



Condominium Law Q&A

October 23, 2006

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

Question – Last year, and again this year, during the hurricane season, our condo board “took a pro-active approach by protecting the common elements, which included shutting down the domestic water, the cooling towers, the elevators, and sending all employees home for their safety”. Mind you, the board did this to a 30 story, 400 unit condo while there was still available FP&L electric power and public water. Quite a number of elderly and sick had to either have emergency evacuation on stretchers by the fire department down the 30 story darkened stairwells (Oh, did I mention the buildings emergency generator was also turned off because it is cooled by the public water system) or walk down the pitch dark stairways with flash lights. Of course, the board, having sent every building employee, including all security, home, also closed all the building’s parking entrance gates, which the fire department made them reopen. So the building was wide open with not one security person on-site. Now, we receive a new board letter which states “management and the board will be shutting down the elevators to prevent flooding; the cooling towers will be shut down to prevent any motor damage.” Since a new domestic pump was installed, the water pressure will adjust itself unless the powers goes out. My question, is this board action legal under current Florida condo laws? Can a board arbitrarily shut off all elevators, power and water, even when power is still available, leaving no recourse for building residents? Your prompt response is appreciated. C.J.M., Ft. Lauderdale

Answer – The board acted properly insofar as the precautions it took to protect the building systems. [A disturbing situation occurred in a number of high rises during the rash of hurricanes of 2004 and 2005. A few residents who refused to evacuate their units, notwithstanding, the issuance of mandatory evacuation orders from emergency management officials, turned the systems back on once management left the premises, subjecting the systems to severe damage. Such actions should not be tolerated, and damages caused by such action should be pursued against those causing the problem.] The only thing which I cannot determine from your letter is the timing of the board’s action in shutting down the elevators; that is, the timeframe from that point in time in which mandatory evacuation was ordered. Needless to say, common sense needs to prevail and every effort should be made to ensure that every resident is given ample opportunity to evacuate, including those with special needs. As I previously advised in an earlier article, effective July 1, 2006 a new law in Florida mandates that, effective July 1, 2006, every residential high rise defined as 75 feet or higher, from the lowest level of ingress to the floor of highest occupied spaces, must contain one non-service elevator tied to a generator with an on site fuel source. The obvious intent is for said elevator to be operable 24/7. The emergency elevator must be operational prior to December 31, 2007. In addition, there must be an “emergency operation plan” which details the

sequence of operations before, during and after an emergency. The plan must include a life safety plan for evacuation; maintenance of the electrical and lighting supply, and provide for the safety, and welfare of the residents. It must be in place by December 31, 2006.

Question – I live in a manufactured home in a community where I lease the pad from a corporation. An article published in the Community’s newspaper noted that, “It is a requirement that all mobile homes within the community have a carport.” This requirement has not been enforced due to shortage

of both materials and qualified contractors, following the onslaught of recent hurricanes. Nevertheless, the lessor has not set an outside date by which our home must be retrofitted with carports or be in violation of our lease. Is this legal? S.R., Tampa

Answer – The requirement that all mobile homes within the park have carports is a contractual requirement, not a statutory one. Accordingly, the consequence of not complying is set forth within the lease, and can range from an action for specific performance to a termination violation of the lease.

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.