



Difficult Merger Can be Done

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Q: I am a board member for one condominium association in a community that has three separate associations. My understanding is that in order for the three associations to merge into one association, the merger would have to be ratified by 100% of the unit owners of all three associations. The chances of every association obtaining a 100% vote is highly unlikely. Is there any way for our associations to merge without obtaining 100% approval? D.S. (via e-mail)

A: It is true that obtaining a 100% vote on anything is extremely difficult, if not impossible. Fortunately, there are two methods by which a merger can be accomplished, and only one requires a 100% vote.

The first method is called a “property merger” where the condominiums are merged into a single condominium. Merging the condominiums includes combining each condominium’s common elements, budgets, and condominium associations into one single condominium association. This type of merger is rarely accomplished because it generally requires the approval of 100% of all unit owners and all holders of liens against the units unless otherwise provided by the declaration of condominium as originally recorded. In most cases, the 100% voting requirement makes this type of merger impossible.

An alternate type of merger is a “corporate merger.” In this type of merger, two or more separate corporations merge their identity into a single organization which is managed by a single board of directors, but retain their separate identity when it comes to common elements, budgeting and the like. When condominium associations accomplish a corporate merger, each condominium remains responsible for its own expenses and would not share in the expenses that are unique to the other condominiums.

A corporate merger results in what is commonly known as a “multicondominium association.” In order to accomplish a corporate merger, each association would need to amend their condominium documents in accordance with the percentage required by the condominium documents, or if a percentage is not specified, the percentage as set forth in the Florida Condominium Act.

Q: I am a homeowner and would like to know more about the differences between condominium and homeowners’ associations. What sources can you recommend? J.N. (via e-mail)

A: Last year I conducted a three-month comparative study in this column on the

similarities and differences between Florida's laws applicable to condominium associations and homeowners' associations. Multiple articles on this subject, ranging from August 10, 2006 to November 9, 2006 may be found on my webpage at www.becker-poliakoff.com/pubs/articles.html. These will provide a good starting point.

You can also log on to the Division of Land Sales, Condominiums and Mobile Home's webpage at www.state.fl.us/dbpr/lsc/index.shtml. Separate hyperlinks provide information for both condominium and homeowners' associations ranging from educational materials and on-line courses to legislative news and Division contact information.

There are also several books on association law, although I am unaware of any dealing with specific differences between Florida condominium and homeowners' associations.

Q: I have some questions concerning the posting of notice for board meetings. If the notice is not posted a full 48 hours prior to the meeting time, is the meeting valid? Should the agenda be posted as well? Also, am I correct in that the Florida Statutes give all members a right to speak at least 3 minutes on any subject the board brings up at the meeting. We were told we did not have the right to speak unless we requested to be on the agenda prior to the meeting being scheduled, but there is no advance notice of the meeting other than the posting. K.G. (via e-mail)

A: It is not clear from your question whether your association is a homeowners' association governed by Chapter 720, Florida Statutes, or a condominium association governed by Chapter 718, Florida Statutes. The detailed answer to your questions will be slightly different depending upon the type of association.

For a homeowners' association, notice of all board meetings, with the exception of an emergency meeting, must be posted in a conspicuous place in

the community at least 48 hours in advance of a meeting. If the proper notice is not posted in a timely manner, then the meeting is not valid and any action purported to be taken by the board at the meeting is not valid. However, failure to properly notice a board meeting can be easily corrected by posting the proper notice, and conducting a board meeting at which the board adopts resolutions or ratifies prior actions. Moreover, the notice of a board meeting in a homeowners' association is not required to include an agenda of items to be discussed at the meeting, except if the board will consider an assessment or rules regarding parcel use. In the case of a special assessment or a rule regarding parcel use, the notice of the board meeting must be both posted and mailed to all members not less than 14 days before the meeting.

Members of a homeowners' association are only entitled to speak at a board meeting with respect to matters placed on the agenda by petition of the voting interests of the association. The statute requires a matter to be placed on the agenda if 20% of the members sign a petition. In such cases, a 14 day notice of the meeting must be both posted and mailed to members. Also, in such a case, each member may speak for at least three minutes on each matter placed on the agenda by petition. However, the association may adopt written, reasonable rules expanding the right of members to speak and governing the frequency, duration and other manner of member statements.

With respect to unit owner participation at condominium association board meetings, the statute is different. For condominium associations, notice of board meetings must be posted in a conspicuous place on the condominium property 48 hours in advance of any board meeting, except in the case of an emergency. Just as with homeowners' associations, any meeting at which non-emergency special assessments or rules regarding unit use will be considered must be preceded by 14 days notice that is both posted and mailed to the unit owners.

In the case of a condominium association, all board meeting notices must specifically incorporate an identification of agenda items. In addition, all unit owners have a right to speak at board meetings with reference to all designated agenda items, regardless of whether the agenda item is the result of a unit owner petition to have the item added to the agenda. However, there is no specific reference in the condominium act to a three minute limitation on the duration of any unit owner statement. Instead, the statute provides that the

association may adopt written reasonable rules governing the frequency, duration and manner of unit owner statements.

Many people assume that the three minute time period set forth in the homeowners' association act is evidence that the legislature or a court may find that three minutes is also a "reasonable" length of time to allot to condominium unit owners to speak on board meeting agenda items. However, there is no express guidance on this point in the law.

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.