



## Condominium Law Q&A

August 24, 2009

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

**Question** – Thanks for your column. People in Florida are particularly vulnerable to persons who do not think of others when making decisions in small lot communities or in condominiums. One of the problems, particularly at this time of the year, is the girls and women who insist on wearing the small mini bikini (hardly more than strings) type of bathing suits at public pools. It is totally embarrassing for me as a female. It is a bad example to other young persons. It is difficult for men, who are true to their wives, but would like to enjoy the relaxation of a pool area. How mothers can allow their young girls to dress like this in public makes you wonder if they are soliciting for male favors. I wanted to attend a free vacation to a beautiful time share project, however, when I visited the reception area and saw the almost nude young women, I declined to go. Some regulation must be applied, in my opinion. Can anything be done about this? Name withheld by request. W. Melbourne

**Answer** – No doubt you will appreciate the illustration to the Chapter in *New Neighborhoods* titled "Not in my Castle," which discusses the scope of the board's authority to promulgate rules and regulations; it shows a posted sign on which is written, "Speedo limit." It is within the purview of the board's authority to impose restrictions on what can/cannot be worn on the common areas. The test of the enforceability of a rule and regulation is one of "reasonableness." So long as the rule does not abridge a fundamental right, or circumvent a right

granted by the recorded documents, it will be found to be enforceable. On the other hand, something I speak about frequently is the importance of selecting the shared ownership community which is the right one for you. There are senior retirement communities, communities which cater to families with young children, communities which prohibit pets, and even clothing optional condominiums. So do your homework before buying or renting in order to avoid being embarrassed by what you discover.

– Recently, my condominium association had a board of directors' meeting at which a vote was taken to amend the bylaws to allow some trucks (which trucks to be decided by future regulations) to be allowed the same privileges as automobiles. Six board members were present, which was enough for a quorum. The motion to allow trucks did not pass, as the vote was three ayes and three nays. At this point, a member of the board told the president (who voted "nay") that she must withdraw her vote, because the president only votes to break a tie, not cause one. The president then withdrew her vote, and the measure passed three votes to two. Of course this does not become final without the consent of the membership. But, was the proper procedure followed, or should the initial vote stand, and the motion to allow trucks be recorded as defeated? P.K., Wellington

– This is a common misconception. At meetings of the board, the "president" sits as a board

member, not as an officer of the association, and as such, has the same right to vote as any other board member. Based upon the facts presented, you are correct, the motion failed on a 3-3 vote.

– I am a board member of my homeowners association. Are we allowed to withhold or cancel amenities (cable, clubhouse privileges, security alarm, etc.) for those owners who are more than 90 days in arrears and/or still living in their foreclosed house and not paying their maintenance fees? This has become a severe burden on the homeowners who maintain their payments as

well as on our overall budget. J.C., Palm Beach Gardens

– Unlike the Condominium Act which does not provide the right to disconnect services to unit owners who are delinquent in payment of their assessments, the Homeowners Association Act does grant the association the authority to deny delinquent unit owners access to amenities and to cut off non-essential services such as cable television. Similar authority was proposed for condominium associations, however, the bill which contained the language was not voted on during the 2009 legislative session.

*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](mailto:gpoliakoff@becker-poliakoff.com).*