



Condominium Law Q&A

May 10, 2010

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Question – I own a unit in a 200+ unit complex that is mostly investor-owned, with onsite offices to manage unit rentals and property maintenance. Additionally, the majority of the units are owned by a single owner/investor who by proxy holds the majority of any vote. There are two pools located on the property. One was built when the first phase of the property was developed and is next to my unit, one of the reasons I purchased it. The second pool was built during the final phase of development and is remote from my unit but adjacent to the management offices. During the last annual meeting a proposal was brought up to fill in the original pool due to maintenance and repair costs and security (unauthorized use) concerns. I feel these issues were created because management is remote from this pool site and has not been as diligent with surveillance and upkeep as with the pool closer to the office - out of sight, out of mind. The Board plans to take a poll of owners to determine whether they either want to pay for repairs and ongoing maintenance of the pool, or simply fill the pool in and fence it off at a much reduced cost. My question is: can the pool be abandoned in this way? Do I own a share, by deed, of the pool and can my shared interest in the pool be taken away from me by a vote of the owners, specifically the single majority owner? I'm certain a filled-in, fenced-off pool next to my unit will have a detrimental effect on its value. J.G., Gainesville

Answer – There was a time that removing a pool (or tennis courts, shuffle board courts, jogging trail) would have been deemed the removal of an

“appurtenance” to the unit, requiring the consent of 100% of the unit owners. However, the Condo Act was amended to now define such an action as a “material alteration” requiring the prior approval of 75% of the unit owners. Merely polling the owners will not suffice. This will require notice of a special meeting and an actual vote of the unit owners.

Question – I own a ground floor condo apartment. The sewer under my two bathrooms may have to be dug up and replaced. The condo association says they will do it. Doing so, however, would result in considerable damage to my expensive tiled floors, tiled walls, custom bathtub, and plumbing fixtures. Is the restoration of my condo to its same or equal condition my responsibility or the condo association’s responsibility? If they orally agree that it is their responsibility what kind of legal form or contract would I need to assure their full compliance? If they refuse to sign and not fix the sewer under those preconditions what recourse would I have? M.M., Boca Raton

Answer – The nature of the repairs which need to be done is the type which obligates the association to repair incidental damages, such as that which you described. I’d certainly document the improvements which exist before the repairs commence. Send a letter to the association describing the nature of the problems and the scope of work which is going to be performed. Then say, “This letter shall confirm that the association has agreed that it will restore my premises to its prior condition which necessitates the replacement and restoration ...”

Question – I am treasurer of my homeowners’ association and have questions about changes to Florida Statute 720.3085. It seems to me the revised statute disqualifies liens for non-payment of assessments older than one year. We have several liens which fall into this category. These liened properties are going, or have gone, into default and requests from me for information on the debts on these properties will only honor non-paid assessments from 2009 or 2010. What happens to those liens applied in 2008 and earlier? Are they nullified or is there some way for HOAs to recoup these older debts? Can we “roll-forward” the older liens into the 2010 lien? If so, should we cancel out

the older liens annually and adjust current liens to reflect these older debts? Why was the statute changed? Who or what was the main force behind this change? T.S., Melbourne

Answer – Most authorities take the position that although the lien expires, if an action to foreclose the lien is not taken within a year, the obligation owed is not extinguished. Thus, the association merely has to start the collection process from the start: initial demand letter, including all monies owed from day one, lien (recorded for total amount owed), 30 day notice prior to initiating a foreclosure action.

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