St. John's Law Review

Volume 48
Number 4 *Volume 48, May 1974, Number 4*

Article 25

August 2012

Promulgation and Enforcement of House Rules

Louise Hickok

PROMULGATION AND ENFORCEMENT OF HOUSE RULES

In the flurry and excitement of buying a condominium, a purchaser is apt to pay scant attention to the "bylaws"[1] that govern the property. Often, it is not until he encounters the day-to-day problems of living in his unit that the new owner feels the full force and effect of bylaw regulation. He may not realize at the time of purchase that the bylaws can preclude activity he considers acceptable or that they may be subsequently amended to diminish rights he would never willingly relinquish. A resident, because of ambiguous language[2] in, or his own careless reading of, the bylaws, may suddenly find himself on a collision course with a board of managers bent on enforcing uniformity of unit appearance and "acceptable" individual activity.

One owner who lovingly transforms his balcony into a stucco and glass Italian villa may be shocked to find a board of managers demanding he remove it because the neighbors think it is hideous.[3] Another may learn to his distress that he is being assessed for a $500 basketball court that the board has decided no one can do without. He hates the game![4] And every year someone cannot understand why an exception to the "no dog" rule cannot be made for the little German schnauzer that is the comfort of Grandma's old age.[5]

Though many have tried, unit owners have generally been unable to evade enforcement of such rules by their boards of managers. Resultant litigation has led to animosity, warring factions of unit owners, and even sell-outs and foreclosures. It is becoming increasingly obvious that the extent to which a board of managers may control or compel individual behavior and authorize expenditures under governing bylaws must be more clearly defined and communicated to prospective pur-

---

1 "Bylaws" are those rules which govern the operation, maintenance and repair of a condominium community. They typically regulate the use of the premises by owners, specify restraints on alienation, provide for a board of administrators or managers to act as the quasi-governmental body of the project and empower it with specific duties. *See* 1 P. ROHAN AND M. RESKIN, CONDOMINIUM LAW AND PRACTICE § 3.03 (1973) [hereinafter cited as ROHAN & RESKIN]. *See generally* Rohan, *Cooperative Housing: An Appraisal of Residential Controls and Enforcement Procedures*, 18 STAN. L. REV. 1323 (1966).

2 Some suggestions for drafting condominium documents are discussed in Rohan, *Drafting Condominium Instruments: Provisions for Destruction, Obsolescence and Eminent Domain*, 65 COLUM. L. REV. 593, 604-06 (1965).

3 *Cf.* Vinik v. Taylor, 270 So. 2d 413 (Dist. Ct. App. Fla., 4th Dist. 1972).

4 *See* Amoruso v. Board of Managers, 38 App. Div. 2d 845, 330 N.Y.S.2d 107 (2d Dep't 1972) (mem.). *See* note 92 *infra* for a discussion of this case.

5 *See, e.g.*, East Midtown Plaza Housing Co., Inc. v. Halpern (N.Y.C. Civ. Ct. N.Y. County), in 169 N.Y.L.J. 25, Feb. 5, 1973, at 19, col. 4. For a discussion of the "no dog" prohibition, see text accompanying notes 60-69 *infra*.

chasers. Where bylaws do clearly establish the boundaries of a unit owner's permissible activity and are nonetheless violated, more expedient methods of enforcement should be given boards to avoid the delay, expense and consequent ill-will associated with litigation.

Although fee title in a unit is a concomitant of condominium ownership, a purchaser shares an undivided interest in the common elements of the project with his co-owners.[6] This cooperative living arrangement necessitates the assumption of responsibilities and duties in the interest of successful operation of the enterprise and social compatibility.[7] Such obligations may be prohibitive — *e.g.*, refraining from objectionable behavior such as late night parties[8] or excessive piano playing,[9] or mandatory — *e.g.*, paying a pro rata share of operational expenses or installing required fixtures.[10]

CONDOMINIUM ADMINISTRATION

The board of managers administers and interprets the bylaws which establish unit owners' responsibilities. The power of the board of managers is initially derived from state condominium enabling acts.[11] These generally require that the administration of condominium projects be governed by bylaws[12] initially promulgated by the original sponsor of the development and approved, supplemented or amended by the body of subsequent unit owners.[13] Common statutory schemes require that bylaws entrust responsibility for administration to a board of managers or other supervisory organization elected by the unit owners and specify the powers and duties of the board.[14] Bylaws constitute the outer limit of a board's authority.

---

6 *See, e.g.*, CONN. GEN. STAT., ch. 825, § 47-68(b) (1972); GA. CODE ANN., ch. 85-16B, § 85-1604b (1970); IND. ANN. STAT. § 32-1-6-5 (1973).

7 *See* Schreiber, *The Lateral Housing Development: Condominium or Home Owners Association?*, 117 U. PENN. L. REV. 1104, 1140 (1969).

8 Baum v. Ryerson Towers, 55 Misc. 2d 1045, 287 N.Y.S.2d 791 (Sup. Ct. Kings County 1968) (mem.) (house rule governing parties in community room held reasonable).

9 *Cf.* Justice Court Mut. Housing Co-op. v. Sandow, 50 Misc. 2d 541, 270 N.Y.S.2d 829 (Sup. Ct. Queens County 1966) (house rule prohibiting playing of music held unreasonable).

10 *Cf.* Linden Hill No. 3 Co-op. Corp. v. Berkman, 61 Misc. 2d 275, 305 N.Y.S.2d 623 (Sup. Ct. Queens County 1969) (upholding co-op requirement that residents replace refrigerators 12-years-old or more).

11 For an exhaustive list of state condominium enabling acts, see 1A ROHAN & RESKIN, App. B-1.

12 *See, e.g.*, CONN. GEN. STAT., ch. 825, § 47-80(a) (1972); FLA. STAT. ANN. § 711.11(1) (1969); KAN. STAT. ANN. § 58-3118 (1964); N.Y. REAL PROP. LAW § 339-u (McKinney 1968).

13 *See* 1 ROHAN & RESKIN § 17.05.

14 Some statutes clearly envision that the association of unit owners incorporate and elect a board of directors. *See, e.g.*, CONN GEN. STAT., ch. 825, § 47-89 (1972); FLA. STAT. ANN. § 711.12(1) (1969); ILL. ANN. STAT. ch. 30, § 318.1 (1969); IND. ANN. STAT. § 32-1-6-8 (1973); S.C. CODE ANN. § 57-502 (Supp. 1973).

Some states also suggest that bylaws contain regulations known as "house rules," which govern residents' use and operation of the property, and that the method for adding, deleting or amending such restrictions be specified therein.[15] Since bylaws must nearly always be recorded, changes in their content will not become effective or enforceable until they too are recorded.[16] Furthermore, as a minimum percentage of unit owners is usually required to modify bylaws,[17] a board may be effectively prohibited from passing rules absent owner consent or participation. Within this statutory and documentary framework, a board of managers' major responsibility is to follow and ensure compliance with its bylaws, thereby serving in a quasi-governmental capacity; when violations of the bylaws occur, the board invokes its police power.

Bylaw violations are generally of two types: 1) failure to pay pro rata assessments for maintenance expenditures, and 2) noncompliance with house rules.[18] The board's police power consists of determining whether a violation has occurred and, if so, taking action to rectify the infraction. When the violation is an owner's failure to pay dollar assessments,[19] the board can either sue on the debt or utilize the more expedient method of imposing a lien against individual units which may be foreclosed in the event of non-payment.[20] However, unless the extent of a violation can be measured in terms of dollars owed to the association of unit owners,[21] the board's[22] sole recourse may be to sue for injunctive relief.[23] In such an equitable action, the defenses of

15 *See, e.g.*, CONN. GEN. STAT., ch. 825, § 47-80(b)(9) (1972); N.Y. REAL PROP. LAW § 339-v-1(h) (McKinney 1968).

16 1 ROHAN & RESKIN § 7.03[1] n.14. *See, e.g.*, IND. ANN. STAT. §§ 32-1-6-3, 32-1-6-25 (1973) (bylaws to be attached to declaration which is recorded); N.Y. REAL PROP. LAW § 339-u (McKinney 1968) (bylaws and amendments recorded with declaration); TENN. CODE ANN. § 64-2707(4) (Supp. 1973) (bylaws recorded with master deed).

17 *See* 1 ROHAN & RESKIN § 7.03[4], at 7-32, 7-33.

18 Lowell, Prahl, Alessio & Cazares, *Land Use and Operational Controls in the Planned Development*, 9 SAN DIEGO L. REV. 28, 60 (1971) [hereinafter cited as *Land Use Controls*].

19 One of the board's duties is to prepare the operating budget for the condominium and assess each unit owner his proportionate share. 1 ROHAN & RESKIN § 17A.02[1][a].

20 *Land Use Controls, supra* note 18, at 60.

21 *Id.* at 61-62.

22 In most jurisdictions, a unit owner also has standing to bring suit in his own name. *See, e.g.*, N.Y. REAL PROP. LAW § 339-j (McKinney 1968); S.C. CODE ANN. § 57-510 (Supp. 1973).

23 For those statutes expressly creating a right to injunctive relief, see 1 ROHAN & RESKIN § 10.02, 10-5 n.8. South Carolina has since added an injunctive remedy for noncompliance. S.C. CODE § 57-510 (Supp. 1973). The Illinois act now allows bylaws to provide management the right of forcible entry and detainer in cases of bylaw infractions. ILL. ANN. STAT., ch. 30, § 309.2 (Supp. 1973). New York, too, provides an additional remedy. N.Y. REAL PROP. LAW § 339-j (McKinney 1968) allows management to require securities in the event of recurrent breaches of bylaws and house rules. *See* text accompanying notes 25-26 *infra*.

waiver and estoppel would be available to the alleged violator.[24]

Two states now provide other enforcement measures. In New York, when a board of managers is faced with recurring abuses of bylaws or house rules, it may demand surety from the misbehaving resident "for his future compliance."[25] Illinois will now allow a board to maintain an action for forcible entry and detainer "for any infraction" if the bylaws so provide.[26] Although the Illinois approach may appear harsh, the requirement that such a provision appear in the bylaws effectively puts purchasers on notice. The New York surety provision, although not required to appear in the bylaws, avoids the harshness of the Illinois result while encouraging compliance via a monetary sanction and avoiding the necessity of litigation. As these remedies have only recently been available, there is little commentary or case law on them. However, judicial attitudes toward the propriety of actions taken by condominium management and the enforceability of these and other bylaws may be gauged by an examination of prior actions for injunctive relief.

ENFORCEMENT OF HOUSE RULES

Courts are generally prone to enforce proper house rules. These regulations must be reasonably related to stated purposes,[27] enacted according to the provisions of bylaws,[28] "consistent with the law,"[29] and not destructive of any vested right.[30]

---

24 *Land Use Controls, supra* note 18, at 59. Courts have rarely sustained these defenses. *But see* note 63 *infra*. *Cf.* Board of Managers v. Gans, 72 Misc. 2d 726, 340 N.Y.S.2d 826 (N.Y.C. Civ. Ct. Queens County 1972) (unit owners who paid assessments for 2 years following unrecorded change in bylaw election procedure estopped from refusing to pay next assessment).

25 N.Y. REAL PROP. LAW § 339-j (McKinney 1968). New York recently rejected a bill which would have required condominium bylaws to provide for arbitration of disputes between a board of managers and the unit owners when 40% of the latter request it. *See* A. 10221, 195th Sess. (1972).

26 ILL. ANN. STAT., ch. 30, § 309.2 (Supp. 1973).

27 *Cf.* Baum v. Ryerson Towers, 55 Misc. 2d 1045, 1047, 287 N.Y.S.2d 791, 794 (Sup. Ct. Kings County 1968) (mem.); Justice Court Mut. Housing Co-op., Inc. v. Sandow, 50 Misc. 2d 541, 544, 270 N.Y.S.2d 829, 832 (Sup. Ct. Queens County 1966); Vernon Manor Co-op Apts. v. Salatino, 15 Misc. 2d 491, 495, 178 N.Y.S.2d 895, 900 (Westchester County Ct. 1958).

28 See KAN. STAT. ANN. § 58-3128 (1964); MINN STAT. ANN. § 515.28(b) (Supp. 1974). *But cf.* Board of Managers of Gen. Apt. Corp. Condominium v. Gans, 72 Misc. 2d 726, 340 N.Y.S.2d 826 (N.Y.C. Civ. Ct. Queens County 1972) (although election procedure not recorded in bylaws, acts of subsequently selected board not invalid).

29 Vernon Manor Co-op Apts. v. Salatino, 15 Misc. 2d 491, 494, 178 N.Y.S.2d 895, 900 (Westchester County Ct. 1958), *citing* N.Y. COOPERATIVE CORPORATIONS LAW § 14(i) (McKinney 1968).

30 *See* Vernon Manor Co-op Apts., Section I v. Salatino, 15 Misc. 2d 491, 495, 178 N.Y.S.2d 895, 900 (Westchester County Ct. 1958) (prior permission to use washing machines

Alterations or Additions by Unit Owners

Rules restricting a unit owner in making alterations or additions ordinarily require him to obtain some form of approval before he begins construction. Depending on where the proposed change is to be made and how substantial it is, bylaws usually mandate approval by either the board of managers or a percentage of unit owners. In condominium complexes, the property to which modifications can be made is classified as one of three possible types, *viz.*, common element, limited common area or individual unit.[31] If a resident wishes to make an alteration or addition within his own unit, approval by the board alone is usually sufficient.[32] If, however, a limited common area or a common element is involved, consent by the affected unit owners, a percentage of the entire association or sometimes even unanimous approval may be required.

When a controversy arises as to a resident's right to make some addition or alteration, three issues are involved: 1) the character of the property affected, 2) the nature of the alteration or addition, and 3) the type of approval necessary and whether it has been obtained. In attempting to resolve these issues, courts generally first examine the condominium enabling statute for relevant provisions. They then consider the declaration and bylaws in light of the statute and attempt to reconcile the three. *Sterling Village Condominium, Inc. v. Breitenbach*[33] followed this approach. The Breitenbachs owned a condominium unit with an attached screened porch to which they had sole access. They decided to replace the screen with glass jalousies and sought permission to do so from the incorporated association of unit owners. Despite denial of their request, they installed the jalousies and the corporation, upon their refusal to re-install the screening, sued.[34]

The Florida District Court of Appeal held for the managing cor-

does not create any vested right in their future use). *See also* Kent v. Quicksilver Mining Co., 78 N.Y. 159, 183 (1879) (corporation bylaws must not disturb vested rights).

31 Most state enabling statutes define the common elements. *See, e.g.*, FLA. STAT. ANN. § 711.06 (1969); N.Y. REAL PROP. LAW § 339-e(3) (McKinney 1968). Limited common elements are usually designated in the condominium documents. *See, e.g.*, FLA. STAT. ANN. § 711.03(11) (1969). KAN. STAT. ANN. § 58-3102(j) (Supp. 1973). The boundaries of the units are also demarcated in these instruments.

32 *See* CAL. CIV. CODE § 1353(d) (West Supp. 1974) (exclusive right to redecorate inner surfaces of units); *accord*, MISS. CODE ANN., ch. 2A, § 896-07(D) (Supp. 1972). *But cf.* FLA. STAT. ANN. § 711.13(3) (1969) (unit owner may not make any changes which would jeopardize building); N.Y. REAL PROP. LAW §·339-k (McKinney 1968) (unanimous approval by owners required to make substantial addition or to put in a cellar). For a definition of "material alteration," see note 39 *infra*.

33 251 So. 2d 685 (Dist. Ct. App. Fla., 4th Dist.), *cert. denied*, 254 So. 2d 789 (Fla. 1971).

34 The incorporated owners association brought suit for mandatory injunction pursuant to the relevant Florida statute. *See* FLA. STAT. ANN. § 711.23 (1969).

poration and ordered the Brietenbachs to either replace the screening or get permission from the unit owners for the jalousies.[35] In its decision, the court found applicable the provision of Florida's enabling act prohibiting "material alteration or substantial addition to the common elements except in a manner provided in the regulations."[36] As the declaration of the condominium expressly designated the porches limited common elements,[37] the court felt that if the change constituted a "substantial alteration"[38] permission from the association would be required. It subsequently found that replacing screening with glass jalousies effectively changed the character of the porches such as to constitute a "substantial" or "material" alteration.[39] Significantly, the court stated that it would strictly construe both the condominium statute and documents to ensure investors "that what the buyer sees, the buyer gets."[40]

The policy of strictly construing bylaws led to a different result in the same Florida court one year later, in *Vinik v. Taylor*.[41] Taylor, an individual unit owner, wanted to enclose the balcony of his unit with stucco archways. Permission was granted from the condominium association's board of directors. An adjoining unit owner, Vinik, objected, claiming that approval of a percentage of the unit owners was necessary since the balconies constituted common elements of the building. Though the court sympathized with the plaintiff, it distinguished *Breitenbach*, noting that Taylor's condominium did not specify in its bylaws that the balconies were either limited common areas[42] or part of the common elements. On the contrary, the court's examination of the condominium instruments showed that the balconies were intended to be part of the units themselves.[43] The bylaws provided that alteration of the units could be undertaken with approval from the board alone. The court, therefore, reluctantly held Taylor to

35 251 So. 2d at 688.

36 *Id.* at 686, *citing* FLA. STAT. ANN. § 711.3 (1969).

37 Despite the fact that porches were designated limited common elements, under another provision of the declaration the unit owners alone were responsible for their maintenance. 251 So. 2d at 686.

38 *Id.* at 688. The court apparently equated "limited common elements" with "common elements," so as to come within the purview of the statute. *Id.* at 687.

39 We hold that as applied to buildings the term 'material alteration or addition' means to palpably or perceptively vary or change the form, shape, elements or specifications of a building from its original design or plan, or existing condition, in such a manner as to appreciably affect or influence its function, use, or appearance.

Id. at 687.

40 *Id.* at 688.

41 270 So. 2d 413 (Dist. Ct. App. Fla., 4th Dist. 1972).

42 *Id.* at 415 n.5.

43 *Id.* at 416.

be within his rights to retain the arches. However, the decision was concluded with a strong admonition to the board for having approved so radical a change in the exterior appearance of the building.[44] The court noted that once such a procedure was sanctioned by the bylaws, neither the court nor other unit owners could substitute their aesthetic judgment for that of the board.

New owners should be wary of bylaws which grant unfettered authority to a board of managers to approve exterior alterations. It is not always clear, however, whether board approval has even been obtained. For example, in the New York case of *Moran v. Berk*,[45] a unit owner cut a gate into his street-level terrace. The issue was whether he had obtained the requisite consent from the board of managers pursuant to the bylaws. The pertinent provision required owners desiring to make any "structural alterations" to serve a 30-day notice upon the board. If, within that period, the board had neither granted nor denied permission, the owner could proceed. In *Moran*, the board issued an approval which was conditioned upon "an attorney's finding and bank's approval."[46] No further statements were made, and the owner went ahead and cut his gate. In the subsequent injunctive action,[47] the court held that the board had given not an unqualified consent but a conditional approval, and since the conditions had not been met, the owner was not free to proceed. He was, therefore, ordered to restore the terrace to its original condition. Hence, New York appears to follow the strict interpretation rules enunciated in *Breitenbach* and *Vinik*, according great weight to actions of the board of managers pursuant to the bylaws.

Certain additions to common elements may require approval by unit owners immediately affected by the change. In *Graff v. Lackaitz*,[48] a New York court granted a unit owner an order directing the removal of a fence erected by his neighbor on common elements. The defendant had previously applied for permission to erect the fence, but approval

---

[44] If succeeding applicants are loosely granted such approval, it could lead to a hodge-podge or bizarre outward appearance, . . . and different architectural treatments given sway. It could very well harm or destroy the symmetry and attractiveness of the building . . . .

Id. at 417.

[45] No. 2470-72 (Sup. Ct. Westchester County, April 20, 1972), *discussed in* 1 CONDOMINIUM REP., Nov. 1973, at 2.

[46] *Id.*

[47] The board had ordered the owner to return the gate to its original condition and imposed a fine for each day's delay in doing so. The owner refused and sued to restrain the board from interfering with the use of his gate. The board, in turn, requested an order enforcing its demand and a judgment for the penalty. In holding for the board, the court nevertheless refused to enforce the penalty.

[48] (Sup. Ct. Nassau County), in 170 N.Y.L.J. 28, Aug. 9, 1973, at 11, col. 3.

had been denied by the board which wanted only ranch-style fences in the area. As the defendant had not only failed to conform the fence to standards but also neglected to obtain permission from adjoining unit owners, the court directed the fence's removal.[49]

Just how far the rule of reason will permit limiting proposed changes on aesthetic or structural grounds, or prohibiting them entirely, is not clear. Even the common requirement that exterior appearances be uniform is subject to criticism when the condominium is a lateral development.[50] Where lateral units are detached, the question assumes more significance. A rule requiring all fences extending along the common elements of a condominium to be of specific style and dimensions has been held reasonable and enforceable.[51] However, what if an owner decided to plant pricker bushes all around his unit or add an apple tree to the front yard?[52] May condominium management go so far as to control the type of planting an owner wishes to do? Certainly, if the complex provides lawn maintenance as part of its services, the tree and bushes might present vexing problems interfering with and threatening the safety of maintenance crews. In that case, a court might uphold such regulation for valid reasons even though the resident technically owns the land. Moreover, even the reason of aesthetic uniformity might pass muster in a court determined to uphold the bylaws and to see that "what the buyer sees, the buyer gets."[53] However, in the absence of such business, safety or reasonable aesthetic justification, condominium management might be hard-pressed to enforce landscaping regulations in the courts.

Use of Appliances

Resolutions controlling the use of appliances in condominium units will be upheld as long as they are not arbitrary and are the result of valid business considerations.[54] Though most litigation in this area

---

[49] The court rejected the defenses of waiver and estoppel on the facts presented. Although the board had previously approved other fences, they had apparently conformed to a specified type. *Id.*

[50] *See* note 44 *supra*. *See also* Sterling Village Condominium, Inc. v. Breitenbach, 251 So. 2d 685, *cert. denied*, 254 So. 2d 789 (Fla. 1971).

[51] Graff v. Lackaitz (Sup. Ct. Nassau County), in 170 N.Y.L.J. 28, Aug. 9, 1973, at 11, col. 3.

[52] Dense planting is a common method of obtaining privacy in thickly settled communities. By the clever use of bushes and trees, it is possible to effectively obliterate any view of or by one's neighbors.

[53] Sterling Village Condominium, Inc. v. Breitenbach, 251 So. 2d 685, 688 (Dist. Ct. App. Fla., 4th Dist.), *cert. denied*, 254 So. 2d 789 (Fla. 1971). "The individual ought not be permitted to disrupt the integrity of the common scheme through his desire for change, however laudable that change might be." *Id.*

[54] *See* Justice Court Mut. Housing Co-op., Inc. v. Sandow, 50 Misc. 2d 541, 545, 270

has concerned restrictions on using washing machines in cooperative apartments, the reasoning of these cases applies equally well to condominium units. Courts have sustained regulations prohibiting the installation of washing machines entirely,[55] except in the rare case where questions of reasonableness, waiver, estoppel or vested rights are presented.[56] Even if washers have already been installed, it is possible for management to prohibit future installations.[57] It has also been held reasonable to impose monthly service charges for the use of washing machines.[58] Moreover, even if machines have previously been in use, no vested right operates to prohibit subsequently imposed service charges.[59]

Pets

Problems of clean-up[60] and exposure to other residents have caused many cooperative housing communities to prohibit pets altogether.[61] Courts generally have adopted a hard-line approach and have upheld a board's power to refuse admittance to dogs as reasonable and enforceable.[62] Though occasionally successful in lower courts, residents who acquire animals knowing of a prohibition against them will usually lose on appeal despite theories of waiver and estoppel,[63]

N.Y.S.2d 829, 832 (Sup. Ct. Queens County 1966) (appliances may affect plumbing, wiring or the building structure). *See also* Hilltop Village Co-op. No. 4, Inc. v. Wolman, 13 Misc. 2d 753, 178 N.Y.S.2d 498 (Sup. Ct. Queens County 1957).

55 Forest Park Co-op. v. Helman, 2 Misc. 2d 183, 152 N.Y.S.2d 685 (Sup. Ct. Queens County 1956).

56 *See, e.g.*, Opoliner v. Joint Queensview Housing Enterprise, Inc., 11 App. Div. 2d 1076, 206 N.Y.S.2d 681 (2d Dep't 1960).

57 *Cf.* Vernon Manor Co-op. Apts. v. Salatino, 15 Misc. 2d 491, 178 N.Y.S.2d 895 (Westchester County Ct. 1958).

58 Garden Hall, Inc. v. Abidor, 18 Misc. 2d 584, 184 N.Y.S.2d 257 (Sup. Ct. Kings County 1959); Hilltop Village Co-op. No. 4, Inc. v. Wolman, 13 Misc. 2d 753, 178 N.Y.S.2d 498 (Sup. Ct. Queens County 1957).

59 Vernon Manor Co-op. Apts. v. Salatino, 15 Misc. 2d 491, 178 N.Y.S.2d 895 (Westchester County Ct. 1958).

60 *See* Justice Court Mut. Housing Co-op. v. Sandow, 50 Misc. 2d 541, 545, 270 N.Y.S.2d 829, 832 (Sup. Ct. Queens County 1966) (pets create problems of sanitation).

61 Dog "amortization" can be an effective and enforceable method of introducing a "no dog" rule into previously uncontrolled areas. Residents who already have pets are permitted to keep them, but when the animal dies they may not replace it. Ideally this results in a slow phase-out of animals in the community. *See* Knolls Co-op. Sec. No. II, Inc. v. Cashman, 14 N.Y.S.2d 579, 198 N.E.2d 255, 248 N.Y.S.2d 875 (1964) (cannot replace dog under "dog amortization" rule; five year delay in bringing action no defense).

62 East Midtown Plaza Housing Co., Inc. v. Halpern, 169 N.Y.L.J. 25, Feb. 5, 1973, at 19, col. 4 (N.Y.C. Civ. Ct. N.Y. County).

63 *See* 930 Fifth Corp. v. King, 64 Misc. 2d 776, 315 N.Y.S.2d 966 (N.Y.C. Civ. Ct. N.Y. County 1970), *aff'd*, 71 Misc. 2d 359, 336 N.Y.S.2d 22 (1st Dep't 1972), *rev'd*, 40 App. Div. 2d 140, 338 N.Y.S.2d 773 (1st Dep't 1972), *appeal dismissed*, 31 N.Y.2d 1046, 294 N.E.2d 856, 342 N.Y.S.2d 71 (1973) (mem.). *But see* Mutual Redevelopment Houses, Inc. v. Hanft, 42 Misc. 2d 1044, 249 N.Y.S.2d 988 (N.Y.C. Civ. Ct. N.Y. County 1964) (waiver defense upheld).

emotional dependence,[64] safety precautions,[65] or love.[66] Furthermore, proprietary leases may constitutionally provide that "no harboring of dogs" clauses are a substantial obligation of the agreement, enforceable by proceedings.[67] As a dog-harboring lessee may thus risk forfeiture if he fails to remove the offending canine, a question arises as to whether a similarly stubborn condominium owner could be removed for such an infraction. In most states, by the nature of his estate, a unit owner cannot be expelled.[68] Enabling statutes, however, could allow bylaws to provide that violations would give rise to a right of reentry and expulsion.[69]

Nuisances

Activities which might prove annoying to fellow residents may be regulated by the board of managers. Such restrictions, however, must also be reasonable, related to stated purposes, and not aimed at a specific resident in the absence of a clear rationale.[70] A board may not prohibit the playing of music or musical instruments altogether, nor may it place unreasonable time limitations on music playing[71] or the use of community party rooms.[72]

If a resident objects to a nuisance and the board of managers fails to act, he may bring an action for declaratory relief against the board to compel its action.[73] In *Baum v. Ryerson Towers*,[74] the unit owner

[64] *See* Hilltop Village Co-op. v. Goldstein, 41 Misc. 2d 402, 244 N.Y.S.2d 454, *rev'd*, 43 Misc. 2d 657, 658, 252 N.Y.S.2d 7, 8 (2d Dep't 1964), *aff'd*, 23 App. Div. 2d 722, 258 N.Y.S.2d 348 (mem.) (2d Dep't 1965) (that dog was acquired to help emotionally disturbed child did not alter the fact that tenant was in violation of lease).

[65] East River Housing Corp. v. Rizzo (Sup. Ct. N.Y. County), in 165 N.Y.L.J. 68, April 9, 1971, at 17, col. 5.

[66] East Midtown Plaza Housing Co., Inc. v. Halpern (N.Y.C. Civ. Ct. N.Y. County), in 169 N.Y.L.J. 25, Feb. 5, 1973, at 19, col. 4 (elderly woman ordered to remove 17-year-old, blind and toothless dog).

[67] 930 Fifth Corp. v. King, 40 App. Div. 2d 140, 338 N.Y.S.2d 773 (1st Dep't 1972), *appeal dismissed*, 31 N.Y.2d 1046, 294 N.E.2d 856, 342 N.Y.S.2d 71 (1973) (mem.).

[68] *Cf.* Susskind v. 1136 Tenants Corp., 43 Misc. 2d 588, 592, 251 N.Y.S.2d 321, 327 (N.Y.C. Civ. Ct. N.Y. County 1964).

[69] *See* text accompanying note 26 *supra* for discussion of the Illinois statute which permits such a bylaw.

[70] *See* Justice Court Mut. Housing Co-op. v. Sandow, 50 Misc. 2d 541, 270 N.Y.S.2d 829 (Sup. Ct. Queens County 1966).

[71] *Id.* at 545. *Cf.* Douglas L. Elliman & Co. v. Karlsen, 59 Misc. 2d 243, 298 N.Y.S.2d 594 (N.Y.C. Civ. Ct. N.Y. County 1969) (objection to drum playing).

[72] Baum v. Ryerson Towers, 55 Misc. 2d 1045, 287 N.Y.S.2d 791 (Sup. Ct. Kings County 1968).

[73] *See* Alpern v. Goldsmith (Sup. Ct. Nassau County), in 166 N.Y.L.J. 86, Nov. 4, 1971, at 18, col. 5, in which the New York Supreme Court held that an action against the board of managers of a condominium could not be brought in the form of an Article 78 proceeding pursuant to N.Y. CIVIL PRAC. § 7801 *et seq.* (McKinney 1968). Such a suit to compel activity by the board would be treated as one for a declaratory judgment.

[74] 55 Misc. 2d 1045, 287 N.Y.S.2d 791 (Sup. Ct. Kings County 1968) (mem.).

complained of late night noisy parties in the community recreation room. He alleged that this was in violation of a house rule setting hours for the room's use, that the board was ignoring the violations, and, alternatively, that the rule itself improperly permitted a nuisance. The court found that the plaintiff had made no showing of "a public disturbance"[75] and that the hours permitted for parties were reasonable.[76] It therefore refused to order the board of managers to act.

A similar action, in which it was alleged that the board of managers was failing to exercise its discretionary power, was equally unsuccessful. In *Alpern v. Goldsmith*[77] the condominium owner complained that 1) the swimming pool deck was being used for eating and parties, 2) that a dog station had been established nearby, and 3) the parking facilities of his building were being interfered with by pool users from other buildings, all with the acquiescence of the board of managers. After examining the bylaws, declaration and house rules in the factual context, the court found it to be within the discretion of the board to regulate the complained of activity. The court was reluctant to interfere with management unless the complained of activity could truly be classified a nuisance. It held that the use of the pool facility was reasonable and that the parking area near plaintiff's unit was intended to accommodate extra cars. Whether the dog station constituted a nuisance was to be considered upon remand for trial.[78]

A more difficult problem is presented when the unit owner himself is the nuisance. What can a board do with a resident who is a perpetual busybody or is noisy, pugnacious, immoral[79] or whose behavior is so eccentric as to border on the criminal? What if the objection is not to the unit owner himself but a member of his family or a distant relative who visits only occasionally?[80] A board of managers beleaguered with complaints has little recourse. Unlike the traditional

---

75 The court treated a house rule regarding use of the community room as akin to a breach of the peace ordinance. To enjoin potential violation of either would require a showing of a "nuisance" or "public disturbance." *Id.* at 1046, 287 N.Y.S.2d at 793.

76 *Id.* at 1047, 287 N.Y.S.2d at 794.

77 (Sup. Ct. Nassau County), in 166 N.Y.L.J. 86, Nov. 4, 1971, at 18, col. 5.

78 Final adjudication of this action has not yet been reported. Dogs, however, have been considered a major irritant and are likely to be held a nuisance by the courts. *See* text accompanying notes 60-69 *supra*.

79 Some states specifically prohibit "immoral" or abnormal behavior in condominiums. *See, e.g.*, NEB. REV. STAT. § 76-804(3) (1971).

80 An analogous situation has arisen with tenants subsidized by the New York City Housing Authority. A longstanding policy of that agency is that if a member of a tenant's family is undesirable, even though no longer residing in the project, there may be grounds for evicting the resident. *See* Plaintiff's Memorandum of Law, Tyson v. New York City Housing Authority, 73 Civ. 859 (S.D.N.Y., filed Feb. 27, 1973).

lease arrangement under which a landlord may attempt to remove a tenant,[81] condominium ownership in most jurisdictions would prohibit summary proceedings for such grievances.[82] However, if the conduct were tantamount to nuisance, or in violation of statutory or reasonable bylaw requirements, injunctive relief would be available.[83] Otherwise, the board is most likely limited to its own internal grievance procedures.[84]

Authority to Spend Money

The power of a board of managers to spend money will be questioned more frequently as problems of obsolescence — particularly with respect to older buildings converted to condominium ownership — and demands for additional amenities arise.[85] Where the statutory or bylaw authority by which a board may install capital improvements or maintain and replace obsolete facilities is unclear, the possibility of litigation from disgruntled unit owners increases. Most enabling laws are silent as to a board's power to make capital expenditures.[86] They usually provide, however, that the right to make alterations or improvements may be contained in the condominium instruments.[87] These documents often set a dollar maximum which the board is permitted to spend either for maintenance or additions, with or without owner approval.[88] Any attempt to minimize or expand the board's spending power would require amendment of the bylaws.[89]

When a board acts pursuant to proper authority, the courts will uphold it, strictly interpreting the power conferred. So long as the

---

81 *Cf.* Rohan, *Property*, 24 Syracuse L. Rev. 411, 414 (1973) and cases cited therein.

82 Susskind v. 1136 Tenants Corp., 43 Misc. 2d 588, 592, 251 N.Y.S.2d 321, 327 (N.Y.C. Civ. Ct. N.Y. County 1964). *But see* text accompanying notes 25 & 26 *supra.*

83 *See* text accompanying notes 23 & 24 *supra.*

84 A board could, for example, request tenants to refrain from their objectionable behavior. For self-help measures applicable to other situations see *Land Use Controls, supra* note 18, at 62.

85 For a discussion of problems encountered by a board of managers in financing major condominium expenditures, see Rohan, *Drafting Condominium Instruments: Provisions for Destruction, Obsolescence and Eminent Domain*, 65 Colum. L. Rev. 593, 604-06 (1965); Note, *The South Dakota Condominium Act: Problems of Termination, Obsolescence, Eminent Domain & Repair*, 15 S.D.L. Rev. 423 (1970).

86 The usual statutory provision allows management to repair and replace property. *See, e.g.*, Fla. Stat. Ann. § 711.12(5) (1969).

87 *See, e.g.*, Ga. Code Ann., ch. 85-16B, § 85-1617(f) (1970); N.Y. Real Prop. Law § 339-v(2)(b) (McKinney 1968).

88 In the Westchester Hills Condominium, the board of managers was authorized to spend up to $5,000 without owner approval. Amoruso v. Board of Managers, 38 App. Div. 2d 845, 330 N.Y.S.2d 107 (2d Dep't 1972) (mem.). A $50,000 ceiling was allowed the board in the St. Tropez Condominium in New York City. Bylaws, St. Tropez Condominium (New York, N.Y., Jan. 14, 1965), *reprinted in* IA Rohan & Reskin app. C-1, at app. 92, 104.

89 *See* text accompanying notes 15-17 *supra.*

expense is reasonable and within the imposed dollar limitation an owner must pay his assessed pro rata share.[90] He may not evade payment of the common charges by abstaining from use of the improvements.[91] In *Amoruso v. Board of Managers*[92] the New York Appellate Division upheld the right of a board to assess all unit owners for a $500 basketball court pursuant to a bylaw permitting it to make expenditures for additions costing up to $5,000 without seeking unit owner approval. Courts seem to uphold any authority granted by the bylaws in this area, and it is doubtful that the "reasonableness" requirement could be invoked to prohibit the expenditure of *any* amount of money pursuant to bylaw authority. The reasonable limitation is probably applicable only to the *type* of expenditure. Since *Amoruso* found a basketball court to be a reasonable expense, the rule of reason thus applied would appear to be quite flexible.

To the extent that expenditures can be considered for repair or replacement, the board's authority is usually not questioned.[93] However, when building code violations, changes in fire and health codes,[94] or the simple desire for better living[95] occasion sizeable expenditures, the authority of the board may not be so clear.

Though the desire for capital improvements will undoubtedly increase as owners become aware of the additional amenities offered by the newest condominiums, no board of managers should have unfettered authority to spend and assess without some degree of unit owner approval. However, even where some owner approval is required, the wishes of the majority may cause undue hardship for the minority. A retired couple living on a fixed income may face economic disaster if burdened unexpectedly by large assessments necessary to finance the swimming pool desired by two-thirds of their co-owners. In view of this possibility, those provisions relating to capital improvements should be carefully scrutinized before buying in.

---

90 Amoruso v. Board of Managers, 38 App. Div. 2d 845, 330 N.Y.S.2d 107 (2d Dep't 1972) (mem.).

91 This is a common statutory prohibition. *See, e.g.*, GA. CODE ANN., ch. 85-16(B), § 85-1619b (1970); KAN. STAT. ANN. § 58-3121 (1964).

92 38 App. Div. 2d 845, 330 N.Y.S.2d 107 (2d Dep't 1972) (mem.).

93 *Cf.* Linden Hill No. 3 Co-op. Corp. v. Berkman, 61 Misc. 2d 275, 305 N.Y.S.2d 623 (Sup. Ct. Queens County 1969) (resolution requiring all co-op tenants to replace refrigerators more than 12 years old upheld).

94 For example, an older building might require new fire escapes, electrical wiring or incinerators.

95 A transformed condominium would probably not be in a position to compete with newer ones without, for example, air conditioning.

Conclusion

Much of the potential friction between condominium management and residents is traceable to the contents of the bylaws themselves. If they are unclear as to the powers conferred upon a board of managers, residents are likely to question board authority to take certain measures. If the bylaws are vague as to what types of activities can and will be regulated, unit owners will be more apt to go to court than to modify their lifestyles. The solution lies in careful draftsmanship, detailing the powers and duties of the managers and attempting to anticipate contingencies. If the bylaws specifically delineate those infractions of rules that might result in injunctive action, or forfeiture of surety or even of ownership, residents and the courts will be put on notice of how substantial the obligations are. Since it is not possible to foresee all the problems that will arise in condominium management, the board, as a quasi-government, needs some flexibility to act, *e.g.*, in the event of emergencies. At the very minimum, however, the bylaws should inform the unit owner of what is contemplated.

Louise Hickok