



## 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:** I have been an avid reader of your weekly column in the Palm Beach Post since my move to Florida a few years ago. I live on a zero lot line property in a 55 plus community. A neighbor just installed a camera on a 14 foot pole affixed to his property wall. Camera is pointed to our joint zero lot property line at rear patio. If the camera is scanning my property is this considered invasion of private space by Florida statute and is it an electronic form of trespassing? E.G., Boynton Beach

**Answer:** There are numerous sites which anyone can go to on the internet, such as "Google Earth," where you can view from the sky, any spot on the earth, including your own home, and your comings and goings. That said, the question insofar as your neighbor placing a security camera on a 14-foot pole with a clear view of your property is whether the CC&Rs of your community allow such an installation; I seriously doubt it.

**Question:** This question relates to parking spaces. Are parking spaces assigned by Tallahassee? When a unit owner sells his unit, does the assigned space go to new owner? Can a director change the space? F.H., Fort Lauderdale

**Answer:** Tallahassee is NOT involved in parking space assignments. If the developer assigned a parking space to the initial unit(s) sold, and the documents provide the parking space is an "appurtenance" of the unit, then it belongs to the

unit and cannot be transferred without the approval of the unit owner (s).

**Question:** I am a unit owner in a condo which maintains a common entrance which is used in conjunction with the adjoining HOA, pursuant to a recorded easement agreement. Years of dispute as to the proper sharing of the expenses resulted in protracted litigation settlement of which resulted in an agreement as a formula to be used to determine the amount for which the HOA (and its members) would be responsible. After execution and recording of the supplemental agreement our management company sent bills which, unfortunately were in an amount less than that required per the amendatory agreement. The error was discovered recently and the difference due requested, but the HOA refused payment. The incorrect billing commenced as of July 1, 2005. The principal amount of the arrears is far from being "de minimus". Is the condo board, in its fiduciary capacity, required to pursue reasonable efforts to collect the arrears, especially in light of the provision that all legal expenses incurred in connection with any litigation undertaken to enforce compliance with the agreement, including reasonable attorney's fees connected thereto, shall be due the prevailing party? J.S.

**Answer:** Given the history of the relationship as you have described it and, in particular, the resulting agreement spelling out the obligations of each of the respective parties, it would seem to me that the HOA should pay what it is obligated to pay, and if it

continues to refuse to do so the condominium association should consider taking legal action to collect the past due obligation. In litigation of this sort the parties generally ask the court to reserve jurisdiction to enforce the settlement. Hopefully that occurred in this case; it would make it more expedient and cost effective.

**Question:** We live in a 55 plus condo unit. We have louvered windows which are rusting out. We want to know who is responsible for repairing or replacing them, the unit owner or the section which has 100% reserve? H.K., Delray Beach

**Answer:** Within the declaration of condominium is a section which delineates maintenance responsibility between the unit owners and the association. It will state unit owners are responsible for the maintenance and repair of certain improvements defined as being

“within the unit,” which all other improvements being the maintenance responsibility of the association. Now here is the key. To ascertain that which is “within the unit,” and thus the unit owner’s responsibility, and that which is part of the common elements and thus the association’s responsibility, one must go to a separate section of the declaration which defines the boundaries of the unit. Within this section it will give you the upper (usually the unfinished ceiling slab) and lower (usually the unfinished floor slab) and the exterior boundaries including the apertures (windows and doors). Thus, a reading of the sections which I referenced is essential to be able to answer the question whether the unit owner or the association is responsible for replacement of the rusting louvered windows.

*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).*