



## Condominium Law Q&A

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**Question** – I have a question about a policy that our HOA board adopted about eight years ago, regarding engagement of a café owner with a long term contract, at the expense and assessment of all the residents, for services essentially benefiting a small body of the community. I, for one, as do many others, have no need, interest, or desire to patronize our café. Yet, our board, sees fit to assess all units to the benefit of a minority of the residents. The assessments keep going up with each sweetheart contract made with the various caterers, and I, as one of the majority, keep paying to defray the costs of operations on behalf of minority of the residents, at the expense of those of us who are being forced each year to pay \$135.00 and buy food that we have no need of. I have personally lived in the development for 17 years, and the board made this decision arbitrarily, without consulting us, or holding a general election to determine what all the residents wanted. Would there be any point in suing the board to terminate assessing all residents, and instead, assess only those units who favor having the café a commensurate percentage of the total sum contracted for with the caterer? A.M., Boynton Beach

**Answer** – The question asked and the situation you described is more common than you suspect. While you expressed concern with having to subsidize a café which you do not personally frequent, the same argument is made by unit owners who do not use the health club, swimming pool, card room, tennis courts, or other recreational amenities built as part of the community's "life-style" package. I have even

had individuals express resentment for having to pay to repair elevators, boat docks, unit terraces, and other improvements which are not used by every unit owner. I know of one community that has a mandatory assessment to support a restaurant, which is part of the common elements, where individuals who are unable to eat in the restaurant due to dietary restrictions and/or religious laws, have for years unsuccessfully fought the assessments. It all comes down to one thing, is the assessment a valid common expense for the necessary maintenance, repair or replacement of the common elements, common areas, association property and the operation of the community property. Of course, in the case of subsidizing restaurants, there is an option exercised by many associations. That is, while the assessment to subsidize the restaurant is not optional, unit owners who do not eat in the restaurant and/or do not consume their full allocation of food credits, are allowed to transfer their food coupons (allowance) to other unit owners for consideration.

**Question** – I am writing you as a desperate 75 year old woman living in a gated villa complex of 375+ units. The complex is about 40 years old and has numerous mature olive trees that shed small leaves constantly all year. I have submitted numerous requests to have the tree in my yard trimmed (even at my own expense). My requests are ignored. My gutters have to be cleaned on a weekly basis (which I do myself by climbing on the roof). If the gutters are not clean, my patio floods, coming dangerously close to flooding my villa. We are charged a \$2,940

maintenance fee annually. This complex has a volunteer board of directors who will not address this problem. Please advise me as to my options. P.A.T., Boynton Beach.

**Answer** – There was a time when Black Olive and Ficus trees were standard fare for most new developments due to their relatively low cost and quick growth. Today, many municipalities have banned both for being pervasive and a nuisance. Fortunately, for some communities the rash of hurricanes in 2004 and 2005 have cleared the

landscape, allowing associations to replant with more appropriate trees. While unit owners do not have to right to take things into their own hands and trim or cut down trees on the common elements [I have known of more than one midnight trimmer to do so], in situations such as you described, the board should cut responsibly, and trim or remove the obnoxious tree. If the board refuses to do so, unfortunately your only recourse is private legal action to convince it to cure the nuisance.

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