Condominium Law Q&A

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By Gary A. Poliakoff
gpoliakoff@becker-poliakoff.com
Tel: 954.987.7550
Fax: 954-985.4176

CORRECTION: In my column last month I stated, "That while the Condominium Act provides for a schedule of how delinquent payments must be applied [interest, administrative late fees, costs, attorney fees, and then to the delinquent assessments"], that the Homeowners Association Act has no similar provision. While that was true when the question was initially answered, in the intervening timeframe before the column was printed, the law changed. Effective July 1, 2007, the Homeowners Association Act now also provides that "any payment received by an association and accepted shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment."

Question – I submitted a written request to the board of directors of my association to screen in my front patio. Since I did not receive a denial in the normal timeframe, and the screen will be hidden from the street by the hedge between the street and the patio, I installed the framework. The screen was not installed because I was waiting for the building to be painted. Five months after my request, I was told by the board to remove all framing because it altered the look of our units, which is not allowed. Our documents state the back patio can be screened but say nothing about screening the front patio. However, our V.P. and several others have been allowed to install screens in front of their garage doors that face the street. Is this not altering the look on a grander scale? Our past president is the only unit with coach lights on the front of his garage. I have no objections to these changes, but is this legal and fair play? E.L., Rockledge

Answer – First, in addressing the question of whether the delay in the board's response is tacit approval to your request, the answer is no. The courts have held that, where written approval is required, mere tacit consent does not satisfy the requirement of prior written approval. Insofar as the actions of other unit owners and officers in making unauthorized alterations, the covenants, conditions and restrictions must be enforced uniformly and non-selectively. Failing to do so will provide a defense for others when actions are challenged.

Question – My husband and I purchased a townhouse in Perdido Beach, Florida in 2002. We recently built a new home and wanted to rent our townhouse out until the real estate market gets better. There were no restrictions on renting or leasing in the condo declarations. Out of the 20 units in the complex, 5 are full time residents. My husband and myself along with 2 other unit owners intended on renting our units. When some of the other unit owners found out, they hired, an attorney (at a special assessment fee to all of us) to have the condo declarations revised prohibiting short term rentals. Do we have any rights? Does this apply to future owners or all of us that owned prior to?

Another aggravating issue is some of the owners are never there, but constantly have different people staying in their units. What is the difference if they are collecting rent or not? What are my rights? Any advice is appreciated. M.T., Perdido Beach

Answer – It depends when the rental restrictions were approved and recorded. Effective October 1, 2004, any amendment restricting unit owners' rights relating to the rental of units applies only to unit owners who consent to the amendment and unit owners who purchase their units after the effective date of the amendment.

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.*