



Records Can Verify the Cost of Project

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Q: Our condominium documents say that if the cost of material alterations or substantial additions to the common elements exceeds ten percent of the annual budget, the board can not proceed with such improvements without the approval of at least seventy-five percent of all the unit owners. I believe that our board has approved an alteration that will cost more than ten percent of our annual budget without a unit owner vote. How can I verify that the cost is more than ten percent? If it is, what can we do to stop them?
J.P. (via e-mail)

A: In some circumstances, material alterations or substantial additions to the common elements require unit owner approval. The Florida Condominium Act permits the declaration of condominium to provide the required level of unit owner approval. If the declaration is silent, the Condominium Act provides that seventy-five percent of all unit owners must approve the material alteration or substantial addition.

The declaration of condominium can provide instances where a unit owner vote is not necessary. Your declaration of condominium, for example, does not require a vote of the owners if the cost of the material alteration or substantial addition is less than ten percent of the annual budget. There are other instances where a unit owner vote might not be necessary such as when the work amounts to “necessary maintenance” of existing improvements,

or it is required to comply with current codes or ordinances. Therefore, before you begin the process of challenging the authority to make a material alteration or substantial addition to the common elements, you should make sure that an ownership vote was required in the first place.

The way you can verify the cost of a specific project is by inspecting the official records of the association. The Florida Condominium Act provides that the association must maintain various types of records, including but not limited to the minutes of all meetings of the board and association, contracts to which the association is a party, budgets, and all other records of the association which are related to the operation of the association. As an owner, you are entitled to inspect and copy the official records, and can obtain the budget, bid proposals, and any contracts entered into to determine if the cost of the project in question will exceed ten percent of the annual budget.

If you find that the cost is more than ten percent of the annual budget, which requires a vote of the owners as provided for in your declaration, then you can file a petition for arbitration with the Division of Florida Land Sales, Condominiums and Mobile Homes to seek appropriate relief. You are well advised to obtain legal counsel for this process, as the winning party is usually entitled to

recoup their attorney's fees from the losing party in disputes of this nature.

Q: I own a condominium unit and am governed by a condominium association which has rules and regulations. I live in a corner unit and it would be to my advantage to have a satellite dish mounted on the roof where I can receive a premium picture and high definition. I have requested permission for the installation and was flatly refused. I have learned that there is a "cable act" where the association cannot prohibit the installation of the dish. If this is true, can you state the act and the subject line, as I would like to rebut their decision. **S.S. (via e-mail)**

A: The "cable act" that you have heard about is the Federal Telecommunications Act. In 1996, the Federal Communications Commission ("FCC") adopted what is commonly known as the Over the Air Reception Devices Rule ("the OTARD Rule"). The OTARD Rule prohibits restrictions that impair the installation, maintenance, or use of antennas used to receive video programming. The rule applies to certain antennas, including satellite dishes that are less than one meter (39 inches) in diameter. The OTARD Rule applies to viewers who place permitted satellite dishes or other permitted equipment on property that they own (or have a leasehold interest in), that is within their exclusive use or control, including condominium unit owners who have an area where they have exclusive use, such as a balcony or a patio. Therefore, the rule would apply to the installation of a satellite dish by a resident on the lanai of his or her condominium unit or on the outside of the home in a homeowners' association governed community.

In your case, and in the case of most condominiums, the roof is most likely a common element, which is not within the exclusive use of the unit owners. Therefore, based on your facts, it appears that the association was within its legal bounds to deny your request to install the satellite dish on the common element roof.

Q: I purchased a condominium unit in June, 2007 and almost immediately the association is asking for a \$1,000.00 per unit special assessment to repair steps and replace electric meters. I was told that the owners were just charged \$500.00 for a special assessment last year. My question is, how often can an assessment be charged to condominium owners and how much can be charged each time an assessment is made? In addition, what percentage can the annual assessment be raised each year? **B.O. (via e-mail)**

A: As you may know, one of the most important obligations of a condominium association is to maintain and repair the common elements of the condominium. The board of directors is obligated to take all necessary actions to maintain the property and often the board has no real choice but to levy a special assessment and make needed repairs. In addition, a condominium association has one source of revenue, which is of course, its members through its assessment authority.

The Florida Condominium Act provides that special assessments may be levied in accordance with provisions set forth in the condominium documents. Therefore, you will need to review your condominium documents to determine if there are any special assessment limitations. Most likely, such provisions would be in the declaration of condominium or in the bylaws. In many cases, the board of directors has unilateral authority to levy unlimited special assessments, so long as the special assessment is to pay the costs of a proper expense of the association. In other cases, the board may have unlimited special assessment authority up to a certain dollar amount in any fiscal year, or up to a certain percentage of the total annual budget of the association in any fiscal year. When limitations are present, a membership vote is required to authorize a special assessment in excess of those stated limitations.

Finally, you inquired about the percentage by which annual assessments may be raised each year. This issue is a constant source of confusion for many condominium owners, who often mistakenly

believe that the annual assessments may not be increased in an amount that exceeds 115 percent of the prior year's assessment. Actually, any budget that is adopted by the board which exceeds the prior year's budget by 115 percent, not including reserves or expenses not expected to be regular or annual expenses, only gives rise to the right of the members to petition for a special meeting at which the members may adopt a substitute budget by a majority vote of the total voting interest of the association. In my experience, most budget increases that exceed 115 percent of the prior year's budget are necessary and justified by actual expenses of the association. Therefore, even if the members successfully adopt a substitute budget that is significantly less than the board-adopted budget, there are still necessary expenses that must be paid in order to maintain the condominium property as required by the governing documents.

FREE COURSE ON THE REGULATION OF RESIDENTIAL CONDOMINIUM AND COOPERATIVE ASSOCIATIONS IN FLORIDA TO BE HELD IN FORT MYERS.

A free course on the regulation of residential condominium and cooperative associations in Florida will be held on Thursday, October 18, 2007 from 9:00 am to 1:00 pm at the Seven Lakes Condominium Association, 1965 Seven Lakes Blvd., in Ft. Myers, FL (across from Bell Tower Shops). The course will be taught by Community Associations Institute (CAI), the designated condominium and cooperative educational provider of the State of Florida's Department of Professional and Business Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes.

The course focuses on how federal and state statutes and regulations impact associations. Participants will review guiding documents such as Florida statutes and legislation including the Condominium Act and Cooperative Act, the Fire Safety Act, and the Florida Administrative Code. The course will also touch on federal laws such as the Fair Housing Amendments Act of 1996, and the Fair Debt Collection Practices Act. Please note that this course does not count for manager CEUs for community association managers.

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.