



Condominium Law Q&A

JULY 31, 2006

Gary A. Poliakoff, JD

gpoliakoff@becker-poliakoff.com

TEL: 954.987.7550

FAX: 239.433.5933

Question – I enjoy reading your column each Sunday, it is enlightening and informative. I presently live in a condominium complex where we have 200 owners. My questions revolve around the collection and enforcement of fines for violations of our rules and regulations. I am thinking of proposing a process whereby offenders of our rules and regulations would be served a warning of a violation, and if not rectified, would be fined for their violation. Presently, letters are sent to tenants and/or owners but, for the most part, are ignored because we have no fining or enforcement structure. It appears that even though we have just published newly revised rules and regulations, some owners and their tenants continue to ignore them. My questions are: Can a condominium association consider a process that would fine an owner (whether they live here or have a renter)? Are there limits to the amount of the fines? Although we could not place a property lien for unpaid fines, could the unpaid fines be deducted from the owner's monthly assessment, therefore showing that the full assessment is delinquent until the difference is paid? Could the board institute such a process or does it need owner approval? I believe our condominium documents allow for enforcement by fine but it has never been developed into a process. Your help in this matter would be appreciated. D.B., Daytona Beach

Answer – Both the Condominium Act (Chapter 718, Florida Statutes) and the Homeowners Association Act [Chapter 720, Florida Statutes] authorize the levy of fines, if the governing documents provide for

same. Both Acts limit the amount of fines to \$100.00 per violation, with each continuing day of the violation being a continuing violation subject to fining, provided that no fine exceeds \$1,000.00 in the aggregate. Fines cannot become liens against a unit; accordingly, they can only be collected by judicial action. In addition, prior to levying a fine, the unit owner must be given notice of the alleged violation, an opportunity to cure it, and then, if not cured, a hearing before disinterested parties, none of whom are members of the board, officers of the association, or their relatives. Homeowners associations are given broader discretion than are condominium associations in that in addition to the authority to levy fines, the association can prohibit delinquent unit owners from voting, and suspend members from using the amenities.

Question – I have been reading your column since I moved to Florida. I love it. Keep up the good work. I am on the board of directors of my condominium association. We have 32 units. Small but very nice. We have a unit owner that is incompetent and is presently in a senior home. She has no living relatives except a few nephews and nieces out of state. She elected to have a woman (let's call her Jane Doe) be the executor of her estate and gave her power of attorney. Now, Jane Doe died. Can the estate executor and power of attorney be willed down to her surviving husband or son? Also, how do we go about finding out who is the unit owner's attorney? Jane Doe's husband and son will not tell us. The son is living in her condo, and we would like to know if that is legal. Any information

would really assist on resolving this touchy matter without us going to court. J.A.M., Melbourne

Answer – Common interest ownership housing communities are microcosms of society and, as such, experience many of the same problems you find in society. Only, the associations are generally not equipped to handle problems of aging and incompetent owners, particularly when there are no family members willing or able to help. I have written about a phenomenon which I call “elder dumping,” the practice of loved ones up north buying condominium units in Florida with the expectations that their aging parents are better off in a warmer climate, only instead of placing them in adult congregate living facilities with nursing care available, they put

them in condominiums where they are left to their own means of survival. Some of these individuals become literally prisoners in their own units, as they lack the mobility and/or mental capacity to care for themselves. In some cases, boards have been forced to “Baker Act” residents who present a physical threat to themselves or others. My readers would be shocked by the callous response from some family members, who, when contacted by the board, simply shrug off any responsibility or hang up the phone. In your case, what the board needs to do is check the public records to verify how title to the unit is held. Only the “record title owner(s)” has(have) any legal right to possession of the unit. If anyone is living there other than the owner(s), he/she can be compelled to evidence the authority for doing so. ■

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.