



## Condominium Law Q&A

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By Gary A. Poliakoff

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**Question** – I live in a large gated community which is divided into approximately 40 sub-communities. We have a master association and each smaller community has their own HOA. Before any homeowner can sell his home, our sub-community's board has decided prospective buyers must have a background check run on them and then be approved by our board before they can complete the purchase. Is this legal? Can an HOA board tell a homeowner to whom they can and cannot sell their property? We are a golf community, not an over 55, and this is the only sub-community that has this requirement. Are we setting ourselves up to be sued for discrimination when our board one day decides that someone cannot purchase a home? This is not something that homeowners voted on and approved. This is one board member who wants to "do his job and keep murderers, rapists and child molesters out of our neighborhood." L.D.

**Answer** – If the master covenants, conditions and restrictions and/or the neighborhood covenants, conditions and restrictions grant to the association(s) a right-of-first refusal, and that right is exercised in a timely, uniform and non-discriminatory fashion, the courts have affirmed that it is a lawful means of maintaining a community of "congenial" residents. Note that this is not a right of approval, which would be an unlawful restraint on the alienation of property rights. Under a right of first refusal, the association or its designee, must buy the unit from the seller under the same terms and conditions as offered to the outside third party purchaser. The courts have further held that the "outsider" does not have

standing to challenge the internal actions of the association. Of course, if the reason the association is exercising the right is to exclude a protected class member [race, religion, sex, national origin, familial status or handicap], then the person who was discriminated against would have standing and a cause of action against the association. Finally, the courts have held that in the exercise of its right of first refusal, the applicant must pass through a bifurcated process. First, the application "on its face" must evidence that the prospective buyers qualify to live in the shared ownership community. For example, if the covenants state no more than two persons can occupy a one bedroom, or four to a two bedroom, and a family of 7 applies to acquire a two bedroom, then the applicant can be rejected without the association having to buy the unit.

**Question** – I am an owner of a condominium. Our carports need repair, and the board has approved an assessment to have a new roof with aluminum beams installed. My question is: The original beams are cement. Does the change to aluminum beams constitute a material change, which the owners would have to vote on? D.B.B., Cocoa Beach

**Answer** – While a material alteration or addition to the common elements normally requires the prior approval of 75% of the unit owners, there are arbitration decisions which allow material changes to be made where the advancement in technology justifies use of alternative materials. I would recommend having an independent engineer

evaluate the alternatives between aluminum and cement beams, and if he/she concurs that the aluminum beams are preferable, the board can approve same without unit owner approval.

**Question** – I live in a planned development governed by a homeowners association. The recreation association is the umbrella group in our community that has violated our documents by having only the annual meeting in December 2007 and no meetings so far in 2008. The documents state, "regular evening meetings shall be held in the months of February, April, June, August, October

and the annual meeting in December at such time as shall be designated by the board of directors." At those meetings, the people have the opportunity to address the members as well as the board of directors. What can we do about it? Does this now legally remove the need for the board to hold bi-monthly meetings? S.R., Delray Beach

**Answer** – No. The meeting schedule, as mandated by the articles and bylaws, should be adhered to by the board. If the board members feel that bi-monthly membership meetings are not needed, the documents should be amended, not ignored.

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