



## Condominium Law Q&A

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**Gary A. Poliakoff, JD**

gpoliakoff@becker-poliakoff.com

TEL: 954.987.7550

FAX: 239.433.5933

**Question** – Up until about three years ago, while I was president of the board of administration of our small townhouse condominium, we had complied with the condominium regulations under control. Since then, we now have several unit owners who violate parking regulations, the schedule for placement of trash out for pickup, even the conduct of business from their unit. There seems to be no effective way to enforce the condominium regulations. I suppose that the condominium association can impose fines for violation of condominium regulations, but there does not seem to be any effective way of enforcement. If I understand correctly, the board can impose fines, but may not lien a unit for fines. Is there some procedure the Board must follow to establish fines for regulation violations and is there some effective means of enforcement? S.P., Indian Harbour Beach

**Answer** – I currently serve as the American Bar Association Advisor to the National Conference of Commissioners on Uniform State Laws, which is in the process of revising the Uniform Common Interest Ownership Act. Nearly an entire drafting session was recently devoted to the question you asked; namely, is there a cost effective means of enforcing the covenants, conditions and restrictions and the rules and regulations of common interest ownership housing communities? There are several options when it comes to enforcement of the covenants and rules and regulations. First, and the preferable course of action, is persuasion. That is, neighbors talking to neighbors, explaining why it is necessary and

important for everyone living within a common interest ownership community to abide by the covenants and rules and regulations which he/she/they agreed to at the time they purchased their home. Second is the levy of a fine. All three Common Interest Ownership Acts, Condominium, Cooperative and Homeowners Association, permit the levy of fines so long as the authority for same is set forth in the governing documents. The Acts do limit the amount of the fine to \$100.00 per violation, with each day being a continuing violation. No fine can exceed \$1,000.00 in the aggregate, and a lien cannot be placed against a unit to collect a fine. Collection will necessitate court action. Furthermore, no fine can be levied without first giving the alleged violator notice, an opportunity to cure, and a hearing before a committee composed of unit owners who are not officers or directors of the association, or their relatives. The third alternative, in the case of a homeowners association, is legal action filed in the circuit court to compel compliance and, in the case of a condominium, mandatory arbitration or mediation. So long as an association acts, timely and uniformly, and the covenants and rules and regulations are unambiguous and do not violate fundamental rights, they will generally be sustained by the court or arbitrator.

**Question** – I am a resident of a senior mobile home community, which has an exterior perimeter six foot high chain link fence topped with three strands of barbed wire. Access to the community is via an electronic lift gate at the roadway entrance. The

majority of the fencing rests on common grounds on the perimeter of the community. Therefore it is to be recognized as a “common element,” subject to the community’s maintenance responsibility, including removal of vines and brush from both sides of the fence, prohibiting entangling and breaking of the links of the fence or sprouting through and over the barbed wire to the interior area of the perimeter and damaging the fence during hurricanes or other severe storms. The remainder of the fencing exists within the last six inches of the rear of several unit owners’ properties which also constitutes a portion of the community’s exterior perimeter. There is an intent to designate this portion of the fence as a “limited common element” because it exists on unit owner properties instead of common grounds and therefore is not subject to the community’s maintenance

responsibility. The unit owners on whose property the fence exists contend that the fence completely encloses the entire community and serves the entire community to the same extent as the fencing on the common grounds. Therefore the fence should be a “common element” rather than a “limited common element” and be community maintained to the same extent as the fence on common grounds. Please advise as to the proper “element” designation of the fencing on the unit owner properties. WGT, Cocoa

**Answer** – While I don’t have the benefit of reading the community’s documents, from what you have described, I am of the opinion that the maintenance of the entire fence, including those portions which intrude onto various lots, are the responsibility of the association. ■

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*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).*