Condominium Law Q&A

January 15, 2007

By Gary A. Poliakoff
gpoliakoff@becker-poliakoff.com
Tel: 954.987.7550
Fax: 954-985.4176

Question – I own a condo in Boca that I am attempting to sell. The unit is 30 years old. The covenants, conditions and restrictions are as old as the unit, and I do not have a current up to date set. I was told that when I purchased the unit I would need at least a 10% down payment of the appraised value, which was not a problem. However, now I am told that there was a vote recently (which I never participated in or was notified of) that 15% of the appraised value is now required. With the rise in property values, this down payment is now considerable, thus severely limiting the pool of prospective buyers. In a four month period, not one unit has sold due to this "rule." I have begun to ask for documentation regarding this vote and where it appears in the by-laws and have been unable to obtain an answer. My questions are – 1) can they hold us to this rule if they cannot prove it exists; 2) not all units have the same appraised value – some of the owners are original owners and therefore the appraised value is very low. Any one who has purchased within the last few years is appraised at a much higher value. Is this legal – since not every property is being held to the same standard amount? S.M.

Answer – First, let me address the question of why many condominiums amended their declaration to restrict the degree to which a unit owner could pledge their unit as security for a mortgage. For a period of time, the price of units was escalating to such a degree that some lenders were willing to loan upwards of 90% of the purchase price. Buyers with marginal credit bought units, pocketed the excess and failed to pay their assessments. When the associations placed a lien and foreclosed on the unit, subject to the rights of the institutional first mortgagee, there was no equity to cover the delinquent assessments. To counter this trend, associations caused the condominium documents to be amended to limit mortgages to 80% of the fair market price or purchase price, whichever was the lesser. For such restrictions to be enforceable, it must be contained in a recorded, approved, amendment to the declaration. Any title company or attorney can obtain for you a copy of the condominium documents. In fact, the Condominium Act mandates that every association keep copies of the current documents, which can be acquired by any unit owner for the cost of production of the documents.

Question – After reading your column, I am convinced that our townhomes operate under condominium law. Please correct me if I am wrong. We are one story buildings with 2 or 3 units in each building. My question concerning Florida law for condominiums is this: Is there a maximum increase a board can impose on the homeowners? I am sure that I have read in your column that there is. The reason for my question is that our current board has increased our monthly homeowners fee from $200.00 per month to $325.00 per month – an increase of 62.5%. Is this legal? I will say that the majority of the increase is due to cancellation of our insurance, and we have had to go with Citizens, the Florida backed insurance. I am interested to know if our board is operating properly. I would also

appreciate information on other Florida laws governing our community. J.G., Melbourne

Answer – The determination of whether the Condominium Act (Chapter 718, Florida Statutes), the Cooperative Act (Chapter 719, Florida Statutes), or the Homeowners Association Act (Chapter 720, Florida Statutes) governs your community is dependent upon the form of common interest ownership housing which you are, and that is not visibly ascertainable. One needs to read the governing documents to determine which applies. That said, all three forms mandate "balanced budgets." That is, the board must assess in such sufficient amounts as necessary to meet all previously incurred expenses, all current expenses, and all projected expenses. Notwithstanding language within the Condominium Act which grants unit owners the power to reconsider, on a line item basis, budgets which exceed 115% of the prior year's budget, I am of the opinion that the unit owners cannot reduce the budget below an amount necessary to balance the budget and cannot preclude the association from exercising its statutory mandate to operate and maintain the condominium property at acceptable levels. Of course, if the board has budgeted for capital improvements, either approved by the board, within its discretionary limits, or the unit owners, the unit owners can elect to defer the projects. There is no question but that there is an insurance crisis both in obtaining coverage and paying the cost of same. Insurance premiums now consume 40% or more of the annual budget of many community associations. Couple that with the need for special assessments necessary to fund uninsured reconstruction following the recent onslaught from the hurricanes of 2004 and 2005, and you will discover the reason why delinquencies in payment of assessments are at an all time high. Nevertheless, unit owners must accept the reality of common interest ownership housing; namely, that they must pay their share of the common expenses, regardless of how high these expenses might be.

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.*