



Condominium Law Q&A

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Columnist's Note: On September 26, 2009, Space Coast Community Association, Inc is sponsoring a book signing and discussion of Gary Poliakoff's and Ryan Poliakoff's new book, *New Neighborhoods: The Consumer's Guide to Condominium, Coop and HOA Living*, at the Comfort Inn & Suites, 3901 North Atlantic Avenue, Cocoa Beach, Florida, from 9:00 a.m. to 12:00 noon. The book signing is open to the public, so come meet the authors and bring your books with you or purchase one there.

Question – As a former board director and officer of our property owners association, I was surprised to see that our association's financial statements for the year ended 12/31/2008 had a "qualified opinion" issued by our auditor. The issue was a very aggressive treatment of the allowance for doubtful accounts at the direction of the treasurer and an audit adjustment to reduce the amount at year-end recommended by the auditor by \$39 K or about 50%. The board unanimously voted to override the auditor and instructed the treasurer to ignore the adjustment. This then resulted in the auditor's qualified opinion. Florida Statute 720 requires that our association prepare audited year-end financial statements but seems to be silent on whether or not a "clean audit option" is required. I would appreciate your thoughts on both the legal aspect of a qualified opinion relative to Statute 720 and also on the authority of the board to overrule a certified, qualified and experienced auditor's recommended audit adjustment. T.M., Palm Coast

– The fact that the Homeowners Association Act might require an audited year-end financial statement doesn't preclude the board, in the exercise of its business judgment, to act in a manner it believes to be in the best interests of the association. This would include making adjustments to the audit insofar as determining if the auditor overstated the position on bad debt.

– I am the secretary of a condominium board of directors, and I have a question. It seems that our treasurer took it upon himself to move monies from a CD account to our checking account without board approval. He insists he did nothing wrong. I am unable to cite him chapter and verse from the law to prove that he should not have done this. Can you help? Thank you for your consideration of this matter. M.D., Bradenton

– The board of directors sets policy. Officers act in accordance with the board's actions. The treasurer should have asked the board to approve his recommendation. This protects the treasurer.

– As a homeowner living under the association bylaws, I would like to pose the following question. Our master homeowners association, on a yearly basis, requires the re-registering of our transponders and card keys (card keys are used to access the pool and clubhouse). All transponders and club access cards not registered will

be disabled on October 1st. This year they are requiring the following:

1. To see a copy of our drivers licenses;
2. To write down our drivers licenses for their records;
3. To see a copy of our registration (must have home address located in the association);
4. To write down the vehicle information including year, make, model and State;
5. Date of each resident's birth;
6. To write down number of bedrooms in my home;
7. To indicate whether we have a 2 or 3 car garage;
8. Cell phone numbers of all residents in the home;
9. Signed acknowledgement of the guidelines (not in the bylaws or voted on) indicating that the security cameras are not for security purposes.

All of the above information is not a requirement of the bylaws to have ingress or egress to the community. Please let me know if you think I am being unreasonable or acting within my rights as a member (dues paid in full) to this association by refusing to provide them all of the detailed information requested, other than my vehicle information. I look forward to your reply. L.E., Wellington

- The test for determining the enforceability of rules and regulations which are not set forth in recorded documents is that of "reasonableness." Does the rule promote the safety, health and welfare of the residents and does it abridge any fundamental rights. Quite frankly, I don't see anything in the requested information which I find to be overreaching in these days and times of enhanced security concerns.

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.