



## Condominium Law Q&A

January 29, 2007

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

**Question – Situation:** Our association has an income above \$400,000, and we would like to have the owners vote on whether or not to have the higher cost financial statements audit. **Issues:** Florida Statute 718 (7.15) states that this audit can be waived by a majority of the voting interests of the association present at a duly called meeting. However, our documents (by-laws) state “the affirmative vote of the owners of sixty-seven (67) percent of the voting interests represented at any duly called membership meeting at which a quorum is present shall be binding upon the members.” **Problem:** At our duly called meeting, we only had 17 voters present and 14 of them voted on the audit question. We felt that we needed a quorum (minimum of 53 owners) to be present/proxy before any vote could be taken and it would require sixty-seven percent (or 36 votes) for passage. **Question:** Which is correct – the 14 votes out of a membership of 105, or do we require the minimum of 36 votes from the 105 for passage. **Comment,** it did not seem appropriate for only 14 owners to decide the fate of our condominium. B.B., Cocoa Beach

**Answer –** The provisions of the Condominium Act govern insofar as the vote required to waive the Act’s mandated audit for condominiums with annual revenues in excess of \$400,000. Accordingly, to waive the audit there must first be a duly called meeting of the association at which a quorum of members are present, in person or via proxy. In the case of a 105 unit condominium, more than likely the bylaws provide that a quorum is 53. Thus, assuming that there is a quorum, 23 unit owners

must vote affirmatively to waive the audit. Let’s take a look at another scenario. Assume that the bylaws require an annual audit. If that is the case, then even if 75% of the unit owners vote to waive the statutory mandated audit, there still must be an audit unless the bylaws are amended to delete the audit requirement.

**Question –** I would like to take this opportunity to inform you how often your advice column is clipped, posted and quoted. Please continue the necessary task of being the authority on making sense of communal living. With that said, my question is: Our condo docs specifically state “Entire units may be leased or rented provided the period of the lease is not less than three months and further provided that the occupancy is by one family, its servants and guests.” An ad appeared in the classifieds advertising to rent one bedroom of a two bedroom unit whereby the owner locks off the “master” bedroom with private entrance and allows the renter to utilize the “guest” bedroom and remainder of the unit. It is currently being rented in this fashion. The board and manager condone this practice, as do many of the other unit owners. What is your slant on this practice? Can anything be done to enforce the docs? Looking forward to your response. C.U., Daytona Beach

**Answer –** The practice you described is not only a violation of the condominium documents, but more than likely is also a violation of local zoning laws. While the association is the party principally charged with the obligation to enforce the covenants,

conditions and restrictions and the rules and regulations, every unit owner has the right to do so. The board should disallow the practice.

**Question** – The president of our condominium association passed away. Does the president’s wife take over as president? L.R., Cocoa Beach

**Answer** – When the president of an association dies,

resigns, or becomes incapacitated, the vice-president becomes the acting president. It is then up to the board whether to elect said person to fill the vacancy or designate another to do so.

*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](mailto:gpoliakoff@becker-poliakoff.com).*