



## Condominium Law Q&A

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**Question** – We are a small homeowners association. Recently, a board member passed away and the board voted among themselves and gave a \$1,000 donation to his family. I feel that this is misuse of community assessments. Is there anything the members can do about it or is there an agency that oversees how community funds are spent? I have expressed my opinion in a letter to the president of the board but have been ignored. What do you advise? B.V., Hobe Sound

**Answer** – While a generous gesture, giving a donation from revenues collected for the common expenses is not appropriate. When making such donations, even holiday gifts for the mail carrier, manager and staff, I have recommended collecting voluntary contributions from the members.

**Question** – Our bylaws are quite clear that board members shall not accept compensation for their services. However, we have the case that a board member was temporarily hired to perform the duties of the property manager. Is he required to relinquish his board duties or at least refrain from voting as a board member while employed? We cannot find anything in our documents or Florida Statutes to cover this situation. A.G., Ft. Lauderdale

**Answer** – First, I assume the unit owner/board member who was hired as a temporary property manager is a licensed community association manager (LCAM), otherwise he/she could not perform such

services. Assuming that he/she is a LCAM, then being hired as a temporary manager and receiving compensation for his/her management services is not being compensated as a director, and he/she can continue to serve on the board and vote on all matters other than those related to his compensation and scope of services as manager.

**Question** – The president of our board is working as a guard in our gatehouse. While president, the property owners association hired a new company for our security, and he was immediately promoted to captain. I am not confident that our best interests were served with regard to the charge for that company. Even though he excused himself from the vote, I am sure he had influence with the other members and helped find the company that was hired. I find the conflict of interest law, as to earning money on the premises while on the board, hard to interpret. Could you tell me your view on this matter? L.L., Ft. Pierce

**Answer** – There is nothing per se which precludes an officer or director of a community association from working for a company which provides services to the community, or even being hired directly as a service provider; e.g., manager or accountant. That said, to avoid even the appearance of impropriety, that person should announce the potential conflict of interest and avoid any debate on hiring said company and discussion on the quality of services, other than to answer questions asked by other board members.

**Question** – We live in a restricted subdivision. If we have a heavy rain, the water comes down the street into the yards and some homes. We recently found out that we have only French drains that go from one side of the street to the other side. Our board maintains that they are only responsible for the common areas (club house, pool, etc.). Could you please explain? Does the board have the responsibility to correct this problem? So much water comes onto the properties, we are forced to run pumps to get the water out of the yards and homes. This is a community of about 365 homes,

and we feel the board should take the responsibility to correct this problem. B.T., Deland

**Answer** – The roads which run throughout your community are either private or public. If private, then maintenance of the roads, the drains and the drainage system is the responsibility of the association. If public, then the municipality or county needs to investigate the source of the problem and find a solution for same. How can you tell if the roads are public vs private? Chances are that if yours is a gated community the roads are private. ■

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*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.*

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