



Condominium Law Q&A

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Reader Feedback: In response to a reader's inquiry as to what to do about a problematic unit owner who has engaged in criminal conduct, you responded that, "the board's reluctance, and/or failure to act, only serves to compromise its ability to enforce the covenants and protect the rights and interests of the unit owners and the property values, which is the purpose behind the mandatory membership associations." The facts presented lead me to conclude that the reader was addressing a problem resident of the condominium where I serve as President. I want you and your readers to know that our board does serve the community, and their wishes, and do take that responsibility seriously. We do try to carry out our duties and often are criticized by some for trying to do so. As you know, being a board member is often very frustrating and unrewarding, and not for the weak at heart. In the case at hand, the Board, with the advise of legal counsel, has taken every step possible to address the problem. Unfortunately, the court system often frustrates efforts to expedite justice. Boards are often restricted by condominium law and criminal law to do what the owners want. Owners get frustrated, as do Board Members, on what seems to be inaction, or not getting immediate results. We feel your readers should have the opportunity to hear from the board concerning this matter.

Question – I have a question which relates to the experience of friends of ours, who recently purchased a condominium in Sarasota. After

purchasing their condo in the nice golfing complex community, and returning home to the UK to their home, the management informed them tht the upstairs owners had a bad leak in their bathroom, which ran down into our friends' bathroom, destroying the tile floor, cabinets and bedroom carpets, etc. When they asked about their apartment owners' insurance covering the damage and if the upstairs tenant's insurance would also cover the damage, they were told that Florida laws state that the ground floor tenant has to pay for the damage that the upstairs tenant caused! That sounds horrendous to me! Could you please cite the Florida statute that explains who is responsible for this type of situation? M.C., Ormond Beach

Answer – That's not the way it works. The Condominium Act mandates that the association obtain and maintain adequate insurance to protect the association and the unit owners from casualty losses and potential liability. The association's duty to obtain and maintain insurance is separate and apart from its obligation to maintain the units and the common elements; the governing documents define responsibility for maintenance. Accordingly, when there is a loss occasioned by a casualty (leak in upstairs plumbing causing damage to the unit below) to the extent that an improvement covered by the association's policy is damaged, a claim is properly filed with the association's carrier. To the extent that what is damaged is excluded from the coverage afforded by the association (unit floor

coverings, cabinets, fixtures), a claim is filed with the homeowner's insurer. Now, let's assume that there is no insurance coverage due to deductibles or lack of coverage, who pays for the cost of the repairs? One must look to the condominium documents, which more often than not say that the unit sustaining the loss is solely responsible for the cost of repairs. Is the upstairs unit owner, whose plumbing fixture caused the leak, off the hook? Not if it can be proven that their negligence caused the loss. However, the process to establish negligence is often more costly than the cost of repairs.

Question – We live in a 157 unit townhouse community. We have a problem concerning tree

branches. Some of the units neighbors' tree branches are hanging over their neighbor's property, such as their roof and patio. Some of these trees have berries that cause a great mess. Can an owner trim branches that are hanging on their property? J.J., Titusville

Answer – Yes, any property owner has the legal right to trim tree branches which cross over onto their property. Conversely, if a neighbor's tree falls onto your property due to an act of God, the property owner on whose property the tree was located is not responsible for resulting damages and has no obligation to remove the fallen tree.

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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