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Pizza person shut out

Question: In our condo, the Board have rules that forbid fast food delivery people from going upstairs to units. Instead, they call from downstairs and tenants must go down to pick up the order. The Board claims this is for reasons of security. Can they do this?

Based on the argument of ensuring security in a building: Does a condominium board have the right to control the private visits of a tenant, whether those visits are for personal or commercial purposes? Does a condominium board have the right to distinguish between personal visits and invited, commercial visits?

Does a condominium board have the right to further distinguish between types of commercial services, allowing some up after being privately buzzed in, and not allowing others up? For example, does the condominium have the right to control a plumber coming up alone, versus a pizza delivery person, versus grocery delivery service, versus morning newspaper delivery?

All of the above visits are private. All of the above visits follow the same procedure: a visitor arrives, calls up and is buzzed in, with the exception of newspaper delivery.

Is the board allowed to actually forbid invited guests from entering the building and going to units?

Answer: For the answer to these questions, Condo Living turned to Bob Aaron, who writes the Title Page column in the New in Homes section of The Saturday Star. Aaron is a Toronto real estate lawyer whose practice includes a significant component of condominium work. Here is his answer:

In preparing the answer to this particularly perplexing pizza puzzle, I exchanged e-mails with the condominium unit owner and asked why pizza delivery people are refused unescorted entry privileges to his Bay-Bloor area condo building. The answer was that sometimes delivery people would drop flyers at other people s doors when delivering pizza. The other reason the board gives for banning fast food deliveries is building security.

I was very tempted to reply that there are two obvious answers: Firstly, the unit owners should elect a new fast-food-friendly board of directors. Either that, or the delivery persons should all wear tags that say Plumber.

Unfortunately, the real answer isn t quite that simple. The guidelines for a board of directors in exercising its powers under the condominium legislation were set out by the Ontario Court of Appeal in a 1997 case involving the Palace Pier condominium on Lakeshore Blvd. W., in Toronto.

The board in that building had passed a rule which stated that pets in the building must not exceed 25 pounds at maturity.

"Portia" was a Wheaten Terrier owned by David and Frances Dvorchik, and "LuLu" was an Afghan who lived in Elizabeth Kaplan's apartment. Both dogs weighed more than 25 pounds. Although mature Wheatens normally weigh under 25 pounds, Portia unfortunately was a bit overweight.

The board applied to court to force the unit owners to comply with the 25-pound dog rule. Essentially, the board wanted the two dogs out of the building.

The dog owners won at the trial court level, but the Court of Appeal in 1997 ruled the dogs had to go.

Under the Condominium Act (both the 1990 and the 1998 Acts) a condominium board may make rules for "the safety, security or welfare of the owners and of the property" or "for the purpose of preventing unreasonable interference with the use and enjoyment of the common elements and of the other units."

The only limitation on the nature of these rules under the Condominium Act is that the rules must be "reasonable" and "consistent" with the legislation.

The three justices of appeal said that the 25-pound dog rule was not an "unreasonable interference with the use and enjoyment of the common elements and of the other units."

Even though the Palace Pier rule may not have been the best rule or the least arbitrary, it wasn t necessarily unreasonable, said the court.

A condo board has to apply the same standards for fast food deliveries. Based on the Dvorchik case, the test for the prohibition of fast food deliveries to unit doors in the Bloor and Yonge-area condo is simply that the rule cannot be unreasonable. If the board was concerned about flyers, smells, security, or spilled food containers, the rule would probably not be overturned in a court. If the rule was arbitrarily made without reasons, or was directed exclusively at one or more owners, it would be discriminatory and might be struck down.

Failing this, it looks like our reader will have to continue to pick up fast food at the front door of the building. Or learn to cook.

Bob Aaron is a leading Toronto real estate lawyer.
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