



Condominium Law Q&A

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By Gary A. Poliakoff

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Question – I am on the board of a homeowners association and have a follow-up question to a couple of your columns. In a prior column, you discuss levying fines against homeowners and indicate that fines cannot become a lien against the property. On February 25, 2007, you discussed delinquent assessments and indicated that the association can lien the property. My follow-up question deals with a situation where an owner does not maintain his property. Our declaration of covenants and restrictions grants the association the right to enter a lot to cure any violation of the covenants and restrictions and to bill the lot owner. Of course, we would not enter and repair unless we had given the owner notice of the violation in writing from our board with adequate time to effect repairs. So, my question is, if we effect repairs and the owner does not pay in a reasonable time, can we lien the property? R.L., West Melbourne

Answer – If authority for the association to enter a lot and effectuate necessary repairs is contained within the recorded covenants, conditions and restrictions, the right to lien is generally also included, in which case the association can both lien and foreclose, if the unit owner fails to pay the cost of repairs.

Question – Currently, our condominium board has directed our association attorney's to gather/identify mortgage information for each association member for the purpose of transferring decision making/voting from the mortgage companies to the unit owners. Why would our board want to

accomplish this? Would this require 100% cooperation of association members or just a designated percentage? K.T., W.P.B.

Answer – Regrettably some planned development attorneys who have little experience with the operation side of common interest ownership housing communities include within the covenants the requirement that all, or a portion, of unit mortgagees must approve amendments to the governing documents. This can be an onerous task, particularly in communities of hundreds of units. Particularly difficult is the task of identifying who the current mortgagee is on each unit, given the practice of banks to bundle and sell mortgages. A 1992 amendment to the Condominium Act provides that any declaration recorded after April 1, 1992 may not require the consent or joinder of some or all unit mortgagees to or in amendments to the declaration, unless the requirement is limited to amendments materially affecting the rights or interests of the mortgagees, unless it is provided that consent may not be unreasonably withheld. Recognizing the burden which these mortgagee consent provisions place upon the unit owners, several recent amendments (e.g., the provision of the Condominium Act mandating insurance coverage) allow declarations of condominium to be amended to conform same to the Act, without regard for any mortgagee approval requirement. While it is questionable whether such statutory enactments are constitutional, the Division and the courts have made it abundantly clear that any amendment passed by the unit owners without the required mortgagee

consents are void “ab initio,” or from their conception.

Question – Would you please clarify the wording on Florida Statute 718. Does the statute make it mandatory that all unit owners must have insurance? Or, does it state that they shall have insurance? If it is mandatory that unit owners carry insurance, how and what can we do as a board to make sure that each owner has insurance? If they refuse to show us their policy, then what recourse do we have? G.G.,
Lauderdale-by-the-Sea

Answer – The way the insurance section of the Condominium Act is written contemplates that all insurable improvements be covered, largely by the association, with the balance by the unit owners. Accordingly, the term “shall” is construed to be mandatory not permissive. That said, while many associations have taken steps to ensure that all unit owners obtain the mandatory coverage and furnish evidence of same, most are either unaware of the requirement or choose to ignore it. The board can compel unit owners to furnish proof of coverage, however, it is very difficult to monitor and costly to enforce.

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