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## COMING TOGETHER

FALLAN PATTERSON [FMPATTERSON@TRIBUNE.COM](mailto:FMPATTERSON@TRIBUNE.COM)

# HOA boards answer cash shortfalls with rules

With nearly 20 percent of the 218 houses in the Springs at Boynton Community Association currently delinquent or in foreclosure, board members are weighing measures to make up for a cash shortfall and asking whether changing the governing documents may help.

"It's amazing how people who aren't paying are driving new cars and can't park in their garage because they have so much stuff," Springs treasurer Susan Vielhauer said.

Some associations have considered amending documents that would allow ca-

ble service to be disconnected from the delinquent homes until all fees are paid. The Springs governing documents state that delinquent homeowners can be banned from common elements. But banning owners from the pool or clubhouse can be difficult and costly.

"We're trying to look for alternatives to motivate people to pay," Vielhauer said.

Using updated amendments to motivate nonpaying unit owners and homeowners has become a hot topic among South Florida associations. Bill Raphan,

assistant condo ombudsman, said questions regarding amendments are among the most frequent that the satellite office in Fort Lauderdale is called on to answer.

Attorney Robert Kaye of Kaye & Bender in Fort Lauderdale said his law firm amends approximately seven documents a month from the more than 700 communities the firm represents.

"A lot of boards like to do the amendments with the yearly elections," Kaye said.

The first step in amending governing documents is to determine whether the clause needs to be amended

at all. An amendment should be drafted with the condo's attorney because of the technicality of the language.

"It's a double-edged sword, because if the amendment is too technical, the owners will vote no," Kaye said. "When we draft amendments, we try to use the original language as much as possible and change it as little as possible, but there are times when you have to scrap everything and write all-new provisions."

Kaye said one of the most sought-after amendments has to do with associations

charging lawsuit fees against the suing unit as a special assessment rather than having the entire association pay.

Once an amendment has been drafted, board members must gain support and get it passed by a vote. Some governing documents ask for the majority and others call for a "super-majority," or 75 percent or more, said attorney Kyle Hooper of Atkinson, Diner, Stone, Mankuta & Ploucha. Votes can be done at a meeting, if a minimum of 14 days notice is given. If the required number of votes is not acquired, board mem-

bers have 90 days from the date of the meeting to get a consensus.

Once an amendment passes, it goes into effect as soon as it has been recorded by the Public Records Office. Hooper, who also represents the Springs at Boynton Community Association, said many associations are digging deeper into governing documents in search of ways to make delinquent owners pay.

"Boards are looking to make nonpaying owners as miserable as possible," he said. "People are looking for any way they can to shore up collections."