

An Associations Right of Entry into a Homeowner's Unit

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community association's right of entry into an owner's unit is a necessary power in order to correct violations of covenants and to facilitate the repair and maintenance of the common areas. In the absence of state statutes that mandate such power to the association, it is incumbent on the association, especially associations that govern condominium projects, to have appropriate provisions in its governing documents that authorize the association to enter an owner's lot or unit for specified purposes.

A homeowners association's management personnel (directors and property managers), as well as individual owners, must be familiar with both the applicable state statutes and all provisions contained in the association's governing documents that address the topic of the association's right to enter into units. If there are conflicting provisions, and the language in the state statutes does not defer to the association's governing documents, the association must comply with the provisions contained in the statutes and the conflicting provisions contained in the governing documents should be modified by an appropriate amendment.

Properly drafted language that grants the right of entry into an owner's unit should contain appropriate provisions relative to advance notice that must be provided to the owner before an association representative enters into their unit. The amount of advance notice typically depends upon the reason that access to the unit is necessary. If its for normal maintenance of common area components, a few days to a week prior notice would be reasonable, but if a particular situation (i.e. a broken water pipe) necessitates immediate access to an area that requires entry into an owner's unit, no notice would be reasonable.

The right to enter into an individual's unit to inspect for and correct violations of an association's governing documents is often more problematic than entry to maintain and/or repair common area components, and frequently results in conflicts between the association and the affected unit owner(s). To minimize such conflicts, it is important for the entry rights to be clearly defined in the association's governing documents and uniformly and properly enforced. Absent a clear statement of the rights of entry to inspect for and correct rules violations, an understanding of those rights by both association representatives and unit owners, and the proper exercise of those rights, there can be confusion and resulting risks of liability to the association based on claims by the unit owners resulting from alleged wrongful entry into their unit.

The following are examples of language that might typically be found in an association's governing documents (typically the Declaration or CC&rs) granting the power to the association to enter into an individual owner's unit:

Right of Entry to Perform Association Obligations

The Association or its agents shall have the right to enter any Unit to perform its obligations under this Declaration, including obligations of construction, maintenance, or repair for the benefit of the Common Area or the Owners in common. In the absence of an emergency, entry into the residential portion of a Unit shall be made only after 3 days' advance written notice to the Owner. The right to enter shall be immediate in case of an emergency originating in or threatening the Common Area, Owners, or such Unit, whether or not the Owner is present. Entry shall be made with as little inconvenience as possible to the Owner and any damage caused by such entry, construction, or repair shall be repaired by the Association.

Right of Entry to Cure Violations

The Association, or its agents, shall have the right to enter any Unit after 3 days' advance written notice to the Owner to cure any violation or breach of this Declaration, the Bylaws, or the Association Rules as long as the Association has first complied with the notice and hearing requirements relative to the alleged violation, and the Owner has not acted to cure such violation or breach, except that, in an emergency originating in or threatening the Common Area, the Owners, or such Unit, the right of entry shall be immediate. The Association shall be entitled to recover from such Owner its costs of effecting such cure.

When dealing with an association's right to enter into owners' units, issues frequently arise concerning how the association's personnel are going to access the unit if the association does not have a master key that opens all locked entry doors to the various units. In such situations, the association will generally require unit owners to provide a spare key to management personnel. If a key is not provided and the association needs immediate access to a unit, it may be necessary for the association to utilize a locksmith to provide entry to the unit.

Associations that do not have policies and procedures in effect to address access to the interior of owners' units when the need arises should take appropriate action to adopt such policies and procedures and incorporate them into their governing documents. When adopting policies and procedures that amend existing governing documents, an association should utilize experienced legal counsel in their jurisdiction to ensure that appropriate language is incorporated into the proposed policy and/or procedure, that it

is consistent with all relevant applicable state statutes, and that the proper procedures for the adoption of the policy and/or procedures are followed.