



Condominium Law Q&A

June 18, 2007

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

Question – Our condominium declaration documents that were recorded in 1973 state what the amount for our regular monthly assessments are depending on unit size. From 1973 to this present day, our regular assessments have paid for all of our common expenses and, when the budget increased year after year, then the regular assessments for each unit increased proportionately. Even when special assessments were first levied in the late 70s, the board, whose president was the developer, had levied special assessments using multiples of our regular assessments, thus using the same formula. A new board was recently elected, whose president and a majority of board members own two bedroom units (the largest), and it decided to levy special assessments equally rather than by unit size. By doing this, the two bedroom owners would now pay less than if special assessments were levied by unit size, while the smaller units would now pay more. Since our condominium declaration provides for the manner of sharing common expenses by using our regular assessments to pay for all common expenses, then don't special assessments use the same formula for sharing common expenses? W.H., Cocoa Beach

Answer – The manner of sharing the common expenses cannot be changed at the whim of the board. Once established by the developer, no further changes can be made without the consent of 100% of the unit owners and all lien holders of record. If the board doesn't voluntarily recant and levy the special assessment appropriately, you should file a complaint with Florida's Division of Land Sales, Condominiums and Mobile Homes, Bureau of

Compliance, 1940 N. Monroe Street, Northwood Centre, Suite 16, Tallahassee, FL 32399-1031, Phone: 850.488.1122, Fax: 850.488.7149, e-mail address: Call.Center@dbpr.state.fl.us.

Question – In response to an inquiry about whether the spouse of a record title owner, who is not on the deed, can qualify to run for the board, you advised that an exception can be made. Who makes that decision, the board, the president or the unit owners? E.L., Deerfield Beach

Answer – It would take an amendment of the bylaws, done by a vote of the unit owners.

Question – I have recently been appointed chairman of our condominium's interview committee. My question is, must the actual interview of new owners/tenants be opened to other unit owners, or may our committee meet with them in private? My concern is that some sensitive information may be disclosed during the interview. Also, must I post notice of any meetings with my committee members? D.G., Pompano Beach

Answer – Unfortunately, legislation is often drafted using a broad stroke, with the consequences being well meaning consumer reform [governance in the Sunshine], which can potentially result in violating a prospective unit owner's privacy. That said, the Condominium Act allows for meetings of committees, which do not take final action on behalf of the board or make recommendations to the board

regarding the association budget, to meet in private. There is, however, a catch. To do so, the bylaws must be amended to exempt those meetings from the open meeting provision of the Act. It should also be noted that information obtained by an association in connection with the approval of a lease, sale or other transfer of a unit is not considered part of the "official" records of the association. As such, the information gathered is not open to unit owner inspection. So, how then do we reconcile one

provision of the Act which mandates all committee meetings be open, unless the bylaws are amended to exempt some, with another section of the Act, which makes the subject being discussed privileged? I am of the opinion that the specific controls over the general and, as such, meetings of screening committees can be conducted in closed session. I know of no case or arbitration decision which have addressed this issue.

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.