



Condominium Law Q&A

November 12, 2007

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

Question – I am requesting your assistance on an issue that may have two questions. First, I am requesting a clarification as to who may serve on the Board of Administration of a condominium. In our condominium, we have several units that are owned by the following: a trust; a limited partnership; a corporation; a realty company. I know that each of the above may designate an individual to vote the interests of their respective units by executing a voting certificate, but may that representative also serve on the board of administration? Does a representative of a trust, corporation, company, etc., qualify as an owner under these stated conditions or under Florida Statutes? **(I requested this same clarification from the Florida Condominium Ombudsman and the answer was “If the trust grantor or beneficiaries of the trust occupy the unit, the occupants are considered members of the association and are eligible to serve on the board pursuant to s.607.0802(2) or 617.0802(2), Florida Statutes. Under your association’s bylaws board eligibility is contingent upon association membership. Unless your by laws permit the designated voting representative of a corporate unit owner to serve on the board those units may be excluded from offering a candidate to serve on the board.”)** In this year’s board of directors election, one candidate was a beneficiary of a trust and does occupy the unit owned by the trust. Another candidate is a family member of a company that owns two units but this candidate does not live in the unit, as the units are rentals only. Both candidates

were in the top seven vote receivers out of ten candidates, so they now serve on the board. According to the way several other owners, including three board members, interpret the response from the ombudsman, the member who is the voting representative of the company cannot serve on the board. When this was brought before the board, the president and three other board members refused to consider that the one member is not eligible to serve on the board and called this a dead issue. Secondly, if my interpretation is correct and the company representative is not eligible to serve on the board, in accordance with our by-laws, what is our next step to have this person removed and replaced with the next highest vote receiver? D.B., Daytona Beach Shores

Answer – Accepting the fact that the condominium documents do not otherwise prohibit ownership by other than individuals, and accepting as being correct the statement of the ombudsman, then the beneficiary of the trust who does not occupy a unit does not qualify and, therefore, is ineligible to serve on the board. The corporate owner, on the other hand, must designate in writing the officer with authority to act for the corporation, and the person so designated would qualify to run for and, if elected, serve on the board. Do not confuse the concept of “voting designee” with the rights of membership; they are not necessarily congruent. Assuming that a person who runs for the board is determined not to be qualified, votes cast for that

person are voided ab initio (from the beginning of time), and the candidate receiving the next highest votes cast is elected. Contrast this with a person who qualifies, is elected but subsequently resigns (even at the same meeting at which he/she is elected). There is a vacancy on the board, filled by the board, which means the candidate receiving the next highest number of votes is not elected and will not serve unless appointed by the board to fill the vacancy.

Question - I have noticed what appears to be a structural defect occurring and worsening on the outside in back of my unit. There is a substantial

gap between the top of my unit and the base of the one above it. The board rejects the problem. It appears that the building is sinking and needs to be shored up. What should be done? B.G., West Palm Beach

Answer – The board’s refusal to have a structural engineer examine the condition is absurd. If I were you, I would call the local building department and ask that they send an inspector to examine the problem. If, in fact, it is determined to be a structural problem, warranting immediate correction, the code compliance officer can compel the association to fix it.

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.