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COVID-19 has brought the issue of rules to the forefront

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COVID-19 has brought the issue of rules to the forefront. The Foundation for Community Association Research in their 2019-2020 U.S. National and State Statistical review published by CAI estimates that there are more than 21,000 associations in New England, and as the 2020 CAI New England Chapter president I have witnessed first-hand the impact of the pandemic on common interest communities and residents. Condominium owners are all too familiar with rules and perhaps better prepared to deal with the COVID-19 rules than those of us who do not live in condominiums since we are not used to being inundated with rules.

With a focus on “condominium rules,” I thought I would go back to basics and cite to a case decided by the Massachusetts Appeals Court in 1993, called *Noble v. Murphy*. This case involved a pet restriction. While the case is nearly 30 years old, it captures the essence of condominium living and rule-making, which I think can be further extrapolated into COVID-19 living and rule-making.

The Court in *Noble* first described the legal nature and shared benefits of condominium living by stating that:

Ownership of a condominium unit is a hybrid form of interest in real estate, entitling the owner to both “exclusive ownership and possession of his unit, and . . . an undivided interest [as tenant in common together with all the other unit owners] in the common areas” It affords an opportunity to combine the legal benefits of fee simple ownership with the economic advantages of joint acquisition and operation of various amenities including recreational facilities, contracted caretaking, and security safeguards.

Then of course the *Noble* Court hit on the burdens as follows:

Central to the concept of condominium ownership is the principle that each owner, in exchange for the benefits of association with other owners, “must give up a certain degree of freedom of choice which he might otherwise enjoy in separate, privately owned property.”

The *Noble* Court went on to conclude that condominium rules are cloaked with a strong presumption of validity unless they abrogate some fundamental constitutional right or violate public policy. The court further noted that said rules or restrictions must be reasonable and should be evenly enforced.

The pandemic has forced us to get back to basics. Whether its COVID-19 rules or regular condominium rules, I think a 30 year old legal case stands the test of time and provides a road map

for the validity and examination of the same. Whether you are a condominium lawyer, manager, board member or trustee, I encourage you to read Noble v. Murphy. It may be old, but it is short, to the point and wise beyond its years and serves as the perfect reminder of the nature of condominium living, even in the midst of a global pandemic.

And as communities navigate each new and unprecedented challenge they have confronted over these past 8 months and stand ready in anticipation of those that will present themselves in the coming weeks, CAI and the New England Chapter will continue to deliver timely resources in aiding condominium boards, managers and industry business partners. And while we are unable to meet in person, the chapter has presented dozens of live webinars and hosted countless virtual meetings of members since March with dozens more scheduled thru the fall and winter months.

For an update on chapter webinars, meetings and resources visit www.caine.org.

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