

Association Budget Time Approaching

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November is budget time for community associations. Over the next thirty days, thousands of associations throughout Florida will be planning on how to spend billions of dollars on goods and services in 2005.

Although the shoe has not yet dropped, most associations can likely plan for substantial hikes in insurance premiums. Additionally, many communities will be seeking to replenish depleted reserve and contingency funds spent in the wake of the historic 2004 hurricane season.

As in most matters, the law for condominium associations is more specific in its requirements, and more complicated than the homeowners' association counterpart.

For condos, the proposed budget must be mailed (or hand-delivered) to each unit owner at least fourteen days in advance of the meeting where the budget will be considered (some older bylaws require lengthier notice, such as thirty days, and that should be followed). In most cases, the board of directors adopts the budget (no membership vote is required), although the bylaws may require unit owner approval.

The association's proposed budget package must contain the proposed operating budget. The operating budget must list anticipated operating expenses for the association, and must set forth a laundry list of items mentioned in the condominium statute.

The second part of the proposed budget is the reserve budget. Every condominium association must present the unit owners with a schedule of "fully funded" reserves for roof replacement, building repainting, pavement resurfacing, and any other component of the condominium property with a replacement cost in

excess of \$10,000.00 (typical examples would include swimming pools, tennis courts, fencing, common area decorations, and elevators).

Unless the members have voted to reduce or waive the funding of reserves, the Board has no discretion and must include fully funded reserves in the adopted annual budget. If reserves are to be waived, a vote of the unit owners must be taken, with majority approval required. The notice for the members' meeting must include a fully funded reserve schedule, and if a waiver or reduction vote is contemplated, should also include the Board's recommendation as to what the owners are voting on in terms of reduced reserves.

Under a recent change to the law, reserve funds may be presented either on a "straight line" or "cash flow" method of funding reserves, although a unit owner vote is required to convert existing reserve funds from "straight line" to "cash flow."

For HOAs, the law is simpler. First, reserve funds are not required to be set up unless required by the governing documents for the HOA. Nonetheless, it is certainly a good idea to include reserves within those areas for which the Association has financial exposure, and nothing in the law prohibits including reserves in the proposed budget for the HOA.

Likewise, the proposed operating budget need not follow any specific statutory formula, but should include the anticipated expenses for the year. Unlike the condominium law, Chapter 720 of the Florida Statutes (the law regulating homeowners' associations) does not require a copy of the proposed budget to be mailed to the owners, although the association must notify owners, in writing, that a copy of the budget is available from the association free of charge. Again, the bylaws may impose

additional procedures which the association must follow as part of its budget adoption process.

Association assessments, like taxes, are never popular. However, when you consider what you get for your

monthly dues (in condominiums, items like building insurance, water and sewer, and even cable television are often included), and compare it to the costs of single family home ownership, it is still one of the best deals around. ⚖️



Question: I have read with interest your previous columns concerning “working sessions” of an Association’s board of directors. Our Country Club’s Board of Directors holds “Special Sessions” to conduct business and neither publishes the agenda in advance nor publishes the minutes of these meeting. They have used these meetings to enact major changes to our dues and fees structures. Likewise, they recently amended our Bylaws without a vote of the membership. Do the regulations covering Homeowners Associations apply to Country Club boards? **W.G. (via e-mail)**

Answer: The Homeowners Association Act, found in Chapter 720 of the Florida Statutes, applies to associations responsible for the operation of a “community” in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership. Further, the association must be authorized to impose assessments that, if unpaid, may become a lien on the parcel.

Therefore, if all of the owners in your community are required to become members of the country club, and if the country club is authorized to impose assessments that, if unpaid, become a lien on their homes, then it would be required to comply with the provisions in Chapter 720 of the Florida Statutes. Otherwise, the country club is governed by its articles of incorporation and bylaws and probably Chapter 617 of the Florida Statutes, the Corporations Not For Profit Act, which contains no “Sunshine” requirements.

Regarding the amendment to the bylaws, if the bylaws allow the provisions to be amended by a vote of the directors, then no membership vote is required.

The required notices of the board meetings and participation by the members, would also be controlled by the articles and bylaws.

Question: Our condominium documents, in the “boundaries” and “maintenance” sections, describe comprehensively unit owner and Association responsibilities for maintenance and repair. We are told by our insurance adjuster, however, that the law makes the Association responsible for all wallboard. I believe this is in contradiction of our condominium documents. Can you verify for us that such regulations exist? If so, where can they be found in Florida law? Do they supercede our condominium documents?

Answer: The provision that your insurance adjuster is referring to is Section 718.111(11), Florida Statutes. This provision was amended in 2003 and is effective for all policies issued or renewed after January 1, 2004. Therefore, it is first important to know whether your policy was renewed after January 1 and before August 12, 2004 (assuming that we are writing about Hurricane Charley damages), although I believe drywall would be treated the same under both versions of the Statute. The purpose of the statute is to clarify the insurance responsibilities between an Association and the unit owners. Therefore, even though something may be the “maintenance” responsibility of the unit owners, it may be an “insurance” responsibility of the Association.

The law requires the Association to insure, among other things, the condominium property located inside the units as such property was initially installed or replacements thereof of like kind and quality and in accordance with the original plans and specification, or if the original plans and specifications are not available, as they existed at the time that the unit was initially conveyed.

The statute then goes on to a list of “excluded” items including all floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner or

heating equipment, water heaters, built-in cabinets and countertops, etc. Therefore, an interior partition wall that would typically be the unit owners' maintenance responsibility is the Association's insurance responsibility under the statute.

However, in my opinion, the insurance requirements do not change the parties' responsibilities for repair after a casualty. You will need to refer to what is typically referred to in the Declaration as "Repair after Casualty" section. Even though the Association may insure something, the unit owners may still be responsible for repairing those items after a casualty (for example an interior wall.) In that case, the Association would be responsible for obtaining insurance proceeds, and disbursing them in accordance with the Declaration.

Question: I know that Chapter 720, Florida Statutes, permits me to display a "portable" United States flag, regardless of what my community restrictions or rules may provide. Must the flagpole also be "portable" or can it be affixed to my home or permanently installed in my yard?" **M.C. (via e-mail)**

Answer: Section 720.304(2), Florida Statutes, which is applicable to homeowners' associations, and Section 718.113(4), Florida Statutes, applicable to

condominiums provide that owners may display "one portable, removable" United States flag in a respectful manner. The statutes however, do not make any reference to flagpoles nor discuss whether an association may promulgate any limitations on flagpoles.

Whether an association can defend a provision prohibiting the attachment of flagpoles to buildings or yards is an open question, that will need to be addressed by the courts, or preferably, an amendment to the statute.

Question: My community is governed by a homeowners' association. Is the Board permitted to meet in a resident's home or must meetings of the Board be conducted in a neutral location? **M.M. (via e-mail)**

Answer: Section 720.303(2), applicable to homeowners' associations only, states that "all meetings of the board must be open to all members [of the Association]." It further provides that members have the right to attend all meetings of the board." However, the statute does not require that board meetings be held at a neutral location. Therefore, board meetings may be conducted in a resident's home but must be open to all members regardless of where the meeting is conducted. ⚖️

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.

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