



Condominium Law Q&A

February 2, 2009

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

Question – Each of the 13 buildings in our Florida community has 32 units and two handicapped parking spaces. There are a couple of residents who claim these handicapped spaces as their own, despite the fact that they each have reserved spaces that come with their unit. Therefore, no one else can use these spaces when needed. There are no rules regarding their use, and the Board of Directors doesn't seem to know how to handle this problem. Is there anything that can be done about this situation? I.B., City unknown.

Answer: While the Fair Housing Amendments Act of 1988 might impose upon a planned development the obligation to make handicapped spaces available to handicapped individuals, I see no reason it needs to do so while allowing the unit owner to also keep their assigned space. If the unit owners want the handicapped spaces, it should be done in exchange for the assigned space.

Question: Our Florida condominium association is part of a master homeowners association whose master declaration and general protective covenants take precedence over the condominium association, as long as there is no violation of Florida Statutes 718. The master association proposes an amendment to include a mandatory country club membership in the country club that is wholly situated within the community. The club membership would be voluntary for current condominium and single-family homeowners, but mandatory for all subsequent transfers of ownership. The prospectus (and the developer's original

agreement for purchase and sale of the tracts) that was provided to us before we purchased the unit included the following provision: "Membership in the club is not included as a part of the purchase price of a unit. Further, membership in the club is not mandatory." The condominium declaration and master covenants do not include any reference to country club membership. What is the legal status of the prospectus relative to Florida Statutes 718 after the developer has turned the association over to the members and is no longer selling units within the association? Can the prospectus be cited as a legal/historical document for the "common scheme" of the community and development? I have read your Firm's newsletters, as well as various recent lawsuits (*Bristol Lakes vs. Aberdeen*, *Granuzzo vs. Willoughby*, and *Marina South Shore vs. Punta Gorda Isles, Section 22*) and would value your opinion on whether or not the prospectus provides us any legal remedy relative to Florida Statutes 718. Thank you for your help and any advice you may provide. W.R.P., Naples

Answer: Appellate courts have decided negatively against efforts to force mandatory country club membership on communities where membership was optional at the time the community was developed. Therefore, I would not recommend that any homeowner association attempt to impose mandatory membership in a Country Club, when that obligation was not part of the original covenants, until the issue is resolved by the appellate courts.

Question: I recently suffered water damage to my unit that was caused by the failure of the ice maker hose to my refrigerator. In addition to my loss, several owners of condos on the floors directly below mine suffered losses and damage. Am I, or my insurance company, responsible to these owners for their losses? E.H., W.P.B.

Answer: You are responsible only if they can show you were negligent; that is, you knew of the deteriorating condition of the ice maker and failed to take action to correct. Otherwise, they file for their loss, depending what is damaged, with the Association's carrier or their own HO6 carrier.

Question: I live in an eight unit condo building. Each owner is a member of our Board of Directors. All major decisions are made by the Board. Is our eight unit condo required to have officers? R.L.W., Apollo Beach

Answer: Your Articles of Incorporation will dictate the officers of the Association. Yes, all corporations (which is what the association is, albeit a not -for – profit) must have a President and Secretary at minimum.

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.