



## Condominium Law Q&A

FEBRUARY 13, 2006

**Gary A. Poliakoff, JD**

gpoliakoff@becker-poliakoff.com

TEL: 954.987.7550

FAX: 239.433.5933

**Question** – As a member of a housing association, I have a question concerning payment to board members. Several years ago, the membership voted to pay the Maintenance Director \$100.00 per month. Then it was decided that the other board members should also be paid. The board serves one year terms and, for the most part, have just been rotating the board positions. Method of payment to the board has been made by waiving their maintenance fees. There are now five board members who do not pay fees, so the fees for the rest of us are being increased to cover this expense. Is it legal to pay board members by waiving their fees? I believe they should be paid by check so that they would report this as income. We live in a PUD, own our homes individually. What is the Florida Homeowners Association Statute relating to this matter? R.W., Indian Harbour Beach

**Answer** – Although the Condominium Act addresses the question of compensation of both officers and directors, providing that unless otherwise provided in the By-Laws, the officers and directors serve without compensation, the Homeowners Association Act is silent on the subject. Accordingly, one would need to look at the Covenants, Conditions and Restrictions and the Association's documents to ascertain the authority, if any, for compensation of a director(s). Even assuming that there is no prohibition against compensating the officers and directors of your association, the correct way to deal with the issue is not by giving them a credit against their unit's assessments for common expenses. Every member

should pay their assessments. Any authorized payment for services should be reflected in a check payable to the director, withholding appropriate taxes and social security obligations. The association shall file a W-2 form at year's end, and the members should report the earnings as income to the IRS. The association's failure to treat payment of the board in the manner described could subject the association to penalties for failure to report their earnings and withhold appropriate taxes.

**Question** – I live on the bottom floor of a two story condominium. My problem is that the hot water heater in the unit above mine broke, causing water to flood into my unit. I notified my insurance company which contacted the upstairs neighbor's insurance company. I was told that his insurance company denied coverage for the damage to my unit, leaving me to cover the cost of repairs. Is the upstairs neighbor liable for the damage to my unit? E.S., Melbourne

**Answer** – Stopped up air conditioner drainage, overflowing toilets and bathtubs, broken hot water heaters, along with roof leaks and broken water pipes all result in one of the most constant source of problems for condominium owners. Each results in the same question being asked, "who is responsible for the damage and the cost of repairs?" And, unfortunately, the answer is as varied as are the sources of water leaks. If the cause of the damage can be proven to have been caused by the negligence of another, be it the Association or a unit owner, then under the theory of

a tort having been committed, you would be entitled to recover for your loss. The primary problem is that the cost of attorney's fees to litigate the case would more than likely far exceed your damages, and those fees are not recoverable. Even assuming you get a judgment, you then have to collect it. Thus, in most cases of injury to property or person, one files a claim with his insurance company. More problems. In a condominium, the law delineates duties to insure the improvements between the association and the unit owners, regardless of the obligation of maintenance. The primary burden is placed on the association to cover the structural improvements, leaving the interior finishes to the unit owner. Thus, if the water from the broken hot water heater damaged the sheet rock, the association's carrier would be responsible for the cost of repairs. And, if your wall coverings and carpet were damaged, your insurance would cover the loss; that is,

assuming the loss exceeds both the association's and your deductibles. When the association's insurance proceeds are inadequate due to the deductible or lack of insurance, depending upon who you ask, the cost of repairs is borne by either the unit owner or the association. Florida's Division of Florida Land Sales, Condominiums and Mobile Homes takes the position that if the association has the duty to insure a component of the condominium against a casualty loss, then the association is liable for the cost of repair, even if not covered by insurance. Many legal experts argue that the condominium documents control, which documents often state that when the insurance proceeds are inadequate, the unit owner suffering the loss pays. Thoroughly confused? I don't blame you, we all are. Hopefully, the courts will sort this all out in the near term, and in the future, I will be able to respond "yes" or "no." ■

---

*Gary A. Poliakoff is a founding principal of [Becker & Poliakoff, P.A.](#) and has served as its President since the inception of the Firm. He is on the Board of Governors of the Shepard Broad Law Center of Nova Southeastern University where he is an Adjunct Professor, teaching Condominium Law and Practice.*

*Mr. Poliakoff is co-author of [Florida Condominium Law and Practice](#), [The Florida Bar Continuing Legal Education](#), 1982, and author of a national treatise, [The Law of Condominium Operations](#), West Group, 1988. Mr. Poliakoff can be contacted by emailing [gpoliakoff@becker-poliakoff.com](mailto:gpoliakoff@becker-poliakoff.com).*