Disclosure of Personal Information and Solving Problems

BY GARY A. POLIAKOFF, J.D. AND RYAN POLIAKOFF

DEAR POLIAKOFFS,

We have a new board and a newly established website for our HOA. A message on the website says that visitors may request a copy of a current resident directory.

Can the HOA give out a directory to anyone who asks for it, even non-residents? We have always had a directory that was given out to our residents only. I and others signed the authorization form to include
our phone numbers and e-mail addresses in the directory. Now, several of us are not so sure we want our information posted on a website or available to anyone other than a resident. If we rescind our consent, our name and address will still appear in the directory for anyone who wishes to have it. Can the HOA share this information to anyone who asks for it?

Signed,

B.C.

DEAR B.C.,

There are two different issues involved in your question—what can the HOA do, and what must the HOA do.

Florida Statute 720.303(4), governing official records, states that the association must keep a current roster of all members and their mailing addresses. If an owner has specifically consented to receive notices by e-mail, that e-mail address must also be kept. These records are available for inspection by any unit owner. However, phone numbers and e-mail addresses provided for purposes other than official notice are specifically protected from owner access. So the association not only has no obligation to provide anyone, owners or otherwise, with your telephone number and non-notice e-mail address, it is prohibited from doing so, at least, pursuant to a request for inspection of documents.

However, the key issue is going to be the consent you signed and exactly what you consented to. If you signed a document consenting to have your personal information published in a directory, and if that consent indicated that the directory would be publicly available, then the HOA would have some protection from disseminating the information. If the consent was narrow or vague, however, we think you have a good argument that, at the very least, the directory should not be provided to non-owners. And, in fairness, it’s possible that the website is simply worded more broadly than intended. Have you checked to see whether your management company is actually providing directories to non-owners? In any event, to the extent the information is
because it’s dangerous. There is an outlet 30 feet away from the pool that we could use, and our CD player would be up against the wall, and there would be no wiring on the ground. We would no longer be able to access the controls from the pool, but we would accept this if we could use the outlet that’s 30 feet away. We think the president of the condominium is using his power in an unreasonable manner. What should we do?

Signed,

S.R.

DEAR S.R.,

Your letter reminds us that many, if not most, of the problems faced in condominiums and HOAs are not legal in nature but are simply an inability of some people, due to their personalities or other natural inclinations, to get along in a way that would, in the past, have befit people who were neighbors with each other. There’s no question that your request is eminently reasonable—there seems to be little reason that a music player could not be plugged in 30 feet away from a pool. Consider the fact that the outlet is there in the first place—obviously, it was intended to be used. Most likely, the outlet is ground-fault circuit interrupt protected. A GFCI outlet monitors the electric current running through the outlet, and switches it off in milliseconds if there is any variation in power—such as, for example, if some of the expected power were to be flowing through a person, instead of between the hot and neutral prongs.
Remember, however, that each of us brings our entire history to our community. Perhaps your president remembers a terrible accident from his past where someone was electrocuted. Perhaps his mother simply made him obsessive about moderate dangers. It’s not possible to change every person’s opinion, especially when some of those opinions are deep-seated.

So, in this case, we are going to provide some practical advice rather than legal advice. First, check the GFCI issue with your property manager. Perhaps the outlet is protected, and your president doesn’t realize that there isn’t a risk. If so, speak to the president and if that doesn’t work, speak to the entire board. If the president and the board are both unresponsive, you may need to engage your neighbors to either convince the directors of the reasonableness of your request or, in a very severe impasse, to recall the board.

That said, if it were us, we would buy a battery-powered CD player and be done with the issue. Sometimes the fight isn’t worth the principle.

Gary A. Poliakoff and Ryan Poliakoff are co-authors of New Neighborhoods—The Consumer’s Guide to Condominium, Co-Op and HOA Living. Gary Poliakoff is a Founding Principal of Becker & Poliakoff, P.A., and Ryan Poliakoff is a Senior Counsel at Sachs Sax Caplan, P.L. E-mail questions to condocolumn@gmail.com. Please be sure to include your hometown.