



## Condominium Law Q&A

JUNE 27, 2006

### Gary A. Poliakoff, JD

gpoliakoff@becker-poliakoff.com

TEL: 954.987.7550

FAX: 239.433.5933

**Question** – My condominium has 48 parking spaces, all under the building. However, 36 of the parking spaces are at the rear of the building and 12 at the side of the building. Although the parking spaces themselves are defined as being limited common elements, the garage doors are common elements. When the garage doors at the rear of the building need painting, the cost of same is paid for from the general revenues, however, when the side facing garage doors require painting, the unit owners having exclusive use of the parking space are charged for the painting. The net effect is that 12 of the unit owners pay a pro rata share of the painting of 36 garage doors, and 100% of the cost of painting of their doors. This doesn't seem right, is it? A.B., Indian Harbor Beach

**Answer** – While there often is no rhyme or reason as to why a developer, when drafting the condominium documents, defines the maintenance responsibility of some portions of a unit, the common elements, or limited common elements, as being the sole responsibility of one or all unit owners, it is totally within the discretion of the drafter of the documents. In addition, once it is established, it cannot be changed without 100% approval of all unit owners and all lien holders of record. That said, I would be surprised if your condominium documents provide that the maintenance of 36 garage doors is a common expense, while 12 are the responsibility of the unit owners having exclusive use rights to the parking spaces. Without reading the actual condominium

documents, it's impossible to verify if what you say is so. I would recommend you take a copy of the recorded documents to an experienced community association attorney for verification.

**Question** – Our association is in the midst of a heated debate regarding fees that are currently charged for boaters using our dock space. Originally the rate for slips rented was \$10.00 per month. Our first dock was destroyed by a hurricane in 1999 and, when the new dock was completed, the fee was raised to \$1.50 per foot. Since we are in serious need of more income and our reserves need to be built up, someone has suggested raising the rental fee. The board, understandably, is very much against this proposal, since two of our five board members are using the dock. They tell us that raising the rental fees would require 100 percent approval of all unit owners. They further say that, if this issue is pursued, they can legally refuse to pay any rent at all, since the docks are considered common elements and thus should be free for all. It is our understanding from our declaration that it would require a 51 per cent approval. In view of the fact that the rates were increased previously with no vote at all, who is correct? J.A., Cocoa

**Answer** – I do not know what the prevailing rental rate for boat slips is in Cocoa, Florida, but this I do know, the association, acting through the board has the statutory right to rent those portions of the common elements which are being used exclusively by a unit owner(s). And, the rate charge should be

---

market competitive. Furthermore, the member(s) of the board who personally benefit from use of a boat slip should abstain from voting on the question of “how much.” Those members of the board who threaten to pay nothing if the issue is pursued should be invited to find alternative dockage and rent their slips to other owners who recognize the benefit they are receiving and willing to pay for it. As an aside, if it isn’t already being done, there should be a “Boat Slip Rental Agreement,” specifying responsibility for payment of electricity and water, and repairs caused by the negligence of the unit owner with exclusive use right of the slips. ■

---

*Gary A. Pdiakoff is a founding principal of [Becker & Pdiakoff, 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. Pdiakoff 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. Pdiakoff can be contacted by emailing [gpdiakoff@becker-pdiakoff.com](mailto:gpdiakoff@becker-pdiakoff.com)*