



Condominium Law Q&A

December 10, 2007

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Question – Although I currently live in Texas, we bought a condominium unit in Florida as a retirement home. Not yet ready to retire, we decided to rent the unit in the interim. We leased the unit to two middle aged men. One moved out shortly thereafter, the other became a landlord’s worst nightmare. The tenant was using crack and bringing prostitutes into the unit; sometimes giving them the security keys to the building. After checking into and subsequently being released from rehab for his drug problems, he moved from the unit but refused to return the keys. We had the locks changed the evening he moved out. The next day, he advised us that, unless we returned his security deposit (keep in mind that he was not current in payment of the rent), he would move back in. Then he took it upon himself to change the locks. Is it legal for someone who has been evicted to change the locks and move back in? Does a landlord have no rights? C.P., Daytona

Answer – While not the typical condo question, given the large number of unit owners who rent their units, I decided to answer your inquiry. While you state that you “evicted” the tenant, it sounds like he voluntarily left, which means that he still has a right of possession, until you lawfully evict him, using the court process, or the two of you agree to a mutual termination of the lease. No doubt, from what you have stated, there are numerous grounds for eviction, including the non-payment of rent. However, you

need to have the court remove the tenant; self-help (changing the locks) is not permitted.

Question – I was surprised by the opinion you gave in your column that a conscientious unit owner who updated their doors and windows with hurricane impact ones, could nevertheless find themselves obligated to pay their share of the common expenses for other unit owners who did not install impact doors and windows. Our documents are silent as to the maintenance and repair of the doors, windows and shutters, all of which were installed by the developer. It has been ruled that the shutters, attached to the outer edge of the balconies, are limited common elements. First, is this correct? Second does this mean that a vote is not required for the association to assume the maintenance and repair of the shutters and charge the unit owners accordingly? W.K., West Palm Beach

Answer – While I don’t recall the specific question asked that resulted in my advising that a unit owner who installed hurricane shutters or impact glass could nevertheless be responsible for paying for others who did not, I assume it related to repairs following a hurricane? The typical scenario goes something like this – unit owner(s) voluntarily elect to install hurricane shutters or impact glass on their unit and it is paid for by the unit owner installing same. A hurricane causes substantial damage to the unit windows and doors. The association, as part of the restoration process, pulls permits to restore the

damaged windows and doors. Code changes no longer allow the existing style windows and doors, instead mandating the use of impact glass or hurricane shutters. The insurance proceeds are inadequate to cover the full cost, so the association levies a special assessment against all unit owners to cover the cost. It not only can happen, it often does. Now, compare the aforesaid with a situation where the unit owners by a majority vote elect to place hurricane shutters on all unit windows and doors. Some unit owners already have installed code compliant shutters. In this case, the unit owners who already paid for the installation of shutters will be given a credit for the monies paid. Why a differing

result? Statutory variation, the former of which did not contemplate the result. Responding to the question of whether shutters attached to the edge of the balcony are a limited common element, the maintenance and repair of which is a common expense, the answer is, not necessarily. Shutters installed by the association are an association maintenance responsibility, the cost of which is levied as a common expense. Maintenance of shutters installed by a unit owner(s), be it on the unit, common elements or limited common elements, is the expense of the unit owner installing same.

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.

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