

Navigating a Minefield: Renting Out Your Condominium

Article submitted to the Illinois Bar Journal

December 18, 2004

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A recent national survey revealed that condominiums and townhomes are “appreciating in value at more than double the rate of conventional single family resale homes.”¹

“The median price of a resale condominium in the second quarter of . . . (2003) . . . was up 15.1 percent from the same period the year before.”²

The American middle class has now learned what many astute investors have known for years; investing in condominiums is a smart way to make money. This trend has been on an upward climb since condominiums first hit the real estate market back in the ‘70s. However, in the late ‘80s, a parallel trend began that could stop potential investors before they even get started.

A mythology of the “scurrilous tenant” began to develop:

1. The tenants were the cause of all of the problems at the property; and
2. With too many tenants, there would be no lenders who would loan money to potential purchasers.

An urban legend arose that all of these guidelines were created by FNMA (Fannie Mae or Federal National Mortgage Association), which underwrites a substantial amount of the conventional loans. The reality was that FNMA guidelines were voluntary for the overwhelming majority of lenders and VA (Veteran’s Administration) and FHA (Federal Housing Association) did not have any such restrictions.

Additionally, individual investor owners were not the “condominium terrorists” that they often were portrayed. The restrictive guidelines were established because if a large block of investors or a developer owned a large number of units, if they defaulted on the payment of assessments, it could bankrupt an association and harm all of the other owners.

Many condominium owners became concerned with high resident turnover, about living alongside a lower-income renter, or operating under the assumption that non-owner occupants care less about maintaining their units than do owners. In addition, resident owners frequently clashed with investor owners over long-term or aesthetic capital improvements to the common elements. The former may prefer higher quality improvements, while the latter may focus more on their monthly bottom line. As a result, condominium associations by the hundreds began amending their covenants to limit or even prohibit leasing. For the resident owner, the condominium remains a good investment option. However, for the potential investor/landlord owners, there is now the

¹ The Nations Housing, Ken Hourly, Washington Post, August 29, 2003

² The Nations Housing, Ken Hourly, Washington Post, August 29, 2003

risk that no-leasing amendments can be enacted and applied retroactively, forcing the investor/owner to sell. An amendment to restrict leasing can be more than an inconvenience and can result in market losses. For the larger investor, the requirement to sell multiple units can result in unexpectedly large capital gains. By putting a large block of units on the market at the same time as other investors, it could also suppress prices.

Well into the '90s, as mortgage money interest rates began to drop, the push for "renter-free" communities began to accelerate.

As a result, the constitutionality of this type of covenant modification has been challenged repeatedly since the mid-'70s and with rare exception, the right of the condominium owners to modify their governing documents has been consistently upheld. If this recent trend continues, can the condominium continue to remain a good investment? Will the legal challenges to the constitutionality of rental restrictions continue being defeated? And what creative ways have owners tried to get around these restrictions?

Background

The development and proliferation of condominiums began in Florida in the late '60s, so it is logical that the first Appellate Court opinions would emanate from there.

A common misconception began to develop which is still pervasive today; investor owners do not care about the property, nor do renters take care of their homes, whereas, resident owners do. As such, rentals should be prohibited and the Declaration of Condominium should be amended to make the community "resident only."

In one of the first cases to challenge rental restrictions is *Kroop v. Caravelle Condominium, Inc.*³ The Florida Court of Appeals held that such a restriction on ownership was not invalid and "unit owners were on notice that the unique form of ownership they acquired when they purchased their units in the condominium was subject to change through the amendment process and that they would be bound by property adopted amendments." Id @ 309

Thus, an owner relying upon the fact that they could rent out their unit, can have that right extinguished by a subsequent amendment to the condominium association documents, which usually requires the approval of a super majority (2/3, 3/4, etc.) of the owners.

In tandem with the *Kroop* decision, was *Hidden Harbor Estates v. Norman*⁴ where an association declaration was amended to limit the right to lease or rent units to no more than once during an owner's tenure. Id. @ 308. The principal of law applied

³ 323 So.2d 307 Fla. 3d Dist. Ct. of Appeals (1975)

⁴ 309 So.2d 180 Fla. 4th Dist Ct. of Appeals (1975)

here was that such a restriction on ownership was not invalid as a restraint on alienation and not unreasonable. Id.

The *Hidden Harbor* decision did not address the issue of valid leasing amendments as much as the legal precedent that “Inherent in the condominium concept is the principle that to promote the health, happiness and peace of mind of the majority of the unit owners since they are living in such close proximity and using facilities in common, each unit owner must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property. Condominium unit owners comprise a little democratic sub-society of necessity more restrictive as it pertains to use of condominium property than may be existent outside the condominium organization.” Id @ 182

“A democratic sub-society of necessity” sums up the style of living that has resulted in the incorporation of over 34,000 condominium associations in Illinois alone.⁵ (This figure does not even include townhome associations, homeowners’ associations of single-family homes and cooperatives.) It stands to reason that a “sub-society” needs its own set of rules.

The two Florida decisions of the mid-seventies have been followed by other states addressing those types of issues⁶ and arriving at similar conclusions.

In California, one of the earliest decisions was *Ritchey v. Villa Nueva Condominium Association*⁷. The California Appellate Court validated the principle that a properly adopted amendment restricting either occupancy or leasing is binding upon unit owners who purchased their units before the amendment was effective. Id @ 696. Thus, the concept of “vested property rights” was now being modified insofar as to occupancy versus leasing.

Evolution

Once the general principle that the right to lease your condominium could be extinguished, variations then followed. It was now well settled that a condominium association could amend the declaration to eliminate leasing, period. Needless to say, this could be a harsh reality without some exceptions. Condominium boards of directors began to consider less harsher measures for specific situations, for example, allowing a blood relative (parent, child, sibling, et. al.) to occupy a unit as an exception; making exceptions in instances of financial hardship or where a unit owner has been transferred for a job for six months, or health reasons, etc. Associations began considering whether existing investors could be grandfathered indefinitely; whether to grandfather certain existing tenants (particularly handicapped or elderly); whether the right to rent could be retained by owners who had first occupied their units for a specified period of

⁵ Secretary of State, State of Illinois, Feb. 2004

⁶ Also see *Seagate Condominium Association, Inc. v. Duffy*, 330 So.2d 484 (Fla. Dist. Ct. of Appeals, 1976)

⁷ 81 Cal. App.3d 688, 146 Cal. Reporter 696 (1978)

time; and whether a certain percentage of units could be permitted to lease? In many instances, the Association made exceptions to allow itself to rent units which it had acquired through a right of first refusal. These considerations, as well as others, colored the different types of amendments being proffered to the owners.

Illinois Law

In 1995, the Illinois Appellate Court first addressed the issue of leasing restrictions for the first time in *Apple II Condominium Association v. Worth Bank and Trust Co.*⁸ In this seminal case, the Court held such amendments to be presumptively valid and enforceable. In *Apple II*, a condominium association brought an action to enforce an owner occupancy amendment to its declaration of condominium ownership and to recover fines it imposed against one of its members. The Court held that: (1) an Illinois condominium association may prohibit leasing of units by either board action or by a vote of entire association pursuant to the terms of the condominium declaration; (2) when such restriction is passed by association's membership and made part of the condominium declaration, a reviewing court will presume that restriction is valid and uphold it unless it can be shown that it is arbitrary, against public policy or violates some fundamental constitutional legal right of owners; and (3) that the amendment was a valid exercise of the association's power. Emphasis added. Id. @ 469.

In *Apple II*, the owner occupancy amendment was passed and recorded after some members already owned property for rental income purposes. Id. The Court held the amendment was valid despite the fact that there were no restrictions on the property when the condominium units were purchased, or that the units were actually purchased for investment purposes. The Court determined that the Condominium Property Act is designed to encourage associations to be self-governing, and that members are in the best position to make determinations regarding such restrictions. Id. Accordingly, the purpose of the amendment to the Declaration in this case was to prohibit occupancy by individuals with lesser property interests, who might not have as much concern and care for the property as outright Owner occupants. The Court noted that a higher level of deference is required when courts review decisions made by self-governing bodies such as Condominium associations. Id.

An amendment properly adopted in accordance with the declaration's amendment procedure is given a strong presumption of validity.

In *175 East Delaware Condominium Association v. Hinojosa*,⁹ the board was seeking to enforce a valid amendment to restrict dogs which was passed by the proper majority of association members. The amendment, rather than "affecting" the homeowners' interests, already reflected them. The board of directors, as representative of the members of the association, was, in fact, representing the interests of the remaining association member-owners.

⁸ 277 Ill.App.3d 345, 213 Ill.Dec. 463, 659 N.E.2d 93 (1st Dist. 1995)

⁹ 287 Ill.App.3d 886, 679 N.E.2d 407, 223 Ill.Dec. 222 (1997)

What started as a decision that brought Illinois into line with numerous other jurisdictions, significantly expanded the principle of the association's right to amend its documents, by opening the door to include "board adopted" amendments.

In *Apple II* and further substantiated in *Hinojosa*, the Illinois Appellate Court has held that an Illinois condominium association may prohibit leasing of units "by [either] board action" or by a vote of the owners and then expanded this principle in *Hinojosa* by upholding the same principle for prohibiting dogs.

In considering these types of amendments that are a direct attack on what was once considered a vested property right, a condominium board must proceed cautiously. What is required for a board-enacted restriction to be valid? Greater care must be taken because vested property rights can be directly attacked by a super-majority of unit owners.

A rule adopted by the Board requires written notice to all owners and can be adopted at an open board meeting after a meeting of owners,¹⁰ keeping in mind that the rule can be revoked by a subsequent board following the same procedure. Frequent shifts in leasing rules can result in problems for owners and affect unit market prices.

Still, the best way to restrict or eliminate leasing is for the owners to support an amendment to the covenants.

First, an amendment adopted by the owners is a "snapshot" of the will of the membership.

Second, a validly adopted amendment must be recorded (Illinois Condominium Property Act¹¹) and becomes public record.

Third, another valid amendment would then be necessary to overturn or revoke an existing amendment.

Fourth, a rule adopted by the Board required written notice to all owners and can only be adopted at an open board meeting after a meeting of owners (Illinois Condominium Property Act¹²).

Fifth, a rule can be revoked by a subsequent board following the same procedure.

Lastly, a rule must withstand much tougher scrutiny than a validly adopted amendment.

¹⁰ 765 ILCS 605/18.4(h)

¹¹ 765 ILCS 605/17

¹² 765 ILCS 605/18.4(h)

Using the principles of *Apple II* and *Hinojosa*, a rule to limit or restrict leasing rights must meet the following tests:

1. Is in the best interests of the association;
2. Is non-discriminatory;
3. Will be applied in an even-handed, fashion and will not in itself create a hardship;
4. Does not restrict any owner's rights under the First Amendment or any other Constitutional or public policy restriction;
5. Is binding on all present and future owners;
6. Is not antagonistic to the legitimate objectives of the association;
7. Is intended to promote the health, happiness and peace of mind of the owners.

In considering whether to amend the declaration or to adopt board policy on the issue of leasing restrictions, it is beneficial to assess the impact of both. With an amendment to the declaration, there is a presumption that the adopted amendment is valid unless proven otherwise. Whereas, a board adopted policy must meet the aforesaid tests. Therefore, an association is always better off amending the covenants rather than relying upon board adopted policies for such a significant change and then being subjected to a much tougher standard.

In a Wisconsin case on this point, a committee appointed by the board adopted a policy to require that all units purchased after the adoption of the policy were to be owner occupied. An owner defaulted on his mortgage and a sheriff's sale was held in the foreclosure proceedings. The purchaser at the sheriff's sale indicated he would not occupy the unit and the association brought an action to set aside the sale as it violated the by-laws. The Wisconsin Appellate Court held that the association's actions were premature since at the time of the hearing, the failure to occupy had not yet occurred. The transfer of title in and of itself did not violate the owner occupancy restriction. The association's actions also violated Section 703.10(6) of the Wisconsin State Statutes as the association's action would have rendered title to the unit "unmarketable."¹³

Contract Sales

Section 18(b)(11) of the Illinois Condominium Property Act¹⁴ outlines the voting rights of sellers and purchasers involved in an installment contract to purchase the unit. An installment purchase agreement, commonly referred to as "buying on contract," can be a high risk transaction where a seller finances the sale. These types of conveyances appeal to a potential purchaser who has poor credit and cannot obtain a conventional mortgage or does not have sufficient money for a down payment. Typically, the buyer makes a small down payment and pays monthly payments towards the loan. The agreement frequently amortizes the payments on a 30-year schedule, although the full amount is due in a balloon payment after a shorter period, such as five years, with

¹³ Bankers Trust Co., of California, NA v. Gregani, 661NW2d 498 (Wis APP Ct 2003)

¹⁴ 765 ILCS 605/18(b)(11)

provisions allowing for extensions. The seller retains legal title and will convey a deed to the buyer only after payment of the entire purchase price. A default by the purchaser results in loss of all interest in the property and forfeiture of all payments made to date.

The Illinois Condominium Property Act provides that the purchaser shall have the right to vote and attend meetings “unless the seller expressly retains in writing any or all of such rights.” Evidence of the sale “shall” be made available to the board. Although a legitimate method of selling and buying real property, a “contract sale” can also open the door for a violation of association policy if an unscrupulous owner wants to avoid enforcement of a “no leasing” policy through a sham installment purchase contract.

Contract sales can be a valuable tool to sell property, especially in difficult economic times, when a property won’t appraise to value, in distressed neighborhoods or properties, periods of high interest rates, or when selling to reformed buyers with a history of financial or credit problems. Contract sales can clash with no-lease restrictions when it comes time to determine whether the contract purchaser is really an “owner” occupant or whether the contract sale is a sham to get around the no-leasing restriction. There is no clear answer to this question; much depends on the specific facts and the nature of the transaction, the intent of the parties and the association using a due diligence approach.

In a non-published opinion, the First District of the Illinois Appellate Court upheld a decision of the Circuit Court of Cook County when it ruled that identical sales contracts executed by a defendant involving three condominium units were voidable as they were in actuality leases.¹⁵ A then-adopted amendment to the declaration to restrict the leasing of units was valid and enforceable and that the defendant’s installment agreements were void, there being no transfer of ownership by the defendant to the occupants and thus the agreements violated the declaration.

In each instance, the defendant (contract seller) entered into articles of agreement with the occupants with identical nominal down payments equal to a typical security deposit amount. The defendant advertised his units as a “lease with an option to buy.” The monthly “installments” approximated the former rent payments the same occupants had paid while they had been tenants. Typically, articles of agreement provide for a short term of installment payments with a balloon payment after a few years. In these agreements, it was a five-year term with automatic five-year renewal periods for 30 years.

In most instances, the doctrine of equitable conversion will apply to give the contract purchaser some measure of equitable interest in the property above and beyond a mere possessory interest inherent in a leasehold.¹⁶

In the *Shah* case, no deed was drawn up, no title commitment was ever ordered, the articles of agreement were not recorded to reflect the purchasers’ interests, no liens

¹⁵ *Greenwood Park et. al. vs. Shah, et. al.*, #01-01-2993 Ill. App. 1st Dist. 2003 (non-published)

¹⁶ *Ruva v. Mentis*, 143 Ill.2d 257, 157 Ill.Dec. 424, 572 N.E.2d 888 (1991)

could be placed on the property, it could not be assigned or transferred without the defendant's consent and the defendant retained the right of eviction (through forcible entry and detainer¹⁷) for a default on payments instead of enforcement under the Illinois Mortgage Foreclosure Act¹⁸ which is the applicable statute for contract sales.

Further, the contract seller retained the existing mortgage and maintained the right to place additional mortgages on the property. The seller paid all insurance, real estate taxes and assessments owed to the association in order to sustain his income tax deductions.

Another factor in determining whether a contract purchase is an arms-length transaction is who will be paying the association assessments and property taxes on the unit. In most instances, the seller retains that right, for fear that a default by the purchaser could cause him to lose the property or incur penalties. In the *Shah* case, the seller paid all insurance, real estate taxes and assessments owed to the association in order to retain his income tax deductions.

Based on the facts of the case, the court held that a then-adopted amendment to the declaration to restrict the occupancy of units to "owners only" was valid and enforceable, that the defendant's installment agreements were void, that there was no transfer of ownership by the defendant to the occupants and thus the agreements violated the declaration.

The contract purchasers did not have claims to any equitable title or interest. No other indicia of ownership was present in any transaction. The installment purchase contracts expressly provided that "no right, title or interest, legal or equitable in the premises shall vest in buyer until the deed as herein provided shall be delivered to the buyer." This provision prevented the doctrine of equitable conversion from applying to give the contract purchasers even equitable title.¹⁹

The Installment Contracts Were Deemed Voidable

Under the Illinois Dwelling Unit Installment Contract Act, Section 2 provides that "any installment contract for the sale of a dwelling structure shall be voidable at the election of the buyer unless there is attached to the contract or incorporated therein a certificate of compliance, or in the absence of such certificate (i) an express written warranty that no notice from any city, village or other governmental authority of a dwelling Code violation which existed in the dwelling structure before the installment contract was executed had been received by the contract seller, his principal or his agent within 10 years of the date of execution of the installment contract, or, (ii) if any such notice of violation had been received, a list of all such notices so received with a detailed statement of all violations referred to in such notice. The requirements of this

¹⁷ 735 ILCS 5/9-101, et. seq.

¹⁸ 735 ILCS 5/15, et. seq.

¹⁹ *Ruva v. Mente*, 143 Ill.2d 257, 157 Ill.Dec. 424, 572 N.E.2d 888 (1991)

section cannot be waived by the buyer or seller.”²⁰ Many sellers who enter into installment sales are ignorant of the requirement that they provide a buyer with a certificate of compliance.

In the *Ruva* case, the defendant admitted that he did not provide the contract purchasers with a certificate of compliance nor was one attached to the articles of agreement. As such, the installment contracts were voidable by the contract purchasers. The trial court granted summary judgment to the plaintiff on three other units owned by the defendant on this very basis: occupancy by individuals unrelated to the defendant pursuant to voided installment contracts violated an amendment to the declaration. Id. at 262.

Likewise, the same rationale applies even more forcefully where the installment purchase contracts are voidable. In that case, the court held that a voidable contract that will remain executory for anywhere from 5 to 30 years does not sufficiently transfer legal or equitable ownership of the subject properties to render the contract purchasers "owners" under the declaration. The purchasers' legal interests are not vested, and they do not bring the kind of stability and interest in the subject properties as was contemplated by the association when it amended the declaration to limit occupancy of the units to owners.

In the *Shah* case, the Illinois Appellate Court affirmed a sizeable award of attorneys fees as a result of the defendant's conduct. Where attorneys' fees are allowed by contract and/or statute; the court may award those fees and costs which are reasonable. In this case, attorneys' fees and costs were recoverable under both statute and contract.

A section of the association's declaration provided that the association that the association may assess fines for violation of the provisions of the declaration; and may maintain an action for possession against the owner and/or their tenant, injunctive or equitable relief and an action at law for damages. A separate section specifically provided that **"any action brought on behalf of the Association and/or the Board of Directors to enforce this Amendment shall subject the Owner to the payment of all costs and attorneys' fees at the time they are incurred by the Association."** In addition, another section provided for the assessment of late fees and interest on unpaid balances, which shall be deemed a lien against the unit.

Further, Section 9.2(b) of the Condominium Property Act provides "Any attorney's fees incurred by the association arising out of a default by any unit owner, his tenant, invitee or guest in performance of any of the provisions of the condominium instruments, rules and regulations, or any applicable statute or ordinance, shall be added to, and deemed a part of, his respective share of the common expense."²¹

²⁰ 765 ILCS 75/2

²¹ 765 ILCS 605/9.2(b)

In *Kaiser v. MEPC American Properties, Inc.*²², the court listed factors to be considered in the award of reasonable attorneys' fees and costs: (1) the skill and standing of the attorneys; (2) the nature of the case; (3) the novelty and/or difficulty of the issues and work involved; (4) the importance of the matter; (5) the degree of responsibility required; (6) the usual and customary charges for comparable services; (7) the benefit to the client; and (8) whether there is a reasonable connection between the fees and the amount involved. Id. at 984. Id. at 428.

In applying these factors, the Appellate Court found the work done, the hours billed and the billing rate reasonable, especially in light of the number of motions, changes in defense counsel and numerous continuances by defendant. Accordingly, the decision awarding plaintiff's fee petition was affirmed as being within the sound discretion of the trial court.

Defining Owners

Leasing restrictions must be read together with covenants and declarations that define ownership. Most sets of covenants and declarations of condominium ownership contains an explicit definition for an "owner" or "member." Typically it will read something in the nature of "a person whose estates or interest individually or collectively aggregate fee simple absolute unit ownership of a unit." The typical owner holds title in fee simple or in an Illinois land trust or living trust and is the individual beneficiary or with a spouse.

Hypothetically, what happens when a unit owner conveys a nominal interest (i.e., 1%) to a tenant in order to get around the restrictions of an owner-occupant only policy? Without specific guidelines or further restrictions, or possibly an additional amendment to the declaration which defines an owner's interest, the association will have to accept a nominal owner as an "owner" for the purpose of occupancy.

If there is a lease between the majority owner and the minority owner, the lease would likely be prima facie evidence of a sham transaction.

Commonly, declarations contain provisions outlining voting rights such as only one person with respect to each unit ownership shall be entitled to vote, most often this is found in husband and wife scenarios. However, beneficiaries could still hold the right to vote by agreement of the parties. In this situation, the board of directors would be required to exercise due diligence to go inside the four corners of a trust agreement to verify whether there is a legitimate relationship or merely a cover for a lease.

Leasing Restriction Exceptions

When is a lease an arms-length transaction? Does a child occupying their parent's condominium constitute a landlord/tenant relationship?

²² 164 Ill.App.3d 978, 984, 518 N.E.2d 424, 427 (1st Dist. 1987)

To address this scenario, many associations include a “blood relative exemption” to a leasing restriction amendment to the declaration so that blood relatives are not considered lessees. Typically, this exemption includes parents, children and siblings. However, it could be crafted broadly so as to exempt “next of kin” which is defined as blood relatives or a definite class of blood relatives or kinsman in existence at the time of the death of a deceased who would take his personal property in case he died.²³

What about a hardship situation? A financial crisis, a job change or health issues can sometimes force a unit owner into a position of needing to rent their unit to a third party for a limited period of time before retaking possession or selling it. Can a board of directors grant an exception to one unit owner over others?

Though never tested in a court of controlling jurisdiction, an amendment which includes a hardship provision for a limited period of time should pass court scrutiny so long as the exception is applied uniformly and fairly. It would appear that was one of the tenets of the *Apple II* case.

However, the Florida Appellate Court has upheld an amendment that provided for an exception to a leasing restriction under special circumstances of hardship. In *Seagate*, the court held that “The association’s leasing restriction was not unreasonable and reasoned that the restriction was not unlimited in several respects: it prohibited only a specific form of alienation, i.e., leasing under general circumstances, but not limited in specified circumstances, such as to avoid undue hardship or practical difficulties for a limited time.”²⁴ Id. at 486-87.

Lastly, can some owners continue to lease while others are not permitted to do so, such as grandfathering existing investor owned units for rental while prohibiting new owners? Likewise, can tenants be grandfathered? What about requiring an owner to first occupy a unit for a specified period of time before allowing him/her to rent the unit? What about a quota, for example, designating a specific percentage of units as permitting leases and once that percentage is attained, then any other owner would have to be put on a waiting list to obtain the ability to lease their unit?

What about requiring an owner to occupy his unit as a resident for at least one year prior to being allowed to rent in order to discourage the pure investor from buying units? These and other variations have yet to be tested.

Conclusion

In a real estate market place consisting of sparse housing and limited rental properties, these types of restrictive policies could come under attack as many former rental communities convert to condominium living and minimize the vast numbers of

²³ *Rodgers v. Consolidated RR Corp.*, 136 Ill.App.3d 191, 195, 482 N.E.2d 1080, 1084, 1985

²⁴ *Seagate Condominium Association, Inc. v. Duffy*, 330 So.2d 484 (Fla. Dist. Ct. App. 1976)

rental properties available.²⁵ Lack of affordable housing is reaching a “crisis” level in some parts of the country. Conversely, in times of low mortgage rates and an active real estate buyers market, there is a tendency for some potential tenants to become owners because of the availability of inexpensive ownership opportunities. During the latter period, it appears there is less likelihood of a legal challenge to a restrictive rental policy in a condominium association than when there is during a housing crunch.

Ultimately, the needs of the market place may dictate the continuing efficacy of such policies and amendments of leasing restrictions. Alternatively, it may legitimize the argument against “restraint on alienation.” Only time and economics will determine the final outcome.

²⁵ In a specially concurring opinion, Justice Quince of the Florida Appellate Court reasoned “...the...legislative [should] seriously consider placing restrictions on present and/or future condominium unit owner’s ability to alter rights of existing unit owners...the restriction deprived these owners of a valuable right that existed at the time of purchase.” *465 Woodside Village Condominium Association v. Johnson*, 806 So.2d 452, (Fla. Dist. Ct. App. 1976).