



## Condominium Law Q&A

September 24, 2007

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

**Question** – Our condo, a 4 story building on Hutchinson Island (Martin County), was built in 1981. At that time, more than half of the owners opted to enlarge their apartments by eliminating part of their screened terraces. This work was done by the original builder. We are having major work done to the building at this time. We, the owners with built out units, have been told that, since we do not have the original design, we will have to pay to reinstall our sliders when the concrete repair has been done, and we will have to pay for any damage done by the contractors to the interior of our apartments. I seem to recall in one of your columns that any damage done to the interior of an apartment by contractors working for the association would be the responsibility of the association. I know that I'm part of the association and that this cost will fall to the owners, but I would like to think that, if the contractor damages my apartment – rugs, ceiling, etc., they will be responsible for that repair. Any input you can give me (us) would be welcome. K.R., Hutchinson Island

**Answer** – I would be curious to know if the incorporation of the terraces into the living space was done with building permits. The reason I ask is that enlargement of the living area generally is disallowed because it increases the total allowable square footage of the living space. That said, given the number of years which have passed, I find it hard to justify the refusal to restore the units to the prior condition, including restoration of the sliders within

units with enclosed terraces. Yes, I am of the opinion that incidental damage to units caused by the association's repair of the condominium property should be borne by the association as a common expense. However, there are exceptions. For example, when a unit owner has been granted permission to install marble or wood on a deck which also serves as a roof over another unit, if the association has to gain access to the deck to re-roof, the cost of removal and restoration of the hard flooring over the roof should be borne by the unit owner.

**Question** – For 20 years, our 214 unit condominium has been consumed by controversies over our boat dock. The dock is mentioned in our documents. It has 22 slips, used exclusively by 22 unit owners. The association has paid for liability insurance, water, electric, major repairs, and \$56,000 for its total replacement due to a hurricane. None of which was ever approved by the association. Our association had a membership meeting. A limited proxy was used to obtain a response to the question to impose a use fee for the exclusive use of a boat slip. Ninety-nine (99) responded yes and twenty-one (21) responded no. Our attorney advised that we needed 108 yes votes and that we could solicit for additional votes to approve the use fee. We obtained a total of 111. A resolution was adopted by the Board of Directors for a use fee of \$40.00 per month that will be in a separate capital expenditure reserve account for the purpose of maintaining, rebuilding,

replacing or enhancing the boat dock and finger slips. Several boat owners are protesting the additional votes that were obtained for the majority vote. We would appreciate your response. L.H., Fort Lauderdale

**Answer** – The first thing which I would verify is that the uplands underlying the boat docks are in fact part of the condominium property. Assuming that it

is, the board can regulate the docks, even assigning exclusive use rights to unit owners on a formalized basis. Inclusive in the assignment can be the extraction of a use fee, even if not agreed to by the unit owners, given that the Condominium Act allows for charging a reasonable use fee when an owner is given the exclusive right to use of a common element.

*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).*