the language carefully to see if they contradict each other.

Check the language to see if it expressly gives the right to perform certain functions to a class of people and not others (e.g. family members versus anyone). If the language does not state that it is open to everyone, then in such event the restriction may limit your objectives (e.g. leasing to family members versus anyone).

In the case mentioned above, had the Declaration stated that the right to lease was an unrestricted right without mentioning the class of persons it applied to, then, in that case the buyer would have had the right to lease for less than a month even though the local rule said limitations of leasing had to be greater than one month.

It is important to remember that local rules can be changed by the board without obtaining approval from the owners. Thus if the board wants to limit the times when property can be leased, they can vote and put into place a rule to that effect. A change to the Declaration or Deed Restrictions requires owner approval by a given margin dictated by the By-Laws of the association or statute.

In conclusion, if you are buying property and are thinking of using your property for certain uses, be sure to get a copy of the restrictions and local rules prior to signing the sales contract (alternatively ask for a reprieve of time to review the documents). Take it to the attorney of your choice and tell him or her what you wish to do with your property (e.g. lease). Allow the attorney to review the language and then give you their opinion of the language as stated in the restrictions and rules. Remember that the rules can be easily changed, the restrictions not so much.

Based on the opinion you receive, you'll be in a better position to decide if buying the property of your dreams is in your best interest. If it is not, hopefully the time to back out of purchasing the property without penalty has not passed.

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