



## Condominium Law Q&A

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By Gary A. Poliakoff

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**Question** – It is my understanding that the association is required by the Condominium Act to provide insurance coverage for unit windows and doors. I recently learned that one of my outside doors has termites, necessitating the replacement of the door. The board told me that I am responsible for the cost of replacing the door. If it is covered under the association's insurance, why am I responsible? J.S., Fort Lauderdale

**Answer** – The question becomes one of whether termite damage is covered under the association's policy and, even assuming that it is, given the cost, which will obviously be less than the deductible, whether the cost of repair is that of the association or the unit owner. The Division has taken the position that, if the association is responsible for providing coverage, then the cost of repair, even when not covered by insurance, is that of the association. Most authorities take the position that, if the insurance proceeds are inadequate, then the documents control. Most condominium documents provide that, when insurance proceeds are inadequate for any reason (no coverage or deductibles), then the unit sustaining the damage is solely responsible for the cost of repair. Given that we are only talking about a door, I would suggest you take care of it, rather than wasting time and merely fighting over the matter.

**Question** – Twelve years ago, I bought a condominium in Hollywood, Florida. Five years

ago, the board approved an amendment to abolish rentals. While the tenant I had at the time the restriction was approved was allowed to stay until the end of his lease, I wasn't thereafter permitted to lease my unit. I tried to sell, without much luck. I had a buyer who was denied by the board for being 53; this is a housing for older persons community. Is that legal? I finally sold my unit at a price substantially below the market, just to get out. A friend told me that she read that rental restrictions are not valid. Can I sue the association to recoup my loss? L.S.L., Hallandale

**Answer** – I need to answer your question with a question. When you say the "board approved an amendment, restricting rentals," did you mean that the amendment was approved by the unit owners, or as a rule solely approved by the board? If the former, and it was passed and recorded in the public records prior to October 1, 2004, then it is enforceable. If it was a board made rule, I question its validity. Your not having challenged it at the time may have waived your legal rights, given that you are no longer an owner. I am also assuming that the condominium amended its declaration in order to become a housing for older persons community and thus be able to reject buyers below the age of 55.

**Question** – This condominium is a seven story drive up with four pods surrounding the garages. The walkways to the units are open all the way to the first floor. Any noise can be heard in the entire pod.

To clean the walkways, the cleaners are now using leaf blowers rather than sweeping. The noise is deafening, and the dust flies over all seven floors. Is there any law prohibiting such machines being used inside? The fumes are toxic, the noise is unbearable and the dust can cause untold problems. J.B., Ponce Inlet

**Answer** – I do not know the answer to the question asked but would suggest that you call your local code enforcement office to ascertain if the City has any laws which restrict noise decibel levels, and if so, during which hours. In addition, you should inquire whether the equipment you described is permitted to be used inside a closed structure.

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**Question** – If my recollection is correct, in a prior column, you said that a developer cannot vote for the majority of the members of the board in the election of directors. My question is: We had a 7 year turnover election, and the developer was allowed to vote for the majority of the Board members. Is this proper? His votes did make a difference in the outcome. M.M., Titusville

**Answer** – No. The developer cannot vote for the election of a majority of the board in a transition or post-transition election.