

COMMUNITY COUNSEL

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RECENT CASES

- ◆ **Condominium rule prohibiting religious services in the common element auditorium was a reasonable rule to prevent possible conflict between competing groups.**
- ◆ **Documents did not permit declaration to be supplemented by a Bylaw amendment.**

THE INFORMATION GIVEN IS SUMMARY IN NATURE, FOR EDUCATIONAL PURPOSES. IT IS NOT INTENDED AS SPECIFIC OR DETAILED LEGAL ADVICE. ALWAYS SEEK INDEPENDENT LEGAL COUNSEL FOR ADVICE ON YOUR UNIQUE SITUATION.

A Handy Guide to the English Language

Many opinion letters that we are called upon to write require us to interpret and explain the meaning of documentary provisions. Sometimes, after we explain our reading, we receive follow-up inquiries in the nature of, "Yes, but what about this other provision?"

The courts, in their ingenuity have created a reasonably standardized set of principles to assist them and us in divining the meaning of the king's English used to draft association documents and other instruments. These principles are called Rules of Construction. They are supposed to assist the courts in reaching the "objective" meaning of the provisions in question, because it is the objective meaning that is important, not the subjective intention of the drafter. For this reason the courts routinely prohibit testimony by the drafter of documents on questions of document meaning.

What follows is a handy clip-and-save paraphrased list of some but not all of the available rules of construction. When wrestling with the meaning of a sticky provision, one that seems inconsistent with another provision, try reading through the list. You may find it surprisingly helpful in resolving perceived ambiguities and making the objective meaning clear.

1. Undefined terms and words are given their ordinary, everyday meaning unless the content or context requires otherwise.
2. Documents are construed as a whole, not

by reading isolated sentences. The context of individual provisions is important. The objective meaning of a provision is determined by reading the documents as a whole: the meaning comes from the four corners of the document.



3. All parts of a document are given equal meaning and interpretations which render words meaningless are avoided.

4. Documents read in such a manner as to reach results that are internally consistent and logical. Separate provisions are interpreted, if possible, avoid conflicts or strained and illogical conclusions.

5. When documents address an issue, they are presumed to address all aspects of an issue, and to the extent that they are silent on some aspect of an issue it is presumed that the silence is intentional.

6. Meaning is derived not only from what is expressly stated but also from what is necessarily implied from the stated provisions.

7. If and when documentary provisions are unclear or ambiguous, they are construed against the party asserting the provision (usually the Association) and in favor of the freest use of property by its owner.

8. More specific provisions govern over more general statements.

Rules of Construction are helpful principles used to interpret documents.

RECENT CASE SUMMARIES

In **Neuman vs. Grandview at Emerald Hills, Inc.**, 28 Fla. L. Weekly D2371 (Fla. 4th DCA October 15, 2003) Unit Owner filed suit against Association seeking injunctive and declaratory relief to determine whether Association's rule banning religious services in the condominium auditorium violated §718.123, Fla. Stat. That section precludes associations from unreasonably restricting unit owners' rights to peaceably assemble. In this case, Association had an auditorium which could be reserved by unit owners for social gatherings and meetings. Unit Owner reserved the auditorium and indicated that the auditorium was being reserved for a party. However, Unit Owner actually conducted religious services. After discovering that the auditorium was being used for religious services, the Board of Directors met to discuss placing restrictions on the use of the auditorium and the common elements for religious activities. After receiving input from the members, the Board of Directors adopted a rule which provided that "no religious services or activities of any kind are allowed in the auditorium or any other common elements." Unit Owner filed suit challenging the legality of this rule and alleged that the rule violated the unit owners' statutory and constitutional rights of "peaceable assembly" and therefore a rule banning religious services was an unreasonable restriction. The trial court held that because no state action was involved, Unit Owners' constitutional rights were not violated. Additionally, the trial court held that the rule was a reasonable exercise of Association's power to adopt rules relating to the use of the auditorium and common elements. The Fourth District Court of Appeal affirmed the trial court. The appellate court noted that the statutory test for rules regarding the operation of the common elements of a condominium is reasonableness. Association's concern for a serious potential for conflict which could arise among competing religious groups was reasonable. Additionally, the right to peaceably assemble has traditionally been interpreted to apply to the right of the citizens to meet to discuss public or governmental affairs. A categorical ban on the right of members to use the auditorium would be contrary to the statute. However, the statute itself permits reasonable regulations. Prohibiting those types of assembly which could have a divisive effect on the condominium community is a reasonable restriction. Where a condominium's regulations regarding common elements are reasonable and do not violate any specific statutory limitations, the regulations should be upheld.

In **Barnett, et al., vs. Destiny Owners Association, Inc.**, 28 Fla. L. Weekly D2392 (Fla. 1st DCA October 17, 2003) Owners brought suit against Association seeking to invalidate an amendment to Association's bylaws which prohibited owners from leasing their houses for a term of less than six months. Association's declaration only required that parcels be used for single family residential use and contained no limitation on the minimum length of any lease. The declaration also contained a provision which states that "*Nothing . . . herein shall be deemed to prevent the Owner from leasing a House, subject to all of the provisions of the Declaration, Articles, and Bylaws.*" The declaration further provided that it could only be amended by a vote of 75% of the owners. Association's Board of Directors amended the **bylaws** of Association to prevent short term rentals by imposing a six month minimum. The trial court held in favor of Association and ruled that the declaration clearly permitted Association to amend the bylaws to restrict the lease terms to the six-month minimum. The First District Court of Appeal reversed the trial court and found the provisions of the declaration were ambiguous because the provisions of the declaration were susceptible of interpretation in opposite ways. As such, the court held that oral evidence should be admitted by at trial to explain the ambiguity.