



## Condominium Law Q&A

June 21, 2010

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

**Question** – I am a newly elected board member of my association. Over the past several months our meeting has gone on for hours, sometimes lasting 3 to 4 hours because every detail of every vendor is discussed before the vote to approve. As a past school board member in NY, it is my understanding that such discussions can be done in an executive session with the board members to discuss contract details and other information. I know we can not spend money, hire or enter into contracts in executive session but it seems crazy that I have to wait to the open board meeting to discuss several contracts from landscapers and pest control. Am I wrong? Thank you for these great articles and information each month. B.F.

**Answer** – “Executive Sessions” at which a quorum of the board are present are deemed to be a board meeting and must be noticed and open to the unit owners. That said, a committee of less than the board, whose purpose is that of gathering information and to make recommendations to the board, even if made up of members of the board (so long as it is not a quorum of the directors), can meet to discuss matters which will come before the board if the By-Laws have been amended to permit same. Note, however, that meetings of committees to take final action on the budget or grant authority to take action on behalf of the board, must be noticed and open to the unit owners. Unlike the Sunshine Act, the Condominium Act does not preclude two or more directors, so long as they constitute less than a quorum of the board, from meeting and discussing matters which will come before the board.

**Question** – I have been an avid reader of your column for many years but have never written to you before even though I have often noted responses to the same question which differ from time to time. One such case becomes important now because my homeowners’ association is involved in a discussion of the matter. Ever since the passage of the Federal Telecommunications Law you have consistently indicated that, subject to such restrictions as color size, location, etc. which do not interfere with reception, the homeowners association could not prevent the installation of a television dish. However, in a recent article you added wording to the effect that such installation could be forbidden if the association provided cable t.v. services to the unit owners. I’m confused. Did I read it wrong or has this condition been recently added either by statute or case law? I.R., Boynton Beach

**Answer** – The Telecommunications Act of 1996, as originally enacted by Congress, empowered the Federal Communications Commission to adopt rules implementing the law. Initially, the rules were broadly written to prohibit any covenants which (1) unreasonably delayed or prevented the installation, maintenance or use of satellite dishes that are less than 39" in diameter; (2) unreasonably increased the cost of same; or (3) precluded reception of an acceptable quality signal. Within a short period of time satellite dishes began springing up across the landscape, turning some condominiums into a sea of dishes. Shared ownership communities (SOC) lobbied the FCC for architectural relief. The FCC responded, after public hearing, by modifying the

rules to preclude individual dishes in situations where community associations provided a master t.v. antenna system and bulk cable which allowed individuals to obtain programming substantially similar to that which they could obtain if using individual dishes.

**Question** – If a misappropriation of funds by a former board member and/or resident was found out while going through Official Records of 02 and 03, and they are still residents, should the President, as his fiduciary duty, try to collect the funds that were taken? The President said it did not happen on his

watch and he and the board refuse to do anything about it. The misappropriation of funds is in the thousands. If they refuse what would be our next step? E.D.

**Answer** – If you have proof that association funds were misappropriated by a former board member the current board, in exercise of its fiduciary duty, has an obligation to bring the details to the attention of the State's Attorney's Office. Let the State's Attorney determine if there is sufficient evidence to bring a criminal charge.

*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](mailto:gpoliakoff@becker-poliakoff.com).*