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## Curbing Violations: Can You Punish All of a Condo/HOA Investor's Multiple Renters?

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An HOA board member who has investors who own more than one property in the community has asked if it's possible to use the group ownership as leverage to enforce rules.

Here's the question: "One of the goals for my community is to have owners of rental homes inspect their properties monthly at a minimum. Our staff invests too much time making sure these companies are in compliance.

"Why not consider all the rentals owned by company X as a group? When one home goes out of compliance, all properties owned by the company are impacted. In our case, we can deny access to our clubhouse facilities. For example, X investor owns 14 properties in our community. Seven are currently out of compliance. Why allow any of their customers access to amenities?"

"We already deactivate fobs when a specific address is out of compliance and the home has gone to the second stage of enforcement. I had our community manager contact the large rental companies and request a list of their rentals in our community. They will provide this information if asked, at least they have in the past."

Would that be a smart way to curb violations or an overreach? Read on.

### This Raises Concerns

We checked in with four of our experts, and three were uncomfortable with this idea. The fourth says the law isn't clear, but this *might* be possible—though it could face a legal challenge.

"In Colorado, it has to be in your governing documents for you to be able to deny access to the common elements," reports Elna Gilbert, a shareholder at Altitude Community Law in Lakewood, Colo., who has specialized in community association law for 23 years. "If it's in your documents, it usually says the condo or HOA can deny those owners the right to vote if they're delinquent or otherwise in violation of their obligations."

But penalizing renters of properties not in violation simply because their owner has another property with renters out of compliance? "No, you can't do that," says Gilbert. "You can cut off access for the owner or resident of the unit that's in violation. But if there's no violation associated with a particular unit, you can't do that."

"You can't do that for anyone who's not doing anything wrong," she adds. "Regardless of who owns the unit, the action has to be associated with a violation for each unit."

That's also the assessment in Florida by Zuly Maribona, LCAM, the Bonita Springs, Fla.-based senior vice president and partner at KW Property Management who oversees the company's southwest Florida, Jacksonville, Orlando, Tampa, and North Carolina operations.

"My immediate reaction would be no," she states. "My understanding is that typically, the renter takes on the rights of the owner when they're renting the unit. So that would be like penalizing one owner for another's violations. Just because one person owns multiple units, it doesn't mean that we get to penalize the other residents associated with that owner."

That's true in California, too. "As an owner who rents their unit, you delegate your right to use the common amenity to your tenants," explains Alex Noland, CCAL, founder of Noland Law PC in San Francisco, which represents 200-plus community associations throughout California. "That landlord has control over their tenant, but the tenant of another unit has no control over someone else. And if your documents say only members can use the amenities, it's really the residents of those units who the condo or HOA would be suspending the rights for."

Noland notes that the practice might also lead to consequences no board means to occur. "This could come up against fair housing law issues and other sorts of issues nobody intended," he says. "A person could own multiple units, and under each ownership, that person could also have separate rights and assessment amounts, so we need to be treating each unit individually."

"I'd focus on separate interest by separate interest," he notes. "If 7 of the 14 units are noncompliant, sure, deactivate the fobs for those in violation. But don't do that for the ones who are compliant."

### **It's Possible, Maybe**

Janet Oulousian Aronson, a partner at Marcus Errico Emmer & Brooks in Braintree, Mass., who is licensed in that state, in addition to Rhode Island and New Hampshire, takes a slightly different approach. "I think it could possibly be done," she says. "I don't think the board could accomplish this by rules. But if the association's governing documents permitted this or were amended by the owners to permit this, it might be possible."

"In our communities in Massachusetts and Rhode Island, to adopt rules, it takes a board vote," she adds. "But to amend the community's underlying documents, it takes a unit owner vote. So, an amendment could be written in a way to say that if a unit owner isn't in good standing, they lose all privileges and their residents lose all privileges."

"That could be challenged in court," says Aronson. "And I don't know of any cases on that issue. Disqualification rules typically apply to a unit owner, and an owner may be able to get around an amendment like that by putting each of their units into a different legal entity. But this might be possible if the owners voted to amend the documents."