



Condominium Law Q&A

November 5, 2007

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

Question – I live in a condominium where, in August 2006, the board required that each member pay a \$1,500.00 assessment because they needed to pay the building insurance policy and, of course, the reserves did not have enough to pay the ridiculously increased rate. However, after all was said and done, the board did not need the additional funds due to the fact that they obtained an insurance policy without “wind”! So what happens to the so-called “insurance assessment”? Aren’t assessment monies supposed to be used for the specific assessment. Shouldn’t we get our money back, if it wasn’t used? L.D., Tequesta

Answer – It is a good question, one which is frequently asked. While the Condominium Act states that “the funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in the notice,” the very next sentence of the Act negates that mandate wherein it provides, “However, upon completion of such specific purpose or purposes, any excess funds will be considered common surplus, and may, at the discretion of the board, either be returned to the unit owners or applied as a credit toward future assessments.” The board is mandated by law to operate under a balanced budget. That is, assessments must be sufficient to meet all previously incurred and anticipated expenses. To the extent that the actual cost of operation, including increased costs of insurance and other operations, reflects an operating deficit, the board can apply the unused

special assessments. However, if not needed, it will appear at the end of the year as “surplus,” at which point it must be returned, rolled into reserves or credited toward future assessments.

Question – We have a condominium of 192 units. We have had a special assessment for what was described as a “Five-Year Plan” for improvements and updates. In that plan was an allocation of \$395,000.00 plus for entryways, awnings, etc. That money was paid as a special assessment for that item as well as others. Over \$600,000 was spent on our recreation, pool, etc., and that money was not allocated in that original five-year plan. We were told that they used the funds in the five-year plan for these expenditures. Apparently, now, there is a shortfall to complete the entryways, awnings, etc., for which they are suggesting a “new special assessment.” Is this legal? The second question has to do with a special assessment that was required to add to the insurance monies received for doing the roofs after Hurricane Wilma. At the end, there was \$7,000.00 left, or reimbursed, in this account. The board decided to just transfer this surplus to the general maintenance fund. Is this legal? M.B., Oakland Park

Answer – There are essentially two types of assessments levied by community associations. Assessments levied pursuant to the annual budget for routine maintenance and operation, and special assessments levied for capital repairs or

improvements and for monies needed to cover uninsured losses. The latter, if for other than maintenance and repair, will generally require the prior approval of the members. Given that what you described sounds like a capital improvement project, I am assuming that the nature and scope of the work was submitted for unit owner approval? If I understand it correctly, additional funds are now

required to complete the project. If so, the board can levy a special assessment without having to go back to the members for their approval. However, the notice of special assessments must be sent to every unit owner, in addition to being posted on the condominium property. Unused monies from a special assessment have to be returned to the unit owners or credited against future assessments.

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.