



Condominium Law Q&A

June 9, 2008

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

Question – Could you please answer the following questions concerning condominium living?

1. In the past, we have always voted each year on whether to establish a reserve fund. Can the board establish a reserve fund without a vote of all the owners? If the board can establish a reserve fund, can they then add the reserve fund monthly payment to our monthly maintenance fee?

2. Can the President of the board hold two positions? Our current President is both President and Treasurer. Is this legal?

3. In our condo building, each condo owner has an assigned parking space. The pipes are leaking on some of the owners' cars. Attempts have been made to repair the problems, but the leaking reoccurs. Can the board reassign one of our many common area spaces to an individual condo owner?

B.K., Daytona Beach Shores

Answer – 1. In a condominium, the board must include in the annual budget, statutory reserves for deferred maintenance and capital expenditures sufficient to cover roof replacement, building painting and pavement resurfacing, plus any other item for which the deferred maintenance or replacement cost of which will exceed \$10,000. While the board must include statutory reserves in the budget, the members can vote annually to waive statutory reserves or to fund reserves which are less than adequate. In a homeowners association, reserves are only mandatory if mandated by the

governing documents originally provided for in the budget promulgated by the developer, or approved by a majority of the owners.

2. The Articles of Incorporation and/or the Bylaws will prescribe the necessary officers of an association. There is nothing limiting an individual to holding only one office, for example, a President-Treasurer. However, under corporate law, the President cannot also hold the office of corporate secretary.

3. The condominium documents will state if parking spaces assigned to a unit are deemed to be an "appurtenance" (belongs to) to that unit. If it does, then, without specific language in the documents to the contrary, the parking spaces cannot be reassigned by the unit owner or the association.

Question – I, along with several unit owners in our condominium, formed an advocate group to address many of the unit owners' issues and problems that seem to go unanswered by the board. Does the advocacy group need to be licensed and approved by any authority? We have written several letters to the board on behalf of the unit owners with no response at all from the board. Any suggestions? M.M., Fort Lauderdale

Answer - Assuming that you are not seeking to become an advocacy group outside of your immediate condominium, and that you do not intend

to lobby a municipal, county or legislative body (In which case, you might have to register as a lobbyist.), there is really no need to be licensed or seek anyone's approval for what you are doing. That said, while the Condominium Act does mandate that a the Board give a substantive response

in writing, within 30 days, to a written inquiry received by Certified Mail to the Board, it does not require the Board to respond to any advocacy group. Thus, to achieve your objective, you would be better off helping one of your unit owner members draft an inquiry to the Board, on their behalf.

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.