



Condominium Law Q&A

December 3, 2007

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

Question – The board of the association which regulates the condominium in which I live decided to redo the balconies. They say that they have been working on this matter for two years, but I didn't hear about it until recently, which surprised me, since I usually read the notices of meetings. At the last annual budget meeting, the subject came up again; the engineering staff presented some report of the repair cost. I'm not comfortable with the company which the board is considering hiring to do the job. It is my understanding the contract has to be bid, which I do not believe was done. Don't we, the owners, have the right to demand a bidding process and hear some different estimates on this matter? D.S., Fort Lauderdale

Answer – To begin with, all contracts entered into by a condominium association related to the purchase, lease or renting of materials or equipment, which will not be fully performed within one year, AND all contracts for the provision of services, must be in writing. If a contract for the purchase, lease or renting of materials or equipment, or the provision of services, requires payment, in the aggregate, of more than 5% of the total annual budget, including reserves, then the association must obtain competitive bids. The Act does not specify how many bids must be obtained; thus two quotes would satisfy the requirement of the Act. The association is not obligated to accept the low bid, and the requirement of obtaining competitive bids is not applicable to contracts with employees of the

association, contracts for legal, accounting, architectural, community association management, engineering and landscape architect services. Following the rash of hurricanes in 2004 and 2005, the Division allowed restoration contracts to be let without competitive bids, citing the shortage of licensed contractors capable of doing the work.

Question – You have previously advised that a homeowners association cannot place a lien against a unit to secure a fine. However, you further advised that a lien can be filed against a unit, if the owner is delinquent in payment of assessments. My question relates to a situation where a lot owner fails to maintain his property. Our covenants, conditions and restrictions grant the association the right to enter a lot to cure violations of the covenants, conditions and restrictions and to charge the cost of repair to the lot owner. Of course, we would not enter and repair without first giving the lot owner notice and an opportunity to effect repairs. My question is, if the association makes the repairs and the owner does not pay in a reasonable time, can we lien the property? R.L., West Melbourne

Answer – A lien is a claim of entitlement to be paid the sum stated in the lien. It is not a judgment. To reduce a claim of lien to a judgment, the association would have to file a lawsuit to foreclose the lien. The party against whose property the lien was filed would receive service of process (notice that a claim has been filed in the court), and an opportunity to

defend. After a trial, assuming that the judge/jury found in favor of the association, a judgment would be entered, stating the dollar amount owed, including costs and legal fees. If the judgment is against the property, and the judgment is not paid, the court can order the property sold to pay the judgment. This is basically the same process which is followed in collecting delinquent assessments, and can be used in the situation which you described, when authorized to do so by the covenants conditions and restrictions.

Question – I am on the board of directors of a condominium, and we have an owner that is putting our minutes, rules and regulations, bylaws and amendments on a website he has created. As a director, I do not feel these minutes, etc. should be for public view. I believe they should be only for

the owners. What do you think? J.V.E., Fort Lauderdale

Answer – While I see no harm in posting the condominium documents and the rules and regulations on line (They are, after all, open to the public, being they are recorded in the public records.), I agree that posting association minutes in an unsecured manner, which is open to non-owners, can present potential problems. To begin with, there are privileges associated with communications among owners, which, if disseminated to the public at large, might violate the Federal Fair Debt Practices Act, and/or can be deemed libelous. You should share this with the unit owner and ask that he stop posting the association minutes.

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.