



Condominium Law Q&A

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By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

Question – In our condo complex, each building has covered parking. Our covered parking area is the newest structure built (only 4 years old) and came through the 2004 hurricane season with no damage. Older parking areas in the complex were not as lucky. After the hurricanes, all damaged structures were completely removed. At this time, none of the areas have been rebuilt because we are still in litigation with our insurance company. In the meantime, a young man driving a delivery truck accidentally hit our covered parking area and damaged part of the roof. He came a few weeks later and took off all of the damaged pieces but because the roof structure is not whole, the integrity of this roof has certainly been compromised. It has sat untouched for months. I contacted the HOA board to ask when our parking area would be repaired so that the structure would be sound again with the start of the 2007 hurricane season. I was told that the young man had no insurance and that his father paid \$500.00 to cover costs of repairs (even though no estimates for repair were ever done). The board said that they decided to put the \$500.00 into the general fund, and that they were not going to repair our structure. When the hurricane insurance claim is settled, they said they will tear down our covered parking area and rebuild all of the parking structures at one time. First, doesn't this money have to be used to repair the damaged structure since this damage had nothing to do with hurricanes? Second, why would you tear down an almost brand new structure and build a new one?

And, third, doesn't the board need to make all efforts to replace defective areas in case of approaching storms? J.M., Port St. Lucie

Answer – As I write this answer, we once again have been fortunate to have been spared the onslaught of any hurricanes in June, July or August, but are about to enter the peak of the hurricane season (September), when 95% of the major storms hit. Yet, I constantly hear of associations which have yet to make repairs from the 2004 and 2005 storms because they haven't settled with their insurance companies. That is not the way it is supposed to work. The association has an obligation to maintain, repair and replace the condominium property, regardless of whether or not it receives insurance proceeds. Also, in the aftermath of a casualty, it is obligated to mitigate the damage, including drying out and shoring up (drying-in) the building and removing debris. There are several alternative means of securing funds for this purpose, from the levy of special assessments to commercial lines of credit to SBA loans. What is not acceptable is leaving the damaged property unattended.

Question – I am the treasurer of an homeowners association. One of our homeowners was charged a \$25.00 late fee, per our documents, and he deducted the late fee and paid just the dues he owed. Since he's been late before, and already received the customary one-time good will credit, is it legal for

me to charge him interest or add another late fee to the \$25.00 he refused to pay? B.H., Palm Bay

Answer – Administrative late fees, along with interest, are permitted charges which can be added to the account of delinquent unit owners in condominiums, cooperatives and homeowners associations, if provided for in the governing documents. The Condominium Act provides for a schedule as to how payments made are applied, regardless of any restrictive endorsements. The payment is first applied to interest, then to administrative late fees, then to costs and reasonable attorney fees, and finally to the delinquent assessments. The aforesaid schedule of payments is often attacked as being unfair, since it ensures that

all the costs, fees and interest are paid prior to the delinquent assessments. However, there is a reason for this. The assessments levied for maintenance of the common elements/common areas is an expressed exemption to the Homestead laws, which allow the unit to be liened and foreclosed for non-payment of same, whereas late fees, costs and attorney fees are not. Thus, if the payment was applied solely to the delinquent assessments, there would be no effective means for the association to recover the cost of collection. The Homeowners Association Act does not afford similar protection, thus, homeowner associations must be diligent about restrictively endorsed payments, and payments which are less than the full amount owed.

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.