



Condominium Law Q&A

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Question – I live in a gated golf course community in West Palm Beach, with a common property owners association and about 12 individual homeowner association sections. My community is responsible for maintaining all landscape trimming and mowing, as well as maintenance of the irrigation system, both for common property and each homeowner's property. The homeowners association board has voted recently to assess the individual homeowner for any repair over 35 dollars. Can they arbitrarily circumvent a right granted by the document and charge for such repairs. My main concern for writing to you is a problem with my property line. My neighbor has planted several trees, and in particular 2 banana plants, which as you know grow very fast and wild and huge, so close to the property line that they are now at least a foot and half on to my property, destroying my very own plantings which are well on my side. One of these plants has now caused a crack in the irrigation line due to its root structure and floods the property when it is activated, wasting very valuable water. The homeowners association has stated that, since it is not on common property, they are not responsible, and it is between the neighbors. I think that if they are responsible for trimming, then they are responsible for clearing away any encroachment on to my property. If his tree is cracking the pipes, it should be removed, and trimming the stalks above ground does not effectively eliminate the root problem. Is there any city code or ordinance that limits how close to your neighbor's property you can

plant? It seems obvious that if you plant on the property line it is a matter of time before it grows over the property line. He also has planted in another area a hedge-like planting against my fence, which is about 6 inches on to my property, and has allowed it to overgrow to about 12 feet. It is getting so large that, at this point, I am concerned it might uproot my fence. The homeowners association is not taking any action here, and I feel they have a responsibility to protect me from this selfish person. I have both my final survey and my neighbor's final survey and have no doubt where the property is divided. Name withheld.

Answer – I can write an entire book on issues associated with trees and other landscaping, which is both planted on or removed from the common areas and/or intrudes onto a neighbor's property, causing all types of nuisances. It is not unusual to have "midnight" landscapers remove trees blocking a unit owner's view of a golf course or other scenic vistas. Here is how it works. As a general statement, you have a right to trim limbs and other vegetation which extends across your property line. If a neighbor's tree falls onto your property during a windstorm, even damaging your property, the unit owner on whose property the tree was situated is not liable for the resulting damage or even the removal of the fallen tree. If, on the other hand, one's property, say a boat or chaise lounge is blown onto your property in a storm, the property owner has the right to trespass onto your property to retrieve their

property. The association cannot arbitrarily decide that it is going to add a surcharge against unit owners, in addition to the common expenses owed, for maintenance of the common areas. On the other hand, if a neighbor's landscaping is uprooting your plumbing lines, you do have a right to remove from your property the offending root system. And, if the covenants, conditions and restrictions required prior approval for making additions to the landscaping, which wasn't obtained, even if the association fails to

take action, you as a co-covenanter can enjoin the offending unit owner's actions.

Question – I read your column weekly and always find it interesting and informative. My question is: Is it legal for a condo association to prohibit the permanent occupancy of residents under the age of 18 when the complex is not a registered 55+ community? G.T., Vero Beach

Answer – No.

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.

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