



Condominium Law Q&A

May 22, 2007

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

Question – I live in a 54 unit condominium and am having numerous problems doing so. We no longer have a manager, as she was let go after an owner found out she is not licensed as a community association manager. Security is no more. Maintenance fees go unpaid. Bills are behind. The board members have given up – no one is in charge – the building is in disrepair and no one seems to care. Drug use in this association is on the rise. I can't get owners to come together to resolve our problems – owners are not checking applicants to see if they are qualified to lease within our building. Property value is going down, instead of up. I want to reverse this problem – what do I need to do. D.P., Fort Lauderdale

Answer – Leadership abhors a vacuum. Step up to the plate, take command of the situation by volunteering your services to the board. Encourage other like-minded individuals to do likewise. There is really no excuse for letting a common interest housing community deteriorate to this state of affairs.

Question – I live in a gated community for seniors (not a condo) where we each own our homes and land. We have a master association, and homes are located on each of several “isles,” each with its own set of rules and regulations. Like many other Florida residents, I suffered hurricane damage during the past two years and am now in the process of installing accordion type hurricane shutters. Although approved by my “Isle,” I understand that shutters must be set up and removed just prior to and

immediately after a hurricane. Since I am a snow bird, this presents a problem, especially since other isles have rules allowing shutters to remain in place during the hurricane season. Does the master isle make the controlling decisions? Is there any Florida State law regarding this situation? If I am unable, for whatever reason, to return to Florida from my summer home up north to put shutters in place before a hurricane, or if any of my neighbors are not available to put shutters in place, and my home is damaged because of a hurricane, would I not have an action against the “Isle” for prohibiting me from adequately protecting my home against the elements? G.P., Port St. Lucie

Answer – With yet another hurricane season on the horizon, yours is a timely question. While the Condominium Act mandates that condominium associations allow the installation of board specified hurricane shutters, the Homeowners Association Act contains no similar provision, thus leaving the question of what is allowed up to each homeowners association. Insofar as rules and regulations specifying the timeframe when shutters can be closed, both condominium and homeowners association boards have established, by rule, regulations governing same. Yes, I am aware of the hardship this imposes upon snowbirds and unit owners on vacation, but one needs to look at this through the eyes of permanent residents who might otherwise be forced to live for 5 – 6 months a year in a “boarded up” community.

Question – The board of our homeowners association approved a \$300,000 loan, at 7.5%, to be used for major renovation of the common areas. When questioned as to their authority for doing so, the board responded that the Homeowners Association Act grants the board the power to do so. The homeowners association documents provide otherwise, requiring two-thirds prior approval of the lot owners for a loan. Which controls, the Homeowners Association Act or our documents? E.F., Port St. Lucie

Answer – The Homeowners Association Act does not address the question of whether the board has the authority to borrow. The Not-for-Profit Corporate

Act grants to the association all the corporate powers not otherwise restricted by the articles or by-laws. Given that your homeowners association documents impose a prohibition against borrowing without the prior approval of two-thirds of the members, the board's action was improper. Before an association is granted a loan, the bank usually requires an opinion from the association's attorney saying that the association has the power and authority to borrow. Given what you advise the documents say, I would be curious as to how the opinion was worded.

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.