

Questions & Answers

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Today, I will try to catch up on some back-logged reader inquiries. Keep those letters and e-mails coming!

QUESTION: Our condominium is wired for cable television. Owners who wish to have cable pay individually. It has been that way for many years. The Board is talking about including cable television for all unit owners, as part of our monthly maintenance fees. Should this not require approval of all owners? J.D.

ANSWER: This issue is governed by the Florida Condominium Act. Section 718.115(1)(d) is the applicable clause.

The law provides that if so provided in the declaration of condominium, bulk cable television is a common expense. If the declaration does not provide for bulk cable television as a common expense, the board may enter into such a contract, and the cost of the service is a common expense.

The unit owners have the right to cancel a bulk agreement made by the board at the first annual meeting after the agreement is entered into. Unit owners who are legally blind or hearing impaired may opt out of bulk cable television, as can owners who receive certain types of public assistance.

Therefore, as a practical matter, the board of directors has the authority to decide whether bulk cable television is in the best interests of the condominium.

QUESTION: We are owners in an eight unit, "55 and over" condominium. Assigned parking spaces are limited to "private passenger vehicles". Boats and trailers are prohibited by our documents. One of our new owners parks a motorcycle on the property. The owner contends that the motorcycle is a "private passenger vehicle". What is your opinion? M.K.

ANSWER: Since motorcycles are not specifically prohibited by your condo documents, it is likely that the unit owner's interpretation would be upheld. Courts disfavor restrictions on the free use of property, even the common elements of a condominium.

Section 316.003(22) of the Florida Statutes (the State Uniform Traffic Control Law) defines a "motorcycle" as "any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground". Thus, it seems that a motorcycle is a "motor vehicle". While you can argue that a motorcycle is not a "passenger vehicle", I would not consider that to be a very strong position. Your association might consider amending the rules or the condominium documents. If you pursue that route, I would recommend that legal assistance be sought to determine whether the owner in question must be or should be "grandfathered".

QUESTION: For the last two years, our condominium association has not spent all of the money that was included in the budget for those years. Some of the balance was transferred to reserve accounts. The rest was added to the "equity" section of our balance sheet. Our manager states that "equity" cannot be spent. It seems to me that this money should be available for needed projects at the condominium. Your advice would be appreciated. C.C. (via e-mail)

ANSWER: Excess operating funds left over at the end of a fiscal year are typically referred to as "common surplus". The law does not contain any limits on the use of common surplus, and unless your condominium documents contain such limits, it is typically left to the Board as to how the funds should be allocated.

Many associations do apply excess funds to reserve accounts. Some associations offset the following year's budget with the surplus, thus reducing the monthly or quarterly maintenance fee.

If the money is carried as a "contingency reserve", it is considered part of the operating side of the budget, and could be used at the Board's discretion. Your manager is not correct about the right to spend "equity". Unless the money is designated as "statutory reserves" (in which case a unit owner vote is required to spend the money on anything other than that for which it was set aside), the money is part of the funds generally available to the Association.

Your Board should also consult with its accounting representative. Under certain tax filing scenarios, surplus can be subject to taxation, and procedures typically exist for avoiding adverse tax consequences.

QUESTION: Am I allowed to videotape my HOA meeting? J.F. (via e-mail)

ANSWER: Section 720.306(8) of the law applicable to homeowners' associations provides that any owner may tape record or videotape meetings of the Board and meetings of the membership. The Board is permitted to adopt reasonable rules governing the taping or recording of meetings. ⚖️

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.