



Condominium Law Q&A

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Question – I am responding to an article about “Boat slips should be at market rate.” We have a similar situation at our condominium. We are a 200 unit condo association on the Banana River, with a 300 ft. dock with boat slips. Not all slips are used. One difference is that we have a “submerged land lease” with the state. We pay a large lease fee each year. In the lease, according to our board, it addresses rental of boat slips. It is my understanding that this would make the rental of the slips commercial. Also, I don’t understand why the dock has a sign that says our dock is a Public Dock. Since the dock is in the back our property, no one outside can access it unless they come onto our provide property. We have had numerous meetings that became very loud. Could you explain to me what a “submerged land lease” is and how it affects the rental of the slips? The explanations at the meetings are very confusing. Thank you. M.D., Cape Canaveral

Answer – Like any other land, the submerged land underlying the boat slips can be privately or publicly owned. If the latter, its use will be regulated by the Army Corp of Engineers, which will establish the parameters for its use, if leased for private use. Even if it’s for “private use,” when leased by a government entity can require that the facility be open to the public.

Question – What is a gated community? I live in a subdivision on 50 acres, with 375 units. We are governed by homeowners association. The units are single family homes, townhouses, villas then, within the development is a 36 unit condo, which is where I live. We have a piece of wood, 4” by 8’ that is up days and down on weekends and overnight. It is worthless.

We do not have a cement wall around our complex. There is no guard – you just punch in your number on the key pad. We have several realtors who continue to call this a gated community. Anyone can get in at any time. I thought gated communities had to have a concrete wall around them and a gate that operated 24 hours either with a guard or without. Next, the homeowners association where I live has Rules and Regulations which we must adhere to because we pay them the monthly fee. However, our condo also has other Rules and Regulations, and of course, we pay our monthly condo fee as well as a fee to the homeowners association. The homeowners association allows pets of any size. My building has a pet maximum of 25 pounds. Do the homeowners rules override our condo rules? Which rules take precedence? G.L., Melbourne Beach

Answer–The term “gated” community generally denotes a planned development to which access is secured at an entrance maintained by security personnel. Needless to say, most gated communities are surrounded by fences and walls. The term also has other connotations, the most important of which is reference to the fact that the internal roads are “private” and, as such, are not open to the public. Next, as to the question of whether in the case of a master association and neighborhood association, which one controls, be advised as follows. When a developer creates a planned development, it first plats the property, which converts a “metes and bounds” legal description to a “lot and block” designation. Next comes the site plan and, accordingly a “unity of title agreement” and/or “development agreement,” which is approved by the government entity having jurisdiction

over the planned development. Within each of these agreements, there can be covenants, conditions and restrictions, which run with and bind the land and will take precedence over any subsequently recorded restrictions. Next, the master declaration of covenants, conditions and restrictions (CC&Rs) gets recorded. A master association is established to operate the master common areas and to enforce the CC&Rs. The next step is to establish a neighborhood association to govern condominiums and planned developments. Each generally imposes its own set of restrictions. In the case of a condominium, the requirements of the Condominium Act must be followed and a declaration of condominium filed, submitting the property to the condominium regime. The neighborhood covenants can be more restrictive than the master covenants, but cannot

be less restrictive. Accordingly, the master covenants take priority. Let's look at a couple of examples of how this works in operation. The master covenants have no restriction against pets, however, the declaration of condominium limits pets to 25 pounds. That is okay, since the declaration of condominium is more restrictive. On the other hand, let's say that the master covenants contain a specific right to maintain pets, then the neighborhood covenants cannot prohibit same. Another example: the master covenants state no cell towers are permitted to be installed on any building within the community. The condominium association, with the prior approval of 75% of its unit owners, approves the installation of a cell tower on its roof. The master covenants control and the condominium association can be compelled to remove the cell tower. ■

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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.