



Condominium Boards Must Follow Rules Before Altering Them

Fort Myers The News-Press, March 8, 2007

By Joe Adams

jadams@becker-poliakoff.com

TEL (239) 433-7707

FAX (239) 433-5933

Q: I am a director on a condominium association board governing 300 condominium units. Our condominium documents specifically state that any changes to the documents must pass with a 75% approval of all owners. The problem is that almost 50% of our units are rental properties. The owners of these rental units do not respond by proxy, nor do they attend annual meetings. Is there anything we can do as an association to amend our documents to by-pass the 75% approval rule? C.S. (via e-mail)

A: Unfortunately, the situation you describe is not unusual, even in communities with less rental activity than you describe. Given the fact that it is difficult in many communities to get a large percentage of members to participate, it is not helpful to be constrained to such a high threshold for document amendments.

Unfortunately, the Florida Legislature has not helped to avoid the potential stalemate that can occur if an unreasonably high percentage vote requirement exists. The Florida Condominium Act only requires that, for any declaration recorded after 1992, the declaration amendment requirement can be no greater than 80% of the members. There are also reasonable statutory

limits on the maximum quorum requirement. In a condominium association, the quorum requirement cannot exceed 50% of all voting members. The quorum requirement in a homeowners association cannot exceed 30% of all voting interests. However, these statutory restrictions relate solely to quorum requirements and do not limit the threshold for the approval of document amendments.

Therefore, your only recourse is to direct all of your efforts toward obtaining the cooperation and participation of at least 75% of your members to pass an amendment to the declaration which reduces the 75% amendment approval requirement to a more obtainable requirement. If properly enacted, such an amendment would be valid.

Q: I am an owner in a condominium complex consisting of a number of different buildings. In addition to the association's budget, each building has its own budget for that building's particular needs. At present, a discussion has come up and a vote will be taken as to whether my building's reserves should be partially funded or fully funded. Would you please tell me the advantages and disadvantages of going either way. D.C. (via e-mail)

A: It sounds like you are a member of what is referred to as a multicondominium association, and live in a multi-condominium community. The Condominium Act requires a multicondominium association to adopt a separate budget of common expenses for each condominium the association operates, as well as a separate budget of common expenses for the association as a whole. As you might know, the Condominium Act additionally requires certain reserves to be fully funded, unless a vote is taken to waive or reduce the reserves. The required reserves are for roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement costs for those items, and for any other item where the deferred maintenance expense or replacement costs exceeds \$10,000.00. In a multi-condominium association, reserve waiver voting must take place on a condominium-by-condominium basis.

The advantages and disadvantages of fully funding reserves, partially funding them, or completely waiving reserves must be assessed by the association members on a case-by-case basis. On the one hand, if you waive or partially fund the required reserves, you will pay less money in your monthly or quarterly assessments. However, when it is necessary to expend money to maintain the building (such as putting on a new roof), if there are insufficient funds to do so you will likely be hit with a large special assessment. If your association fully funds the reserves, your regular assessments will be higher, but when it is time for major repairs you should already have most, if not all, of the funds to do so.

Q: I live in a very large development in Southwest Florida. I recently received a proxy from my condominium association. It would appear that the board of directors would like to waive the requirement for an audited financial statement. If the vote on the waiver is not passed, the board has advised me that there will be a special assessment to cover the cost of the financial

statement. I think the association should provide this financial information, but I do not understand why we should pay extra. What are my rights? S.D. (via e-mail)

A: Florida's law governing the financial reporting requirements of condominiums will vary depending upon the size of your condominium and the total amount of your annual revenues. The Florida Condominium Act only requires an audited financial statement for an association that has a total annual revenue of \$400,000.00 or more. A majority of the voting interests present at a properly called meeting of the association may vote to "waive down" the audit requirement and instead prepare a report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement.

To answer your question about the necessity for a special assessment, if the fee for the preparation of the audited financial statement is a known expense at the time your Association considers the proposed annual budget, it can be added as a line item to the budget and be paid as a part of your regular assessments. Otherwise, a special assessment may be necessary to cover the expense of the audit.

Q: I live in a condominium. We just received a letter from the management company informing us of a board meeting to pass a new budget with an increase of 48% to the maintenance fees. The notice is not in the form of a board meeting notice with an agenda attached, but is just a lengthy letter. Shouldn't this budget meeting be a members meeting? Can the board increase the maintenance fees more than 15%? Can the owners refuse the increase? J.F. (via e-mail)

A: The Florida Condominium Act sets forth requirements for adopting a proposed annual budget. A meeting at which the board will consider the adoption of the budget must be preceded by at least fourteen days written notice which is mailed or hand delivered to each unit

owner, and a copy of the proposed annual budget must be included with that mailing. It is important to note that, in most cases, the adoption of the annual budget is a board function. It is possible for the condominium documents of an association to require member approval of an annual budget, but such a requirement is not commonplace.

Next, the Florida Condominium Act requires that notice of a board meeting specifically identify agenda items. There is no specific format required, but it is necessary for the notice, whether it is a lengthy letter or a more typically formatted notice.

There is a common misconception that the board may only adopt an annual budget that does not exceed 115% of the assessments for the preceding fiscal year. This is true for developer controlled boards, and an assessment increase by such a board can not exceed 115% of assessments for the prior fiscal year, unless approved by a majority of all voting interests. Also, a few older condominium associations require membership approval for budget increases. However, that is not the norm.

In the absence of any unusual provision in the condominium documents, the unit owner controlled board has no limitation on the amount of increase to the annual budget. However, if any increase in the annual budget exceeds 115% of assessments for the preceding fiscal year, excluding reserves and extraordinary items, then the unit owners do have an opportunity to call a special meeting, upon the petition of at least 10% of all voting interests. The members may then consider

their own, substitute budget and adopt it by majority vote of all voting interests, or by a greater percentage if required by the condominium documents, in place of the board adopted budget.

Q: My condominium association recently installed a new gate and fence around our pool. Are there any state laws governing condominium pools? E.G. (via e-mail)

A: There are several different bodies of law that regulate a pool at a condominium. In general, condominium pools are regulated as “public” swimming pools. Chapter 514, Florida Statutes, and Chapter 64E-9 of the Florida Administrative Code contain many of the requirements for the construction and operation of a condominium pool.

Generally, public pools must be surrounded by a minimum 48 inch high fence or there must be some type of structure in lieu of a fence to control access to the pool area. Access to a pool area other than from the doored exits of adjacent buildings must be through self-closing, self-latching lockable gates. The gates must also be at least 48 inches high and the latch must be located a minimum of 54 inches from the bottom of the gate or at least 3 inches below the top of the gate on the pool side. The gate must also open outward away from the pool area. Older facilities may or may not be grandfathered, depending on the jurisdiction. Your local department of health or building official may be able to answer any specific questions you have about the requirements for your pool.

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, cooperative, 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.