



## Year-end Reports Required by Law

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It's hard to believe that another year is coming to an end. In our day-to-day lives, the year's end brings holiday celebrations, reflecting on the successes and challenges of the past year, and resolving to make changes for the year to come.

For community associations, year's end means, among other things, closing out the books for the past year, and letting the members know how the community fared in predicting expenditures. Undoubtedly, most associations will report that runaway insurance costs have had a significant impact on the association's financial picture.

The year's end will also require the association to begin preparation and distribution of a year-end financial report, which is required by law for both condominium and homeowners' associations

There are basically four types of year end reports for associations. The lowest level of report permissible under the law is known as a cash statement of cash receipts and expenditures, sometimes called an in-house report, as it can be prepared by the association without referral to an outside bookkeeping company or CPA firm.

Next on the totem pole is what is known as a compilation, which, as the name implies, involves a bookkeeper or CPA taking the association's financial information, as kept by the association, and compiling it into a certain format, as provided by Generally Accepted Accounting Principles (GAAP).

Above the compilation is the review. A review, sometimes called a mini-audit, must be prepared by a Certified Public Accountant, and requires the CPA to ensure that the association's books are kept in accordance with certain formal record-keeping requirements.

At the top of the hierarchy is the audit, the financial report that most are familiar with. An audit must likewise be prepared by a CPA, and requires the auditor to ensure that rigorous procedures are adhered to by the association so that an unqualified, or "clean" opinion can be issued in connection with the audit.

The association's annual receipts will dictate what level of report is required. Associations with annual revenues of less than \$100,000 can prepare an in-house report. Income between \$100,000 and \$200,000 requires a compilation. Receipts of \$200,000 to \$400,000 will mandate a review, or mini-audit. Taking in more than \$400,000 will require an audit. Associations operating less than 50 units enjoy a limited exemption under the law.

Association members can reduce, or "waive" the required year end report, although an in-house report must, at the least, be provided annually. The required waiver vote is a majority of those who vote at a meeting for which a quorum has been obtained. For condos, this vote must take place before the end of the fiscal year, and can presumably take place at any time up to the report's due-date for HOA's.

The state condo bureau changed its regulations a couple of years ago, catching many associations by surprise. Under the new law, the meeting records for the waiver vote (notice, limited proxy form and minutes) must specifically reflect what type of report the members have agreed to receive, not just that a “waiver” was approved.

Regardless of what level of report the members ultimately settle on, the association must arrange for its preparation no later than 90 days

after the end of the fiscal year. The report must be provided to each member, or they must be notified that a copy is available free of charge, no later than 120 days from the close of the fiscal year.

Like most matters involving associations, the bylaws may provide stricter requirements, but generally cannot be less stringent than the minimum requirements of the law. The bylaws can also establish alternate due dates from those presumed in the statute. ■

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*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](mailto: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](http://www.becker-poliakoff.com).*

## Access to Condo Owner's Keys isn't Automatic

**Question:** The condo where I live is asking me for the keys to my unit. There is nothing in the condominium documents stating that I must hand over any keys. I told them I was willing to give access at any time. Legally, where do I stand on this issue. M. (via e-mail)

**Answer:** This is a question that comes up quite often. Although many people are under the impression that the Condominium Act requires owners to provide keys to their units, that is not the case. What the Condominium Act provides is that associations have the irrevocable right of access to units. This right of access comes into play when it is necessary for the maintenance, repair, or replacement of any common elements, or of any portion of a unit to be maintained by the association, or when necessary to prevent damage to the common elements or to other units.

In furtherance of this statutory right of access, many condominium associations have adopted provisions in their condominium documents, including the rules and regulations, requiring unit owners to provide a key to their unit. Such provisions, if properly adopted, have been consistently upheld.

In your case, if there is nothing in your condominium documents that require unit owners to provide a key then you do not have to do so. Your condominium documents, however, could be amended to require owners to provide keys, in which case you would have to.

**Question:** I am newly elected to my condo board and am having difficulty with our president. He has decided to form a committee to review all the landscaping bids that are coming up for renewal and refuses to tell me who is on the committee, and said he did not have to. I feel as a board member I should know about that. Am I correct? I would appreciate your assistance please. G. D. (via e-mail)

**Answer:** Florida's corporate laws provide that the board of directors appoints committees. Accordingly, the appointment of committees is a function typically reserved for action by the board, not just the president. Further, for both condominiums and homeowners' associations, there are certain committees that must always post notice of meetings, permit all association members to attend the meetings, keep minutes, permit the meetings to be videotaped or recorded with audio equipment, and in the case of condominiums the committee must also permit other unit owners to speak on designated agenda items. This is often referred to as "operating in the sunshine." The "sunshine laws" for condominiums apply to committees which are empowered to take final action on behalf of the board, or committees which make recommendations to the board regarding the association's budget. These are often referred to as condominium statutory committees.

Similarly, the sunshine laws also apply to statutory committees in the homeowners' association setting. Such committees are those that can make final decisions regarding the expenditure of association funds, or committees which are vested with the power to approve or disapprove architectural decisions with respect to parcels in the community.

Regardless of what the bylaws say, the sunshine requirements always apply to statutory committees. All other committees might be referred to as non-statutory committees, and there is a big difference in the law as to how condominium and homeowners' association non-statutory committees are treated.

In the homeowners' association setting, non-statutory committees are not subject to the sunshine requirements. Conversely, the Condominium Act provides that non-statutory committees are subject to the sunshine requirements unless the bylaws for

the association specifically exempt those committees from these requirements.

**Question:** I live in a condominium and our condominium documents state that all vehicles must be kept in the garage or in the driveway of a unit. A few months ago, new renters moved in with oversized trucks. Our single garages, driveways, and parking lots are too short for that size of vehicle. What can be done by the association to correct this problem? I. J. (via e-mail)

**Answer:** The enforcement of parking rules and restrictions seems to be one of the most difficult for associations to handle. As cars continue to get bigger, the problem is made worse. If a vehicle is too large to fit in the garage, and is also too large to fit in the driveway, then it would appear that the vehicle is

in violation of your condominium documents. The association can enforce the condominium documents through fining (if authorized in your declaration or bylaws) or by filing a petition for arbitration with the Division of Florida Land Sales, Condominiums, and Mobile Homes.

Another suggestion is to amend the condominium documents to prohibit certain types of oversized vehicles or trucks. However, such an amendment to the condominium documents cannot be enforced retroactively and can be applied only to new vehicles brought onto the condominium property after the amendment is effective. If an association is lucky enough to have additional parking areas, it may be possible to set up a lease where common area parking spaces are made available to owners or tenants whose vehicles are too large to fit in a garage or driveway. ■

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