



Condominium Law Q&A

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By Gary A. Poliakoff

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Question: I have read and admired your articles in publications such as the Palm Beach Post and hope you can address my issue. I purchased my Florida condo when there were no mandatory country club dues or membership. After several years they instituted mandatory dues. At the time they did this the condo statute required that either the condo docs or an amendment must spell out the procedure to do this and in this case an amendment was required which they never filed. As you know the statute was later changed requiring only a vote. I stopped paying the portion of my maintenance that represents the club dues and the association is threatening a lien and foreclosure. I have read your wonderful articles on this topic saying if you bought when dues were not mandatory they cannot make you pay. You cited many recent cases where the courts are striking down these amendments and in this case they do not have an amendment. How should this be handled when they are trying to force payment? E.W.

Answer: Here is the long and short of it. At the time many of the planned developments when country clubs were built, litigation was raging over the legality of tying the purchase of condominiums and single family homes to mandatory club membership. As a result, many developers built their communities with country club membership being optional. Unit owners who did not play golf and/or did not want to be obligated to pay country club dues were able to buy homes along the fairways of a golf course without having to be a member of the club. As time passes and unit owners age in place, few continue

supporting the golf courses and country club, which, in some cases go into disrepair and/or the land is sold for additional residential development. In an effort to save the country clubs and golf courses, a number of shared ownership communities master associations floated the idea of buying country club and golf courses, making membership mandatory and all unit owners obligated for contribution to the cost of maintaining the amenities. Several unit owners challenge the authority of the association, saying "at the time I purchased membership was optional, you cannot now make it mandatory." The trial courts agreed, voiding the purchases and the imposition of maintenance assessments against those unit owners who did not approve the purchase. The theory of the court upon which the opinion was rendered: it was a fundamental change in the character of the community and, as such, not enforceable. Along comes the 2010 Florida Legislature and passes an amendment to the HOA Act designed to legalize the purchases and save the country clubs and golf courses. (Note: A similar provision has been a part of the Condominium Act, almost from inception.) As passed and signed by the Governor, the HOA Act [F.S. 720.31(6)] now provides [effective July 1, 2010], that "An association may enter into agreement to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities including, but not limited to, country clubs, golf courses, marinas, submerged land, parking areas, conservation areas, and other recreational facilities. An association may enter into such agreements regardless of whether the lands or facilities are contiguous to the

lands of the community or whether such lands or facilities are intended to provide enjoyment, recreation, or other use or benefit to the owners.” The vote to approve the purchase? If the declaration is silent, any such transaction requires the approval of 75% of the total voting interest of the association.

Columnist Note: Today's column picks up where the last one left off discussing 2010 amendments to the Condominium, Co-operative and HOA Acts. Of great concern to condominiums experiencing financial stress due to the large number of unit owner delinquencies and mortgage foreclosures, was the need to retrofit the building for fire safety due to the requirement of law that buildings install emergency generators, up-grade elevators and install hard wired fire alarms and sprinkler systems. As amended, buildings that are required to retrofit fire sprinklers based on changes made to the State building codes adopted in 2000 will have until 2019 to comply, but must apply for the building permit by

the end of 2016. Association will still be able to “opt out” of the retrofitting requirement by a vote of a majority of the unit owners; the vote prior to this year’s amendment was 2/3rd of the unit owners. There is a glitch in the law which no one is certain how it will be interpreted. Although the Legislature did provide, as advised, for a right to opt out of the requirement that the building have sprinklers installed, it still is subject to the right of the local fire marshal, acting pursuant to the State’s Engineered Life Safety System (“ELSS”), to require that the building be hard wired and perhaps even retrofitted for sprinklers. The requirement that buildings install an emergency generator for the elevator was repealed altogether. Insofar as the requirement that elevators be modified to meet current code requirements for Phase II firefighter’s service, said requirement for elevators built prior to July 1, 2008 cannot be mandated for five (5) years, or until the elevator is replaced or requires major modifications, whichever occurs first.

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