



Condominium Law Q&A

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By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

Question – The covenants for our 900 unit homeowners association provided that there was to be two pools. A change in the covenants takes 75% prior approval of the homeowners. The board, without first obtaining homeowner approval, accepted \$100,000 dollars from the developer, relieving it from the obligation to build the second pool, and spent the money on other fixed assets. Is this legal? R.T., Ormond Beach

Answer – While the board has broad discretion in the exercise of its business judgment, I do not personally believe that that extends to the right to negotiate away promised amenities. Some might argue that as an appurtenance to unit ownership, removal of the second pool required the prior approval of 100% of the unit owners; at a minimum, it should have been voted on by the 75% required to amend the documents.

Question – Each of the 13 buildings in our Florida community has 32 units and two handicapped parking spaces. There are a couple of residents who claim these handicapped spaces as their own, despite the fact that they each have reserved space that come with their unit. Therefore, no one else can use these spaces when needed. There are no rules regarding their use, and the board of directors doesn't seem to know how to handle this problem. Is there anything that can be done about this situation? I.E.

Answer – While the Fair Housing Amendments Act of 1988 might impose upon a planned development the obligation to make available to handicapped

individuals available handicapped spaces, I see no reason it needs to do so while allowing the unit owner to also keep their assigned space. If the unit owners want the handicapped spaces it should be done in exchange for the assigned space.

Question – A resident of a homeowners association “threatened” by email his governing association board with a lawsuit if they didn’t take specific action. The resident was not a lawyer. The action the board was taking was merely enforcing the association’s covenants. Over a year later the resident had a lawyer file an official lawsuit. The board reported the lawsuit within days of receiving it to their insurance carrier. The insurance company denied the association’s \$2,000,000 D&O coverage because it said the board had to notify the insurance company when it received the email “threat” from the non-lawyer resident. Is an email threat from a non-lawyer resident a required notice to an insurance company? As you know, Florida mandates “presuit” mediation prior to the filing of an official lawsuit. Why was the association remiss in not filing a claim with their insurance company due only to an email “threat” from an irate resident? R.B.

Answer – Insurance coverage is a contract. The insurance contract spells out the obligations of the insured when it is necessary to place the carrier on notice of a potential claim, or file a proof of loss following a casualty. If a lawsuit was filed without first initiating pre-suit mediation, the association’s attorney can move to stay the proceedings until all administrative actions have been exhausted.

Question – I have an issue with a condo I purchased at the beginning of this year. I closed on the property in February and shortly after I was notified of a special assessment fee of \$145 per month which was to be paid for the next 24 months. I did some research as to this assessment and was informed that this was for a loan the condo association agreed upon from the developer in the previous year in the amount of over \$850,000 to help with financial insecurities. I was not made aware of this circumstance before the closing date and in this case my financial position within this property has changed significantly. I contacted my title search company who informed me that this issue is strictly between the condo association and me. I believe that if I had been made aware about the financial condition of this association before my closing date my decision to invest here would have been altered. Do I have the right to have this special assessment fee negated from my responsibilities? Y.K., West Palm Beach

Answer – Every purchaser of a condominium in the State of Florida is allowed to request a statement of all monies owed by a unit and the buyer is allowed to rely upon the information provided. That said, the single most important thing for every unit owner to understand is that they are owners and not tenants and will be liable for their share of the common expenses, regardless of how high those expenses might be. And, if other unit owners are not paying their share of the common expenses for whatever reason, including a situation where the unit is being foreclosed by a lender, the other unit owners will be required to pick up any operational shortfalls (bad debt) to ensure that the association has sufficient money to pay its obligations. There are many benefits associated with shared ownership, but the potential exposure for special assessments for capital improvements, deferred maintenance, and operational shortfalls is a risk which every owner assumes when they buy into a condominium, co-op or homeowner association governed community.

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.