



Condominium Law Q&A

September 21, 2009

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

Question - I read somewhere that a Licensed Community Association Manager (LCAM) is required if a condominium has more than 10 units and decides to hire a property manager. Please confirm this recent condo regulation for me. I appreciate your urgent consideration. Thanks. Y.Y., Fort Lauderdale

Answer - The threshold for when a community association must use a licensed manager is when the association manages MORE THAN 10 units OR, has an annual budget in excess of \$100,000; in which case Chapter 468, Florida Statutes, controls.

Question - I am a new treasurer for our condo association. We have thirty-two (32) units in our condominium, and I have recommended that since we are less than 50 units we use cash accounting rather than accrual accounting. I find cash accounting much easier for non-professionals to understand and track expenditures versus income. I believe that Florida Statute 718 allows a condominium with fewer than 50 units to use the cash accounting method. Is this correct? S.P., W.P.B.

Answer - No doubt, there is confusion between the provision of the Act which provides that an association which operates less than 50 units "shall prepare a report of cash receipts and expenditures in lieu of compiled, reviewed, or audited financial statements," and the Division Rule (61B-22.006,

FAC) which provides that all financial statements required by the Act shall be prepared on an accrual basis. I can't reconcile the apparent conflict between the sections but have been told that the rule governs and the financial statements must be prepared on an accrual basis.

Question - I recently heard you speak. Did I hear you accurately when you stated that an HOA board cannot levy a fine for a violation? So, does that mean only a Fining Committee can? What if they don't have a fining committee? I tried to find documentation that would explain this but I was not able to find the info in Statute 720. What governs who levies fines in an HOA? If they abuse this, are there any remedies other than voting them out of office? J.A.G., Boca Raton

Answer - If you take a look at Section 720.305(2)(a), Florida Statutes, you will see that for a fine to be levied there must be a hearing before a "committee" of at least three members appointed by the board. Note, however, that the members of the committee cannot be officers, directors, or employees of the association, or the spouse, parent, child, brother or sister of an officer, director, or employee. For a fine to be levied, a majority of the committee must agree to the levy of a fine. Beyond that, the law is not clear in so far as whether the committee or the board sets the amount of the fine. Most pundits opine that the committee recommends that a fine be levied and the amount, and then the

board, sitting sort of as an appellate court, implements the committee's recommendation, rejects same or reduces the amount of the fine.

Question - We live in a condominium which has a no pet restriction but, in essence, our no pet rule is a don't ask - don't tell policy, and if this rule/policy is ever enforced, it is selective. For example, my next door neighbor has had a dog for 6 months, her friend, or her son, openly walk the dog on a daily basis. She has never been cited for violating the no pet policy. In light of the way the no pet rule has morphed into a policy of selective or non-enforcement, we have been thinking about getting an indoor cat. Worst case scenario - we are cited for having a pet. What would I need to do to prove selective enforcement and could I represent myself? Or, what would it cost for someone else to represent me? Where could I find out if my association has

been taken to court over this issue? Before we actually get a cat, we want to count the cost of a possible legal action. Y.K., Plantation

Answer - As a general principle, the law requires that covenants and rules and regulations be enforced within a reasonable time; otherwise, the legal doctrine of waiver or estoppel will preclude its enforcement. In addition, the board cannot selectively enforce; that is electing to enforce the regulations against some but not all. Selective enforcement is a defense to an action which seeks to enforce the regulation. It would be up to the party against whom the board is seeking to compel the removal of a pet to prove that other pets are in the condominium and that no action is or has been taken to remove them.

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.