



Condominium Law Q&A

November 21, 2006

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

Question – I reside in a homeowner’s association which was turned over to the residents three years ago. There are two issues I would appreciate an answer for. First, we recently discovered that while under the developer’s control the developer was maintaining a roadway leading to the association and two of his personal lots, both outside of the homeowners association and its boundaries, and paying for their maintenance with association funds. I contend this was a misappropriation of homeowners funds and possible criminal violation. The present association president, a friend of the developer’s, doesn’t want to talk about it. The second problem is, the association president will not enforce the covenants and restrictions regarding animals against another resident who is also a friend of the developer. What is our recourse as association members? Where do we turn to for help? H.C., Palm Coast

Answer – While not relevant to the question of whether or not what the developer did or did not do while in control of the association was right or wrong, I do feel that you must assess whether the amount of damages sustained by the association will justify the pursuit of this matter. If someone misappropriates association funds, directly or indirectly, no doubt that is a crime. However, given the limitations of the State Attorney’s resources, when asked to choose between pursuing a developer who might have misused his position to misappropriate association funds, or prosecuting a rapist, robber, murderer, child molester, etc., he will say, “It is a civil matter; if you find you have been

wronged, file suit.” That then becomes a question of “cost effectiveness,” given that in most cases legal fees are not recoverable. I trust that the homeowners now control the association and that the practice has ceased. Therefore the board needs to make a business judgment call as to what advantage can be gained from pursuing the wrong. Insofar as the present board refusing to enforce the covenants against his/their friend, never lose sight of the fact that the board serves at the pleasure of the homeowners. If it is the will of the members to enforce the covenants impartially, all you need to do is recall the board and elect members more responsive to the wishes of the homeowners.

Question – I own a unit in a 23 unit condominium. Of the 23 units, 11 are owned by the president of the association, who has apparently served in that position since inception of the condominium. The current board consists of the president and three individuals appointed to the board by the president, none of whom live here or own a unit in the condominium. One of the directors is the president’s son-in-law, and another is a handyman employed by the president. The level of maintenance is abysmal. About two months ago, the board voted to have a unit owner paid \$300.00 a month to “manage” the place. Without discussing it with the board, the manager was excused by the president from payment of a portion of his maintenance fee. Elections are of little value, since with 11 votes the president controls the board. I feel helpless to do anything about the situation. What advice can you give me? E.N., Ormond Beach

Answer – To begin with, the by-laws of 99% of the condominiums and homeowners associations I am familiar with require a person serving on the board to be a record title owner of a unit. Second, if the president rents his unit “in the ordinary course of business,” he is no doubt a “developer” as defined by the Condominium Act and, as such, is prohibited from casting his votes for the election of a majority of the directors, which means that the 12 unit owners, other than the president, should be able to elect 2 of the 3 board seats, which will also allow them to elect the president. Furthermore, even if properly hired [is the unit owner acting as a

“manager” licensed as such, as is required by law?], no unit owner can be excused from payment of his/her share of the common expenses. Is the association reporting the money paid to the manager, e.g., withholding taxes, social security, etc.? No doubt, you and the other unit owners should file a complaint with the Division of Florida Land Sales, Condominiums and Mobile Homes (Bureau of Compliance, 1940 N. Monroe Street, Northwood Centre, Suite 16, Tallahassee, FL 32399-1031, 850-488-1122) and/or seek advice from an experienced community association attorney.

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.