



Condominium Law Q&A

January 6, 2010

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Columnist Note: A recent study conducted by the Community Association Leadership Lobby found two-thirds of respondents reporting that in the past year there has been a rise in the percentage of units/homes within the shared ownership communities that are more than 60 days delinquent in payment of regular and special assessments, and an overwhelming majority of respondents (91.4%) said that they would support a legislative proposal to increase the amount of assessments a foreclosing mortgagee or bank must pay. Unfortunately, the odds of such legislation passing appear to be thin to none. At the same time, Florida's Supreme Court reports that, at the close of 2009, the number of pending foreclosure cases statewide will approximate 456,000. In an effort to address the backlog and the bottleneck, the Supreme Court has ordered that the parties to foreclosure litigation must first attempt to mediate their dispute. My question is this: given home values which have plunged 40% or more, and borrowers who are on fixed incomes, out-of-work, or simply unable to pay their mortgage or monthly assessments to their shared ownership communities, what does the Court hope to achieve? Until or unless Congress recognizes the problem and passes meaningful legislation, the problem will only be further exacerbated.

Question – Since 1986, I have been an original owner in a condominium, which, when I purchased it, allowed pets – small dogs, cats, etc. About 2 years ago, the condominium documents were

"recorded" with a change to "ban" pets from the building. If the "board" changed this rule, don't the owners get to vote on this change? Since I have had a cat all along, am I grandfathered in? My cat is part of my family. I realize if my cat dies I will not be able to replace him with another cat, which I understand, but since I had this one for many years, do I have to get rid of him? I believe I am protected by being grandfathered in, but would like to know how to handle this issue, as it was put in our recent newsletter that if we had a pet, including a bird, we would be asked to remove it. N.S., City unknown

Answer – Assuming that the condominium documents were properly amended, that is, approved by the required number of unit owners, unit owners who owned a pet at the time the amendment was approved and recorded would be allowed to keep their pets but could not replace them once they died. Bottom line, an amendment cannot be applied retroactively, but can be applied prospectively, even as to unit owners who purchased before the amendment became effective. The one exception to the rule is an amendment prohibiting renting of units. It only applies to owners who purchased after the effective date of the amendment or to those owners who agree to it.

Question – I read somewhere that a LCAM (Licensed Community Association Manager) is required if the condominium has more than 10 units and decides to hire a property manager. Please

confirm this recent condominium regulation for me. I appreciate your urgent consideration. Y.Y., Fort Lauderdale

Answer - The threshold for when a community association must use a licensed manager is when the association manages more than 10 units or, has an annual budget in excess of \$100,000; in which case Florida Statute 468 controls.

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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.