



Condominium Law Q&A

JUNE 30, 2006

Gary A. Poliakoff, JD

gpoliakoff@becker-poliakoff.com

TEL: 954.987.7550

FAX: 239.433.5933

Question – We are owners of condominiums in Park Square at Stuart Florida. Each year, the association shows two budgets, one with fully funded reserves and one with partially funded reserves. This year, the board has elected to present only one budget with fully funded reserves. Now, they advised us that, unlike in the past, a unit owner vote will not be needed at the budget meeting, as voting to waive fully funded reserves is not necessary. Do you think that this action is correct without the unit owners having the right to vote, or is there another way to have an agreement with the owners. Will you please let me know what action we can take to get agreement with this budget problem? T.G., Stuart

Answer – The condominium board, in promulgating the annual budget, is not given the option of presenting alternatives in so far as whether statutory reserves are fully or partially funded. The budget which the board MUST approve, is one which includes reserves for capital expenditures and deferred maintenance covering roof replacement, building painting, and pavement resurfacing, regardless of their cost, and any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000. Subsequent to the adoption of the budget with fully funded statutory reserves, the members, by a majority vote, may vote annually to waive the reserves or to reduce the reserves. The board is not obligated to present the question to the members and, if board elects not to do so, then the burden is on the unit owners to petition for the call of a special meeting to consider the question. Given

the shortfall in association reserves during the recent onslaught of hurricanes, more and more association's are foregoing the option of waiving reserves and are in fact increasing same.

Question – I am in desperate need of some legal advice on how I can get my condo association to evict a person who is living in their mother's condo. I have written several letters to the board of directors since she moved here in September of last year. They continue to make excuses and really seem unconcerned about the safety of the other residents. I happen to share a bedroom wall with her. Since September, there has been extremely loud music playing from 11PM-5AM. The headboard has been known to bang on the wall we share for hours at a time. The situation is escalating to a more violent nature. A couple of weeks ago, there was so much banging (not a headboard) that the vibrations were rattling the glasses in my kitchen cabinets. This lasted for a couple of hours. I called over there and the guy who answered the phone said she was mad at her boyfriend and was kicking the walls. It stopped for a couple of hours and then picked back up, again. This past weekend it was so bad we called the police, which we should have done a long time ago. The police said the place was trashed and looked like a bomb had gone off in it. They also said it was a very bad situation and encouraged us to get her out of here. They highly suspected some illegal drug use, as well. I live in a very nice condo on the Intercoastal River. It is a real shame we cannot get

people who do not belong here out of here. A 97-year old who lives on the other side of this person has also complained to the board of directors about the disturbances. The board is telling me they do not have any legal grounds to evict her. They are also concerned about a lawsuit, since this is a family member. I would really appreciate any legal advice you can offer. P.B., Daytona Beach

Answer – Every unit owner is entitled to the peaceful use and possession of his or her unit, free from intrusive interference from others. The conduct you have described constitutes an actionable nuisance, and if the board lacks the backbone to do what it should – bring a legal action to enjoin the conduct and if necessary evict the tenant/guest creating the disturbance, then you can do so yourself. ■

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