



## Community Association Q&A

May 14, 2007

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

Question – A unit owner in the condominium where I live has experienced a problem of water leaking into her unit. At first, the manager thought that the water leak was being caused by the sprinkler system. He adjusted the sprinkler head; this did not help. Next, the wall in the laundry room next to the unit was opened; no evidence of the source found. Now, the manager wants to open the wall again, but advised that if the source of the problem is found to be the pipe solely servicing the unit, the unit owner will be responsible for the cost of repairs. I was under the impression that unit owner's responsibility only begins after a pipe providing utilities to the unit exits through the sheetrock – inside the unit? Could you please shed some light on this? N.W., Tamarac

Answer – The cost of maintenance and repair of pipes providing utilities to more than a single unit is a common expense of the association. However, the feeder servicing only a single unit is the responsibility of the unit owner receiving the service.

Question – We live in Edgewater Landing, an R.O.C. development governed by a homeowners' association. My question involves trimming of mangroves. Our board has spent over two thousand dollars to trim mangroves on leased

property. Our covenants read as follows: "There shall be no alteration of mangrove areas." Based on the wording of the covenants, does the board have the authority to spend association money to trim these mangroves? D.C., Daytona Beach

Answer – Mangroves are protected by State and Federal laws. To a large extent, the question as to whether Mangroves can be trimmed will be determined by their physical location above or below the mean high water mark, and coastal setbacks. That said, in any condition, permits are generally required in order to trim Mangroves. Assuming that a permit was obtained, and that the mangroves are part of or abut the common areas, I see no problem with the association trimming the mangroves and assessing the cost as a common expense.

Question – As a member in good standing of my condominium association, do I have the right to know what members are in arrears regarding maintenance fees and special assessments? If yes, can the names of these people be published in our quarterly newsletter? P.G., Fort Pierce

Answer – Yes. I don't recommend publishing the names of delinquent unit owners on boards or in publications which might be read by third party

non-members. Doing so might violate the Federal or State Fair Debt Practices Acts.

Question – The bylaws of my homeowners association provide that ballots may be delivered to the secretary or his/her designee at or prior to the meeting. The ballots are to be retained for 90 days from the count of the vote, and then destroyed. We are questioning the last sentence. The new board president states that the management company is to hold the ballots, rather than the election committee, which I chair. Was this handled properly? J.J.B., Stuart

Answer – Advocates for uniformity of laws [The Uniform Common Interest Ownership Act covers condominiums and homeowner associations and has been adopted in 23 states] would be stupefied

by the glaring inconsistencies between Florida's Condominium and Homeowners Association Acts. The Condominium Act includes ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners within the definition of "official records." Said records must be kept for a period of one year. The Homeowners Association Act is silent on the subject. You advised that your homeowners association documents instruct the secretary, not the elections chair/committee, to take possession of the ballots and destroy them after 90 days. If I understand your concern, it is that the manager and not the secretary took possession of the ballots. Without some act of impropriety on the part of the manager, quite, frankly, I don't see what difference it makes.

*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).*