



Condominium Law Q&A

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By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

Question - We have a condo wherein the water pipe under the sink broke when no-one was there, allowing water to leak into the condos next door and below, damaging floors and wall coverings. It appears to me from your articles that the other unit owners are responsible for carrying hazard insurance, which would cover the cost to repair the damage, and that the law says we are not financially responsible to make the repairs if they fail to have insurance. It would be much appreciated if you would clarify this issue, or advise of what else would determine it, if I missed something. T.B., San Diego, CA

Answer - The way it works is that the Condominium Act imposes upon the association the obligation to carry hazard coverage for all improvements to the condominium property other than the 11 items required to be covered under the unit owners "HO6" Policy. (Please note that effective October 1, 2008, the law changed to delete air conditioning units, regardless of where located, from unit owner coverage and add them to the association's coverage.) Following the facts as you presented them, the pipe breaks within a unit causing damage to the unit and other unit's floor and wall coverings. Given that unit wall coverings and floor coverings are required to be insured by the unit owner, it is incumbent upon the unit owners, who sustained the loss, to file a claim under their respective policies. The sheet rock, both exterior and interior, is covered by the Association's policy. The problem arises where, as a result of the deductible, the proceeds of insurance from the association are inadequate to

cover the cost of repair or replacement of the sheet rock. The amended Condominium Act (Effective October 1, 2008) requires the Association to make the necessary repairs and charge same as a common expense of all unit owners.

Question - Three (3) years ago, I bought a 2 BR/ 2 B Condo for \$309,000. Annual taxes were \$6,000 and carrying charges totaled \$3,000, annually. As a result of the sub-prime mortgage crash, this property is now (2008) assessed at \$154,000. While annual taxes were reduced to \$3,000, monthly carrying charges for 2009, if approved, are projected to be increased 26% - including the infusion of \$250,000 of reserves, because 57 condo owners of a total of 187 are in arrears. These delinquent owners haven't made payments to our homeowners association for months to years, in some cases, and are in various stages of foreclosure with their mortgage lenders. To complicate matters, some of these non-payers rented out their units - with Condo Board approval - prior to or after it was established that they were in serious default. Many of these unit owners are out of state residents/speculators who collected rent but never paid monthly mortgages or carrying charges. It's evident that this emergency proposal to raise monthly carrying charges on the balance of paying unit owners is a temporary fix that will not work. Ultimately, more unit owners will default over time as the number of non-complying owners exponentially increases. What legal rights, measures, options do unit owners who have played by the rules have in this situation? Is there any way that we can extract ourselves from this Catch-22 mess that will

eventually contaminate everyone? Your acknowledged expertise in evaluating difficult housing issues and coming up with practical solutions to complex problems is well known. Please help. Thank you. L.G., W.P.B.

Answer - The situation you described and the problem experienced is repeated a thousand times a day throughout the State and Nation. Unit owners in common interest ownership communities are being squeezed due to the need to fund budget shortfalls which result from delinquent unit owners, and units which have been abandoned or are in foreclosure. Banks are slow to take title, knowing that, when they do so, they become liable for the maintenance. So, the net effect is that the unit owners who timely pay are also being forced to cover the costs of maintaining the bank's collateral (units on which they hold mortgages), and delinquent unit owners, many of whom continue living in their units and enjoying the amenities, including cable television,

electricity and water, are having the cost funded by others. This is a matter which I recently brought to the attention of the President and Congress, as I strongly feel the bailout bills, which are pumping billions into failed banks and other financial institutions, along with the "Homeowner Affordability and Stability Plan," which allows defaulting borrowers to restructure their mortgages, need to address the plight of the 60 million American's who live in common interest ownership housing communities. The solution to this problem is to mandate that banks receiving federal bailout monies, and unit owners offered restructured mortgages at lower interest rates, bring their obligations to their community associations current, as a condition of receiving federal funds and lower interest rates. I'm calling on all unit owners, who are timely paying their assessments, to join me in this effort by calling their Congressmen/Congresswomen and United States Senators.

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.