



Condominium Law Q&A

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Question – Our new condo will be turned over to the unit owners in three months. As an association, we will inherit an agreement between the developer and a company that will provide TV, Internet and phone services for a twelve year period. Most owners do not like this company and would like to cancel these services. Are we required to assume this extraordinarily long contract, or can we find out own company to provide these services? What is the proper way to assume control of the association from the developer? Should we have an internal audit of all funds? Should we have an independent engineer inspect the building for the quality of work? Any recommendations will be appreciated. A.A. West Palm Beach

Answer – In the early days of condominiums (1970s), there was no right for unit owners to take control of the association, and developers often kept long term control over both the association and management through long term contracts which were referred to by Justice Ervine of Florida's Supreme Court as "contracts of adhesion." Today, every developer must turn over control of the association (transition) to the unit owners within statutory defined time lines, and the unit owners must assume control of the association. By accepting control, the unit owners do not waive any legal rights concerning warranties, representations or accounting issues; in fact, their rights are enhanced. Florida's District Court of Appeal said it best, in the concurring opinion in the case of *Conquistador*

Condominium VIII Association, Inc. v. Conquistador Corporation, 500 So.2d 346 (Fla. 4th DCA 1987): "The case points up the necessity for condominium associations, as soon as the unit owners take control, to engage professional engineers or architects to determine whether the buyers received all that they thought they had bought. The likelihood is remote that volunteer unit owner directors, however, well-meaning, can ascertain, as well as trained experts, whether the development buildings have structural integrity." Presently, the Condominium Act allows unit owners to cancel contracts which provide for operation, maintenance or management of condominiums, made by an association prior to assumption of control by the unit owners, by the concurrence of not less than 75% of the voting interests in the condominium. A trial judge recently ruled that this right applied to contracts for cable and satellite television and related services. This decision is currently being appealed.

Question – Since the homeowners took control of our homeowners' association, approximately 4 years ago, the board of directors has consistently denied all requests to waive any portion of our Covenants, Conditions and Restrictions (CC&Rs). Recently, our board turned down a request to install a wooden fence along the common property line between one of our homeowners and an adjacent property in another association. Homeowners in the adjoining association on both sides of the property in question have wooden fences. The homeowner making the

request essentially wanted to close the gap with a like-style fence. The architectural criteria in our CC&Rs state that, “all fence material shall be of white ~~wood~~ aluminum or PVC.” The word, “wood,” has was struck out in a recorded amendment that was instituted while the developer still controlled the association. As it turns out, the developer approved an identical request for a wooden fence after the amendment was recorded. On the other hand, approving this specific request for a wooden fence would seem to “make common sense.” I have been told by an acquaintance in another homeowners’

association that “variances” to governing document can be approved. I have not been able to find anything in the statutes that provides guidance in this matter. Is it ever permissible for the board to waive any part of the associations’ governing documents? Is there any pertinent case law? G.J., Merritt Island

Answer – For the most part, I totally concur with the board’s position. Changes to the CC&Rs should be approved by the members, not as a result of the board’s inaction, waiver or selective enforcement.

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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