



## Condominium Law Q&A

August 16, 2010

By Gary A. Poliakoff

gpoliakoff@becker-poliakoff.com

Tel: 954.987.7550

Fax: 954-985.4176

**Question:** We have a homeowner who has not paid monthly assessments in 29 months. When I confronted him with this last month before our board meeting he said he could start paying the assessments again and would try to pay on back debt. I received his first monthly payment. Is there a legal policy that says where I credit that money? To the first month, he missed 29 months ago, the late fees, or the current month he pays in? I am grateful he has paid anything but I won't hold my breath for back money. I do send him a monthly statement every month and want to keep the records perfect. S.H., Melbourne Beach

**Answer:** The Condominium Act provides that any payment received by an association shall be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment. The foregoing is applicable notwithstanding any restrictive endorsement, designation, or instruction placed on the accompanying payment. The HOA Act is identical to the Condominium Act in regards to the application of payments.

**Question:** I have owned my condo since 1980 and have been on the board and President for some 15 plus years. I retired from being President some 4-5 years ago. The new board, for the past couple of years, has been unable to have a full 7 members. There is always one seat open. The President and Treasurer came to me and asked me to fill that seat. I did and was surprised to see how they conducted

business. We have a full time manager and when they want to have something done, he types it up and lists all directors' names and places to sign to approve or disapprove. Then, every few months they have a meeting to get all these things put into the minutes of the board meeting. I do not believe this is "kosher". Your thoughts please. J.B., Indialantic

**Answer:** As you suggest, the manner in which the board is being canvassed and actions taken is not "kosher". Plain and simple, it is not legal. For there to be board action, there must be a noticed meeting with a posted agenda. When the meeting is convened there must be a quorum of directors. You mention that for years there was an unfilled board seat. Let's assume the number of directors was required to be seven, but only six served. The quorum is based on the number of authorized seats, not the number serving. Thus, for a seven person board, there has to be four directors present for there to be a lawful board meeting. Hopefully, you will use your knowledge and influence to get the Association operating correctly, under the law.

**Question:** Ours is a homeowners association. For several years, the manager has served as a member of the board. I was recently told that an amendment to the HOA Act passed during the 2010 legislative session no longer permits a manager to serve on the board. Am I correct? Ft. Lauderdale

**Answer:** Senate Bill 1196, which became effective July 1, 2010, added a new section to the HOA Act: Section 720.303(12). The new language provides:

**COMPENSATION PROHIBITED.**-A director, officer or committee member of the association may not directly receive any salary or compensation from the association for the performance of duties as a director, officer or committee member and may not in any other way benefit financially from service to the association. This subsection does not preclude:

(a) Participation by such person in a financial benefit accruing to all or a significant number of members as a result of actions lawfully taken by the board or a committee of which he or she is a member, including, but not limited to, routine maintenance, repair, or replacement of community assets.

(b) Reimbursement for out-of-pocket expenses incurred by such person on behalf of the association, subject to

approval in accordance with procedures established by the association's governing documents or, in the absence of such procedures, in accordance with an approval process established by the board.

(c) Any recover of insurance proceeds derived from a policy of insurance maintained by the association for the benefit of its members.

(d) Any fee or compensation authorized in the governing documents.

(e) Any fee or compensation authorized in advance by a vote of a majority of the voting interests voting in person or by proxy at a meeting of the members.

(f) A developer or its representative from serving as a director, officer, or committee member of the association and benefiting financially from service to the association. (Emphasis added).

*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.*