



Condominium Law Q&A

April 28, 2009

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

Question – Let’s start by saying I am a faithful reader of your column over the years and, now, would like your opinion on my condo problem. I live in a Recreational Vehicle Resort with a condominium association. According to our recorded governing documents, all lots are for recreational vehicles, not one mention of classes. We have travel trailers, fifth wheel trailers, Class A motor homes, Class B motor homes and Class C motor homes scattered throughout the Resort. We have three phases to the project: Section 1, Section 2A and Section 2B. Recently, the board of directors told me only Class A motor homes are allowed in Section 2A, where I own a lot. They said, just before the turn over from the developer in November 2006, the developer filed and recorded an amendment stating, “Only Class A motor homes are allowed in Section 2A.” The board of directors also stated that the sales rep told us this is a Class A only section. I told them that any oral representation from their sales rep carries no weight, only the recorded governing documents at the time. Is this right? This notice that oral representation does not carry any weight is printed on our purchase and sales agreement. Here, again, when I purchased my lot in July 2005, there was no such language pertaining to “Class A Only” in the governing documents, only the reference to recreational vehicles, which means all types and classes, as mentioned above. I maintain that the amendment filed by the old developers board of directors is in violation of the Condominium Act by not allowing me to rent my condo lot in Section 2A to any type of recreational vehicle, as all the other owners in Section 1 and

Section 2B can do. This amendment also affects the sale of my property because I can only sell to Class A buyers. I remember reading your column where you stated that the Condominium Act states, “Any amendment restricting unit owners' rights relating to the rental of units applies only to unit owners who consent to the amendment and unit owners who purchase their units after the effective date of that amendment. When this amendment was written and recorded, only the Developers board voted on it, not the unit owners, so we never gave consent. There was no posted meeting. So my questions are: Is the board of directors in violation of the Condominium Act by restricting the rental and sale of my condo lot to any type of recreational vehicle? Am I grandfathered in because I owned my condo lot before the amendment was recorded? If you feel this recorded amendment is in violation of the Condominium Act, should I file a complaint with the State of Florida? J.G., Titusville

Answer - Effective October 1, 2004, no amendment to a declaration of condominium can affect an existing unit owner unless he/she consents to same. Accordingly, you should be able to lease your lot to any class of RV, without restriction. The amendment would apply to subsequent purchasers; that assumes, of course, that it was validly passed. I have serious questions concerning an amendment recorded by the developer prior to transition which was apparently not voted on by the unit owners. You are correct, oral statements and/or provisions of sales contracts do not control, the recorded covenants do.

Question - I am writing to you because I need an answer to a very important question. Can 2 sisters living in the same community governed by an HOA, but in two different residences be on the same board of directors, one in the capacity of treasurer and one as a director? In my opinion, this would be a conflict of interest. The board in question has only 7 members. If these 2 sisters vote the same way on this small board, they are together almost 30% of the time. Is this allowed? It is imperative that I get an answer as soon as possible. H.P.

Answer - While the Condominium Act, as amended effective October 1, 2008, prohibits co-owners from simultaneously serving on the board, there are no similar restrictions applicable to HOAs. That said, State Representative Julio Robaina does plan on introducing legislation this year to impose similar restrictions in HOAs. Please note there is a difference between being on the board and serving as an officer. The restrictions noted are for serving on the board, which does not preclude, where the documents permit same, a non-board member from serving as an officer of the association.

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.