



## Condominium Law Q&A

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### Gary A. Poliakoff, JD

gpoliakoff@becker-poliakoff.com

TEL: 954.987.7550

FAX: 239.433.5933

**Question** – Must a unit owner give access to the association to break open walls in search of mold when a mold report found that no mold was present, and there is only a slight elevation of the fungi level? Doesn't the unit owner have any rights? B.P., W.P.B.

**Answer** – While the association has an irrevocable right of access to a unit to prevent damage to the unit, other units and the common elements, the right of access cannot be used unreasonably. In addition, without a real emergency, which the facts presented do not evidence, the association cannot resort to self help. It must obtain a court order before tearing apart the unit. Accordingly, the unit will be afforded due process and the opportunity for a hearing before a judge before the association can arbitrarily start opening walls.

**Question** – A member of the board of our condominium was surfing the web one evening when he decided to visit the local tax collector's site to see what the various unit owners pay in taxes. During his search, he found something suspicious on one of the unit owner's tax bills. Even though the bill showed no sign of there being delinquent taxes due, or any liens filed against the property, there was apparently 5 ½ years worth of taxes owed on the property with interest and penalties. The final outcome of this was that the unit owner's condominium went into foreclosure, and the condominium was sold for less than it was worth. The stress of all of this has left

the unit owner very sick and he now lives in a nursing home. My question is this. Is whether or not a unit owner current in his taxes the business of the association? B.S., Melbourne

**Answer** – While I have no idea how the property appraiser's office could have missed the fact that a unit owner had not paid taxes in over 5 years, the information sought and found is a matter of public record, so the fact that the board member reported it is no crime. Why is it his business, you ask? The same reason as if he had discovered that a unit owner was not paying his mortgage. Eventually, the unit would be foreclosed by the association, as was the case of the delinquent taxpayer, and then the rest of the unit owners in the community would be left carrying part of the load for those assessments wiped out in the foreclosure sale.

**Question** – Our homeowners association is working on amending the declaration of covenants, which has not been amended since the turnover of control by the developer to the association. The developer no longer owns any of the community properties. The docs at Article 3.3 address "voting", assigning one vote per member for each parcel owned as to matters on which the membership is entitled to vote. Further, the covenants state that "in no event shall more than one vote be cast with respect to each parcel." At Article 17, the covenants address amendments, stating that "an amendment initiated by any party other than developer requires the approval of at least 75% of the

votes of members.” Amendments initiated by the developer require approval by 51% of the votes of members. Does the disparity in voting percentages accrue to the association board of directors at turnover? The association has a 7-member board of directors and 596 voting parcels. This inconsistency in amendment percentages appears to award each

board member control of 21 votes with regard to amending the declaration. Is this an equitable/legal condition of the declaration? M.K., Palm City

**Answer** – No. After transition the vote to amend is 75% of the total votes of the members. The rights previously reserved to the developer are extinguished. ■

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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.*

*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).*