



Condominium Law Q&A

December 8, 2008

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

Question – Mixed-use residential/commercial condos are becoming more common in Florida and pose unique governance problems. In our 32-unit condo, nine units are commercial, and the remaining 23 units are residential. Amending Rules and Regulations and other mixed-use condominium governing documents that satisfy all owners can be a challenge, since commercial preferences involving signage, pets, parking, noise, and similar matters can sometimes collide with residential interests. The Florida Condominium Statute, 718.404 (1) attempts to clarify rule-making in mixed use condos, but seems to raise more questions than it resolves, when it states: “The condominium documents shall not provide that the owner of any commercial unit shall have the authority to veto amendments to the declaration, articles of incorporation, bylaws, or rules or regulations of the association. This subsection shall apply retroactively as a remedial measure.” Does this mean that commercial owners may not vote against proposed changes to the governing documents normally requiring 75% of the owners to approve, or that commercial owners who are members of the Board of Directors cannot vote against amendments to the Rules and Regulations? If this is a correct interpretation of the Statute, shouldn't it just read: “...a commercial unit owner may not vote to disapprove or veto amendments to the declaration, articles of incorporation, bylaws, or rules or regulations of the association.” We would appreciate your interpretation of this matter, and suspect that other mixed-use Florida condominium owners would also be interested in a clarification. Thank you. C.I., Sarasota

Answer - The question you asked and comments made are right on. As more and more planned developments are built with a commercial element, no doubt the question you asked and issues raised will become more relevant. Although not clearly written, this is a problem which seems to be pervasive in the Condominium Act and in our laws, generally. The intent was not to prohibit commercial unit owners from voting and, with the requisite vote, make changes to the documents, but rather to prohibit the reservation of a right in a single commercial owner to have veto rights over the will of a majority of unit owners.

Question - I have a question that is not setting right with me. I installed hurricane shutters after Hurricane Wilma because the association did not have monies to repair compromised windows and sliders. Now, after getting an engineer to state a window and slider **MUST** be replaced due to hurricane damage, the association is only willing to install a non-impact door because I have shutters. They are installing high impact in other units without shutters. I feel they should give me a credit for my shutters. The association is using a savings off my investment. What say you on this issue? J.J., Boca Raton

Answer - Quite honestly I can't understand the logic of the board penalizing you for doing the right thing in installing hurricane shutters, by refusing to install the same impact doors and sliders which it is installing on other units. Unfortunately, it isn't

possible to answer that question without first reading the section of the declaration which defines whether the unit owner or association is responsible for repair and replacement of the unit windows and sliding glass doors. In addition, while the Condominium Act does impose upon the Association the obligation to cover under its hazard

insurance the repair or replacement of unit windows and doors damaged by a casualty, the law is in flux in so far as whether that obligation carries over in cases where the damage is not covered by insurance. That said, as I previously noted, the Association should treat all owners the same regardless of whether someone has shutters or not.

Gary A. Poliakoff is a founding principal of Becker & Poliakoff, P.A. 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.