



Condominium Law Q&A

June 1, 2009

By Gary A. Poliakoff

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Question - I want to commend you on the informative pieces that you write in the Post week after week. There are a number of times that it helped me in situations that I did not have answers. Keep up the good work. I have a question about the association members. I am the president of the association and our general elections were held yesterday. A board member's daughter was elected to the board; they both own one condo unit, jointly. I informed them that one of them will have to step down. They said that this is not correct. Can two members that co-own a condo unit serve on the board at the same time? They are claiming they can, since the other board member co-owns several other condos with someone else. I thank you in advance in taking the time to read this e-mail. I hope to hear from you soon. B.E., Hollywood

Answer - In response to your question, Section 718.112 (2) (d)(1), Florida Statutes, effective October 1, 2008, provides that, "In a condominium association of more than 10 units, co-owners of a unit may not serve as members of the board of directors at the same time."

Question - Your column is such a blessing to us laymen. We own a unit in a small association (28 units), which means that money for maintenance and projects is always tight. There are three buildings, and all units have balconies front and back on two floors. There are six end units with wrap-around balconies on two floors. These six units have almost 50 percent of the railings. The balcony decks and railings are limited common elements and have been

maintained by the association since the place was built in 1982. We have been slowly doing some major repairs and projects over the last five years, with railing replacement and deck repairs coming up next. The new president has declared that it is unfair to ask the other 22 owners to pay for the end units' railing and deck maintenance, and is seeking to make the deck maintenance and railings the responsibility of the individual unit owners by having a vote of the owners. Notwithstanding the 22 vs. 6 voting mismatch, is this legal to do? In addition to the fairness issue, what other issues and liabilities would this raise? We fear that the neighbors may or may not do adequate maintenance, may make unauthorized changes to the exterior, and who knows what else. I would expect the next push to be making the end units pay more for painting and exterior cleaning because we have more wall space.

We also feel this changes the conditions under which we bought the place, and don't know what our recourse is. Complicating the issue is the fact that the association just finished completely renovating two of the six end units, so they are already paid for by the association. Our unit is one of the remaining four end units, and is the only one that really needs substantial deck repair. We have had a pending repair request, submitted repeatedly over six years, and the work was partially done, then put on hold in order to complete it as part of a complete deck renovation for everyone that now looks doubtful. It is our position that, regardless of what the board does in the future, we are entitled to have our repair finished and paid for by the

association under the current rules. Is this correct thinking? Thanks for your consideration. R.M., W.P.B.

Answer - Given today's technology, I do not know why concrete structures cannot be built in a manner which would preclude the corrosion that occurs when salt water interacts with the rebar in the balcony slabs. That said, among the single most costly projects which a condominium association will undertake is balcony restoration, which inevitably leads to an ongoing debate: "Why should

I pay to repair the end units with wrap around balconies?" I truly understand the concerns you raised, which are not that much different than the first floor unit owners trying to avoid paying for elevator maintenance. That said, at least one appellate court did affirm the amendment of a declaration of condominium, shifting the maintenance obligation for unit balconies from a common expense to a unit expense. That decision was made before today's litany of "vested rights" cases, so it is unclear what a court would do when faced with your predicament.

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