



Condominium Law Q&A

DECEMBER 23, 2005

Gary A. Poliakoff, JD

gpoliakoff@becker-poliakoff.com

TEL: 954.987.7550

FAX: 239.433.5933

Question – The condominium I live in has 6 units per floor. A resident down the hall loves to cook, however, she refuses to open a window, nor does she have a ceiling fan or a workable cooking range fan. As a result, unpleasant cooking odors permeate the hallways for hours. The management office has spoken to her; I have written a letter to her and placed several phone calls, all of which have been totally ignored. The condominium board says she has the right to cook, and I feel I have the right to odorless hallways, which often offend my guests. I spend thousands of dollars for this winter residence, and I feel that I am living next to a soup kitchen. I also love to cook, but I have the proper ventilation and have never offended other residents with unpleasant odors. L.S., Singer Island

Answer – The question you raise is one that is asked a hundred times a year and, regrettably, one for which I do not have a readily available solution. Sounds and smells are the Achilles Heel of multi-family housing. A properly ventilated unit, with airtight separation walls is supposed to muffle sounds and prevent unwanted smells from permeating a neighbor's unit, but I know it often does neither. When it comes to sound, we can monitor decibels and place restrictions on the hours when one can play their stereos and party. But, smells? I do know that there are several chemical products on the market which somehow neutralize smell simply by sprinkling a few drops of the solution around the area. You might inquire about those, and if all else fails, put some chicken soup

on the oven and let it simmer overnight. As a side note, I once encountered two unit owners who were in a feud. The neighbor downstairs complained that the upstairs neighbor made too much noise walking around her unit so the downstairs neighbor used to sit on his balcony blowing cigar smoke upstairs.

Question – A condominium owner carries no insurance pertaining to his condominium. Damage is done to the unit below due to his negligence. Can the owner who sustains the damage put a lien on the unit which caused the loss? I was under the impression that a lien cannot be placed on homestead property. L.J., Indialantic

Answer – No, but not because it might be homestead property, but rather to place a lien on someone's property, you must possess the statutory right to do so. For example, condominiums, cooperatives and homeowners associations are granted the right by statutory law to lien the property, homestead or not, of a unit owner who is delinquent in payment of his or her common expenses. The lien is simply notice to the world that there is a claim for money owed. To collect, the association must foreclose the lien, obtain a judgment and then levy on the judgment. In the case of common interest ownership housing communities, the ability to foreclose homestead property is an exception to the general rule, because the lien secures monies owed for services performed for the betterment of the property. In the case of an individual damage by another's negligence, when

they go to court, assuming they are successful, they will obtain a judgment which is recorded against the individual causing them injury; not against the individual's property. Assuming that the only asset the party causing the injury has is the homestead property, the injured party will not be able to cause it to be foreclosed to pay the judgment. There again, a recorded judgment is valid for 20 years. There is a high probability of collecting at the time the homestead property is sold. ■

Gary A. Poliakoff is a founding principal of [Becker & Poliakoff, P.A.](#) and has served as its President since the inception of the Firm. 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.