



## Condominium Law Q&A

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By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

**Question** – I live in an RV/Golf Resort that is a condominium. We recently went through transition of power from the developer to the unit owners. In the election for the board of directors, the developer had 18 votes. This number represents the 18 units which the developer owns and are currently available for rent. My question is this, does the developer have the right to vote in the board elections? M.M., Titusville

**Answer** – Yes and no. The developer cannot cast its votes in the election of a majority of the members of the board in a post-transition association, but it can vote in the election of a minority of the board members. When you have a developer which continues to own units post transition, the trick is coming up with a voting procedure that precludes the developer from voting in the election of a majority of the board, but counts its votes in the elections of a minority of the directors. The problem is compounded by the Condominium Act's mandated election procedure. The complexities are such that most developers stay out of the mix and do not vote their units, electing instead to keep a designated seat on the board for such time as permitted by law.

**Question** – Our condo is a single building with over 100 units. Many years ago, the original developer allowed a group of men the use of a room for exercise purposes. These men "chipped in" and purchased equipment for the room and have been

allowed exclusive use of the room. This group of men are the only people who have a key for the room. Our condo board refuses to put a stop to this exclusivity. What recourse to we have? Name withheld upon request.

**Answer** – No unit owner can use any part of the shared amenities in a manner which precludes other unit owners from having full access to the common elements for their intended purpose. The only exception would be allowing unit owners to reserve a portion of the common elements, such as a ballroom or clubhouse, at a specific time for permitted organizational or social functions. Locking off the exercise room would not be a justified exception. You can seek help from the office of the Ombudsman (Office of The Condominium Ombudsman, 1940 North Monroe Street, Tallahassee, FL 32399, Phone (850) 922-7671 Web Site <http://www.myflorida.com/condos/contactat.shtml>) or file for arbitration with the Florida Division of Land Sales Condominiums and Mobile Homes (Department of Business & Professional Regulation, c/o Arbitration Section, 1940 N. Monroe St., Tallahassee, FL 32399-1030; Phone (851) 414-6867).

**Question** – I own a unit in a small condominium of 12 units in Palm Beach. I recently received an assessment of \$1,751.00 for my "share" of the repair of one of the units' balconies. I e-mailed the

Association's management firm inquiring why the other unit owners were being assessed for the repair of a balcony which only the unit owner has use and enjoyment of, and therefore does not constitute a common element. I received the following reply:

"The balconies are considered "limited common areas" much the same as the courtyard and walkways to the units."

By whom are these circumstances considered "limited common areas?" Does this seem logical and, more importantly, legally correct? M.P., Palm Beach

**Answer** – It is not uncommon or unusual for the maintenance of certain limited common elements, such as unit balconies, parking spaces, boat docks, and storage bins, to be defined within the condominium documents as being a common expense of the association. That said, I know of many condominiums where the opposite is the case. It is solely within the discretion of the developer, when it creates the condominium, to make this determination.. Thus, what is true in one case is not necessarily the case in another, so one must read their individual declaration of condominium to answer the question asked.

*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](mailto:gpoliakoff@becker-poliakoff.com).*