



Condominium Law Q&A

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Question – I’m a condominium owner in Vero Beach, Florida. We were hit with a hefty assessment to cover our insurance deductible and other hurricane-related expenses. The condominiums are valued at \$15 million, excluding the land. We had \$5 million in damages. The assessment was based on 3% of the \$15 million, not 3% of actual damage. The insurance company is paying for damage based on the maximum aggregate deductible of each unit. Some units have damage, some minor, some none. Example: if a unit’s deductible is \$8,000.00 and that unit had \$2,000.00 in damage, the insurance company pays nothing. My question is, can the insurance company have it both ways, 3% deductible of total property value and using the maximum aggregate deductible of each unit to base their payment? R.B., Vero Beach

Answer – The question asked can only be best answered by reading the policy language in the deductible section. It should say how it is to be applied. The declaration page of the policy should also have an entry noted for the deductible. Based upon the information provided, it appears the insurance company is using what’s known as the T.I.V. (Total Insured Value) method of calculating the deductible. In this case, 3% of \$15,000,000.00. This would yield the total deductible to be applied to the sum of the total loss to all the property. As an example, the loss for all the property should be added up and the 3% deductible then taken from the total. It sounds like they are trying to pro rate the deductible to each building and then apply it to the loss for a particular building. The insurance company

cannot have it both ways, but more importantly, the policy needs to read as to how the deductible clause states it will be applied.

Question – I am the treasurer of a 37 member, not-for-profit homeowners’ association and we pay Florida sales tax on our electricity bill. The electricity is used solely to light the front entrance and to run the water pump used to irrigate our common area at this entrance. When I called Florida Power and Light, I was told to fax a copy of my sales tax exempt status form and they would remove the sales tax charge. However, a homeowners association does not qualify for sales tax exempt status. I just recently checked on this matter at the state and federal level. I was told we had to be a charitable, educational or religious organization. Can you enlighten me more on this subject? Thank you. C.O., Flagler Beach

Answer – Regrettably, whomever you spoke with is not knowledgeable of the law. Section 12-A – 1.053 (Electric Power and Energy) of the Florida Administrative Code provides that electric power or energy sold for and used in the common areas of apartment houses, cooperatives, condominiums and other residential facilities is exempt from sales taxes; this includes common areas in homeowners associations. Advise whomever you spoke with of said fact and ask that you be reimbursed for sales taxes erroneously collected. By the way, the “charitable, educational or religious” exemption is from income taxes, which have nothing to do with sales taxes.

Question – I own a unit in a 82 unit condominium. I would like to know how much knowledge of the Condominium Act those who serve on the board should have? It seems to me that anyone who either volunteers, or is voted into a position on the board, as well as the manager which is being paid a fee, should have knowledge as to the proper procedures which must be followed. Is this the case? R.C., Daytona Beach

Answer – Although as a condition of being licensed, community association managers are required to evidence knowledge and familiarity with the Condominium Act, volunteer directors bring to the board, not so much their knowledge of the Act [they can rely upon others for guidance in what process or procedures need to be followed], but rather their business judgment, which is measured by what an ordinary prudent person would do under like circumstances. In

fact, in Florida, the test of whether a volunteer director can be held liable for his or her actions is set forth in Chapter 617.0830, Florida Statutes. That provision provides that:

- (1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:
- (a) In good faith;
 - (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - (c) In a manner he or she reasonably believes to be in the best interest of the corporation.

A volunteer director of a community association board is immune from liability if he/she performs his/her duties in compliance with the standards set forth above, and refrains from acts of fraud, self-dealing, malfeasance or misfeasance. ■

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.

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