

Association Financial Reports Due Out Soon

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In approximately six weeks, community associations will be closing the books on another year.

Although some associations operate on a customized fiscal year, most associations start their fiscal year on January 1, and end it on December 31.

The law for both condominium and homeowners associations imposes certain obligations on the association to let the members know how the association performed financially during the previous year.

The requirements for condominium associations are found at Section 718.111(13) of the Florida Statutes which provides that within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner.

The type of financial statement required is based upon the association's total annual revenues. An association with total annual revenues of \$100,000 or more, but less than \$200,000, must prepare compiled financial statements. An association with total annual revenues of at least \$200,000, but less than \$400,000, must prepare reviewed financial statements. An association with total annual revenues of \$400,000 or more must prepare audited financial statements.

Associations with total annual revenues of less than \$100,000 are required to prepare a report of cash receipts and expenditures. An association which operates less than 50 units, regardless of the association's annual revenues, likewise may prepare a report of cash receipts and expenditures.

If approved by a majority of the voting interests present at a properly called meeting of the association, an association may waive the reporting requirements. Further, the Board is entitled to prepare statements more thorough than the minimum required by the law.

The law for homeowners associations was amended effective October 1 to impose similar requirements on HOAs. Section 720.303(7) of the Florida Statutes now provides that a homeowners association shall prepare an annual financial report within 60 days after the close of the fiscal year. The dollar thresholds and type of report required is the exact same as the condo law.

If 20 percent of the parcel owners in the HOA petition the board for a level of financial reporting higher than that required by the law, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the association must prepare the upgraded report. The condo law does not give this right to unit owners.

Both laws involve similar themes, and contain similar requirements (there are some minor differences). The highlights of both laws include the following:

- **Waiver of the reporting requirements:** Both statutes allow the members of the association to take a vote to waive the reporting requirements, although both condominium associations and HOAs must always produce,

at a minimum, a cash statement of revenues and expenditures. The waiver vote in condos must be taken before the end of the fiscal year. There is no similar requirement in the HOA counterpart.

- **Delivery of the report:** Both statutes provide that the association is not obligated to mail out the report, but only notify owners that it is available free of charge. There are certain procedures in each of the statutes, which are slightly different, that must be followed.

- **Stricter requirements in the documents:** In both condominium and homeowners' associations, the governing documents for the association may impose more stringent requirements than what is required by law. For example, if an association's bylaws require an annual audit, the association must obtain the audit and could only avoid the obligation to do so by amending the bylaws.

For those who are curious about where those monthly or quarterly fees go, you will soon get your chance to find out. ⚖️



Question: I have recently decided to provide hurricane protection for an inaccessible master bedroom window. My research indicates that the only satisfactory protection for this area is a roll down impact resistant hurricane shutter.

In approaching the Board of Directors, they have indicated that they don't like them and believe they will detract from the aesthetics of the building. Our units face the Gulf of Mexico on the beach. It is my contention that the association cannot deny me these type shutters, but can tell me the color, etc.

The association tells me that a suitable alternative may be to mount the shutters inside of the window. I do not feel that this is in compliance with the Florida Statutes. What is your opinion? L.H. (via e-mail)

Answer: Section 718.113(5) of the Florida Condominium Act provides that each board of administration must adopt hurricane shutter specifications for each building. The board's specifications shall include color, style, and "other factors deemed relevant by the board." All specifications adopted by the board are required to comply with the applicable building code. A board cannot refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the board.

Therefore, if your board has adopted shutter specifications that meet the applicable building code, it has the authority to regulate the type and manner of installation.

I am not in a position to comment whether one type of shutter style works better than another, or which location is best, that question is more appropriately posed to an engineer.

I would suggest that you ask your association for its shutter specifications and try to work with the board toward a mutually agreeable solution.

Hurricane shutters do mitigate property damage. Conversely, the association has a legitimate interest in preserving the aesthetic ambiance of the property.

Question: Can you explain the procedure for election of board members to master associations (communities with multiple resident associations)? B.S. (via e-mail)

Answer: The procedure depends on whether the master association is composed of all condominium unit owners, or whether the master association includes both condominium unit owners and non-condominium owners such as members of homeowners' associations. The Division of Florida Land Sales, Condominiums, and Mobile Homes recently issued a declaratory statement which held that a master association in which all members are condominium unit owners is a "condominium association" under Chapter 718, Florida Statutes, and must comply with the Condominium Act.

The Division held that a master association that appointed its board members from among the officers of the subassociations (which in this case were all condominiums), violated Chapter 718, Florida Statutes, which requires an election of directors. Unfortunately, the declaratory statement did not specify the procedure for electing master board members.

In my opinion, if your bylaws provide for an appointment system, they could be amended to have the directors elected at large, or elected from the various associations, such that each association would have a representative on the master board, or another method whereby the larger associations would have a higher number of seats on the master board. These amendments should be prepared by an attorney, who can advise as to whether your association is a “condominium association” which must elect its members to the master board.

If your association is not a “condominium association”, then the method of electing board members to the master board would be set forth in the bylaws and articles of incorporation of the master association. There is no specific provision in Chapter 720, governing homeowners’ associations, that deals with elections of directors. Therefore, your governing documents will control in that case.

Question: Our community consists of multiple condominium associations and a master association

that controls the recreational areas, the roads, the clubhouse, and community common areas. The recent storms have presented the need to replace carports. Two condominium associations replaced their carports without consulting each other or informing the overall community association board. The problem is that each association selected a different design. We would like to avoid numerous carport designs. Does the master association have any control over carport designs and/or other alterations to the common elements of the individual condominiums? F.S (via e-mail)

Answer: In some instances, the governing documents for the master association contain approval rights for alterations to the common elements of the subassociations. I have found that in most older communities, developers did not delegate architectural approval rights to “master associations”, leaving them primarily responsible for the administration of commonly used facilities (roadways, recreational amenities, and the like).

Conversely, in recent development practice, developers almost always confer approval rights on “master associations”, involving the entire community. The modern development theory is that the overall “look” of a master planned community plays an important role in preserving architectural compatibility throughout the development. nswer for your particular community will lie in review of the master association’s governing documents and particularly a determination whether the master association is granted architectural approval authority. ⚖️

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.