



Condominium Law Q&A

SEPTEMBER 11, 2006

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Question – When a developer finally turns over the condo to the new owners, as pertains to amenities and services, is there any power the developer has? Where can I find this information at government offices or websites? S.D., New Smyrna Beach

Answer – At the time the condominium concept was introduced in Florida (1963), there was no requirement that the developer turn over control of the Association to the unit owners. In fact, developers often kept perpetual control through the device of “Sweetheart” Management Agreements, wherein developers owned and operated management entities contracted to manage the condominium for upwards of 99 years, without unit owners having any say in the day to day operation of the association. I am proud to have been part of the court process which attacked these agreements as being unlawful tying arrangements, in violation of Federal Anti-trust Acts, resulting in the elimination of the practice and opening of the field to independent professional management companies. In addition, with the help of my law partner, former State Representative Alan Becker, we were able to amend the Condominium Act to compel developers to turn over control of the condominium associations to the unit owners within the timeframe of the Act. Recent amendments to the Homeowners Association Act now afford homeowners the same rights as condominium owners, namely, the right to have control turned over to the homeowners three months after 90% of the parcels that will be operated by the Association have been sold. In addition, the

Homeowners Association Act prohibits the inclusion or enforcement of clauses within the homeowners association documents, which grant to a developer the unilateral ability and right to make changes to the homeowners association documents following transition, prohibit the homeowners association from suing the developer, or allow the developer to cast votes greater than one vote for each residential lot owned by the developer. You can find these prohibitions in Chapter 720.3075, Florida Statutes.

Question – This month, our condo board has just reinstated a no dog and cat pet policy. Having owned a unit since March 1999, the policy at the time of purchase was pet friendly. We were given a copy of the rules and regulations, which stated that dogs and cats under 20 pounds were permitted. Since that time, the policy has changed back and forth from pet friendly, grandfathering in pets and, now, this month, a no pet policy. Can a new board with a new manager enforce random and selective enforcement of a Pet Policy that has not been enforced to our knowledge since we purchased our unit in March 1999, or do these issues fall under the decision of a majority of owners voting at the annual meeting for such a change to take place? I.O., West Palm Beach

Answer – The board cannot by Rule circumvent a right granted or inferred by the condominium documents. In other words, the first question is whether the declaration of condominium prohibits pets, and/or allows pets which are under 20 pounds. You stated

that, at the time you purchased your unit, you were given a copy of “Rules and Regulations” which stated that “dogs and cats under 20 pounds were permitted.” If, as I stated, the documents are silent, then pets are permitted and to prohibit them or place a weight limit on them, the documents need to be amended. Let’s assume that the declaration contains the weight limit, however, the association has not enforced the covenant during the past eight years. In this case, the association would be precluded from enforcing the restriction against those who currently have pets. On the other hand, the board can re-impose the covenant, prospectively, and state that from a particular date forward, no new pets will be permitted to be brought into the community and deceased pets cannot be replaced. ■

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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.