



MRTA, Emotional Support Animals, and Hard Flooring

by Gary A. Poliakoff, J.D. and Ryan Poliakoff

Dear Poliakoffs,

In response to a reader's question concerning whether the Marketable Record Title Act (MRTA) extinguished Covenants, Conditions, and Restrictions (CC&Rs) older than 30 years, you responded "Yes, indeed, CC&Rs that underlie planned developments are extinguished after 30 years unless steps are taken in accordance with the law to extend the expiring covenants; notwithstanding any automatic extensions contained within the covenants."

I have owned a condominium unit over 32 years. Does the MRTA impact my condominium?

Signed,

P.T.

Dear P.T.,

No. The Marketable Record Title Act (MRTA) does not extinguish covenants that are part of the declaration of condominium because the deeds conveying title to condominium units reference the official records book and page to the recorded covenants. That said, it is possible in some condominiums, where the association holds title to shared property that is not submitted to condominium ownership but is protected by its own CC&Rs, that those covenants would be extinguished if the requirements of MRTA are not met.

Dear Poliakoffs,

In Florida, if a condominium owner is willing to rent to a tenant who has an emotional-support dog, can the association vote to disallow any dogs on the premises that are not owned by unit owners? There are two or three other owners' dogs in the building, and the unit owner who has the tenant is fine with the dog living in his unit, but the board voted not to allow the dog.

I would very much appreciate the answer to this question and a legal reference perhaps.

Signed,

G.B.

Dear G.B.,

There are arbitration decisions from Florida's Division of Land Sales, Condominiums, and Mobile Homes that have upheld condominium rules and regulations disallowing tenants from keeping a pet, even though unit owners are permitted to do so. That said, assuming that leasing is permitted in general, the question of whether a tenant who is handicapped is

allowed to have a service or emotional support animal would, in our opinion, be subject to the Fair Housing Act's requirements that reasonable accommodations be made in rules, policies, practices, and services to afford handicapped individuals full use and enjoyment of the premises. That is, even tenants must be allowed to keep a service animal if that animal falls within the requirements and regulations of the FHA.

Dear Poliakoffs,

My husband and I recently moved to the U.S. We bought a second-floor condominium unit, and we removed the carpets and installed laminate flooring. Being new here in the U.S., we were unaware that this required condominium association approval. We had not realized that our condominium documents contains a clause, which says "unless ... meeting the sound insulation specifications established from time to time by the board, hard and/or heavy surface floor coverings, such as tile, marble, wood, and the like will not be permitted in units...All areas within a unit...are to receive sound absorbent, less dense floor coverings, such as carpeting."

After being made aware of this requirement, we promptly put in an application to the board for approval of our laminate floors, which they turned down. We appealed and told them we were ready to meet their "sound insulation specifications" (which they ultimately have been unable to articulate). They asked for our sound insulation proposal, which we submitted, but after that sent us a lawyer's letter saying that we need to remove the laminates or they will file for a petition for arbitration.

May I ask if it's the duty of the board to establish the sound insulation specifications, based on the clause in our condominium documents? What do you think are our options?

We would really appreciate your advice.

Signed,

K.Y.

Dear K.Y.,

Most condominiums have language in their declaration that requires all wood, tile, and stone flooring surfaces to be installed over specified sound insulation. This requirement is designed to preclude sounds from units that sit on top of one another from causing a nuisance to those below. In your case, as also sometimes happens, the association documents ban all floor coverings other than carpet. Even though your documents state that the board may establish soundproofing specifications, the natural state in your association is to only allow carpeting. While the board cannot arbitrarily deny installation of your hard surfaces if they have allowed other unit owners to install them, they appear to be able to mandate that only carpeting can be used. It's hard to say this definitively without analyzing the entire document, but it seems fairly likely that the board is not doing anything improper. This is why it is absolutely critical before anyone buys a home in a HOA or a condominium to read their documents to see if there is any language that would be objectionable to them as homeowners.

Gary A. Poliakoff and Ryan Poliakoff are co-authors of New Neighborhoods—The Consumer's Guide to Condominium, Co-Op and HOA Living. Gary Poliakoff is a Founding Principal of Becker & Poliakoff, P.A., and Ryan Poliakoff is the Vice President of Management at AKAM On-Site. E-mail questions to condocolumn@becker-poliakoff.com. Please be sure to include your hometown. ■