



## Color of Buildings Not Necessarily the Condominium Board's

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**Q:** Our condominium buildings need to be repainted. Can the board of directors choose the colors, or do all of the owners have to vote for a color change? V.D. (via e-mail)

**A:** One Florida appeals court, as well as a number of decisions from the state's arbitration program, have concluded that a change in exterior paint color on a condominium building amounts to a "material alteration" of the common elements. The Florida Condominium Act provides that there shall be no material alterations to the common elements, except in the manner provided by the declaration of condominium. If the declaration does not specify the procedure for approval of material alterations, then 75% of the total voting interests of the association must approve the alteration. There is usually one voting interest per unit.

Therefore, you must first review the declaration of condominium to see what it says about material alterations. In some cases, the declaration of condominium permits the board to authorize material alterations to the common elements, without a unit owner vote, so long as the project does not exceed a certain dollar amount or stated percentage of the annual budget. Other

declarations of condominium allow the board to unilaterally approve material alterations without regard to the cost of the project. Some declarations of condominium do not address material alterations at all, in which case the 75% statutory voting threshold applies.

Depending upon what your association's declaration of condominium says, the board may or may not be authorized to choose the paint color for the condominium building. If your association's declaration of condominium says nothing on the subject, 75% of the unit owners would need to approve the color change.

**Q:** One more time: when is it permissible for the board of a homeowners association to meet without notice to discuss community business by holding planning sessions in preparation for the open board meeting, and to make specific decisions such as selecting contractors and approving contracts? J.V. (via e-mail)

**A:** The Florida Homeowners' Association Act (Chapter 720 of the Florida Statutes) requires any gathering of a quorum of the board to be preceded by a notice being posted in the community at least 48 hours in advance. Board meetings must also be

open to members who wish to attend. There are a couple of exceptions to this rule. The exceptions include meetings between a quorum of the board and legal counsel when the topic of discussion is pending or proposed litigation, or personnel matters.

Condominium owners should note that the Florida Condominium Act (Chapter 718 of the Florida Statutes) contains similar rules, but only permits closed meetings with the association's attorney to discuss proposed or pending litigation, and does not include the personnel matter exception.

Therefore, the suggestion in your question that a quorum of the board might meet to engage in planning sessions, or to discuss the selection of a contractor would, in each case, constitute a violation of the law.

There are some practical methods that your association can consider to effectively operate the association, and still comply with open meeting requirements. First, it is permissible for less than a quorum of the board to meet and discuss association business. Therefore, it may be a good idea to ensure that your association has a five or seven member board, so that any two or three members can meet and discuss and work on association matters without violating the statute.

However, it is important that discussions outside of open meetings do not take the place of the open debate that should take place at the public board meeting. It is problematic, both from a practical standpoint and a legal standpoint, for the open board meetings to just become a "rubber stamp" of decisions that were made outside of the meeting.

Another practical solution in the homeowners' association context is to form committees that are composed of members who do not also constitute a quorum of the board. Homeowners' association committee meetings only have to be noticed and open to the members if the committee has the authority to make final decisions regarding the

expenditure of association funds, or has power to approve or disapprove architectural decisions. All other homeowners' association committee meetings are not required by statute to be open to members.

**Q:** My condominium association board of directors is considering purchasing one of the units in our building that is set for a foreclosure sale. This is a little controversial in our community because the association filed the foreclosure for unpaid maintenance assessments. It is my understanding that they plan on creating an office for our property manager. I cannot find anything in our documents that permits the association to purchase a unit at a foreclosure. Is this legal? A.J. (via e-mail)

**A:** The Florida Condominium Act allows an association to purchase units in the condominium, unless it is prohibited by the condominium documents of that particular association. Similarly, there is also no prohibition on the right of the association to purchase a unit at a foreclosure sale where the foreclosure action was filed by the association for unpaid maintenance assessments.

The ownership of a unit in a condominium by an association can be problematic if the condominium documents do not clearly set forth the rights and responsibilities of the association as a unit owner. For example, most condominium documents prohibit the use of units for commercial or business purposes, and require that units be used for single family, residential purposes. If your association buys the unit and uses it as an office for the property manager, it is wise to ensure there is an exception in the condominium documents that allows the association to use the unit for association-related purposes. If the association acquires the unit, the condominium documents may need to be amended to address this change in your community.

**Q:** I live in a condominium. There is only one unit owner that has not installed hurricane

shutters. Hurricane Wilma caused water damage to that unit, as well as the two units below. Does the Florida Condominium Act provide any support to force an owner to install approved hurricane shutters? D.B. (via e-mail)

A: The Florida Condominium Act contains no authority to require a unit owner to install hurricane shutters. Instead, the Condominium Act sets forth two statutory procedures addressing the installation of hurricane shutters.

The first procedure is voluntary installation by unit owners. The Condominium Act states that a board must adopt hurricane shutter specifications that comply with applicable building codes. Any unit owner may install shutters in accordance with those specifications, and such installations are not considered a “material alteration” of the common elements. Even if the board has approval authority for exterior building changes, approval can not be denied for the installation or replacement of hurricane shutters that conform to the association’s specifications.

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The second statutory procedure is installation of hurricane shutters by the association. The Condominium Act states that, with the prior approval of the majority of the voting interests of the association, the board may install, maintain, repair, or replace such approved hurricane shutters on or within common elements, limited common elements, units, or association property. However, where laminated glass or window film that is architecturally designed to function as hurricane protection which complies with applicable building codes has been installed, the board may not install hurricane shutters. Unit owners who have installed code compliant shutters are entitled to a credit.

Although the Condominium Act does not address your question, there may be non-statutory options available to associations, such as amendments to the declaration of condominium. The board should work with the association’s legal counsel if it wants to pursue such an option.