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Insurance Question Explained

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Q: As a member of the board of directors of our condominium association, I am very concerned with the cost of providing the required insurance coverage. The cost is becoming overwhelming and prohibitive for most condominium associations. My question is, can a condominium association become self-insured, or must we be held hostage to the insurance industry with their outrageous rates? **J.P. (via e-mail)**

A: With the passage of recent amendments to the Florida Condominium Act, the legislature has clarified that self-insurance can legally satisfy a condominium association's obligation to provide "adequate" insurance. The legislature also confirmed that self-insurance costs are a proper common expense of a condominium association. Therefore, yes, self-insurance is legally permitted. However, some commentators note that condominium document provisions that require insurance in the amount of the total insurable value of the condominium property may not be satisfied by self-insurance, where shortfalls are assessable against the members. Further, some documents require insurance with carriers rated through Best's, or a similar entity, and self-insurance would likely not satisfy such requirements

Proponents of self-insurance will point to reduced premiums, reportedly ranging from 20 percent to 40 percent, when compared to traditional insurance. Skeptics point out a number of important differences between traditional insurance and self-insurance, including the fact that self-insurance is "fully assessable" insurance, meaning that participants in self-insurance plans are potentially liable for any shortfall of funds to pay claims. In addition, self-insurance plans are not protected by the Florida Insurance Guarantee Association (FIGA) and private reinsurance for windstorm and reinsurance through the Florida Hurricane Catastrophe Fund is limited. For all of these reasons, the main concern with self-insurance plans is in the event of a major windstorm catastrophe that causes damage to multiple properties participating in a single self-insurance plan.

These plans are regulated and it is necessary to file an application with state regulators and meet several significant requirements. I am told that the State's first self-insurance fund for condominium association's was approved by State regulators on November 1, 2007. Stay tuned.

Q: I reside in a condominium. I try to attend the weekly board meetings to stay on top of what is going on in the community. Our association is undergoing litigation against a contractor. At one of our board meetings, the directors called an executive session, at which point I had to leave. Our attorney was not present and the matter was discussed between the board members. I feel these executive sessions are against the Condominium Act. Please advise. **S.B. (via e-mail)**

A: There are provisions in the Florida Condominium Act, sometimes colloquially referred to as the "sunshine" regulations, which specifically address your questions. These sunshine regulations provide that all board meetings at which a quorum of the members is present must be open to all unit owners. A board meeting is any gathering of a quorum of the board where association business is conducted. Unit owners' rights at board meetings include the right to tape record or videotape the meetings and the right to speak with reference to all designated agenda items.

There are exceptions to the requirement that board meetings be open to all unit owners, and in those cases the board can go into an "executive session." The requirement that board meetings be open to the unit owners is not applicable to meetings between the board and the association's attorney with respect to proposed or pending litigation, when the meeting is held for the purpose of seeking or rendering legal advice. In your case, even though it appears the directors were discussing pending litigation in the "executive session", the association's attorney was not present (either in person or by telephone) which is a requirement for such closed door meetings.

Q: Our homeowners' association is planning to undertake a multi-million dollar renovation project. The board has appointed a special committee to work with a professional design team to present the "concept" to our members. This committee meets in secrecy – no posted meetings, no minutes. Is this in violation of the "Sunshine Law"?

Also, we currently have no approved procedure for voting and balloting in our community. Since this is such a controversial project, we believe that our interest would be best served by securing an outside accounting firm to count the final vote. Our board is proposing this project while the majority of the membership is in opposition. How do we go about establishing a procedure to assure a fair vote? **S.W. (via e-mail)**

A: Unless the governing documents of the community provide otherwise, the board of directors has the authority to adopt a resolution creating a committee. It is important to keep in mind that there are two types of committees in the community association setting. The first type of committee is sometimes called "statutory" committees. In a homeowners' association setting, "statutory" committees are those committees which 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. If a committee is granted these powers then the same "sunshine" requirements (i.e., posting notice of meetings, right of owners to attend meetings, etc.) that are applicable to board meetings apply to the committee meetings. All other types of committees are loosely referred to as "non-statutory" committees, and are not subject to the "sunshine" requirements. Whether the committee you describe is subject to the "sunshine" requirements would depend on whether it is properly classified as a "statutory" or "non-statutory" committee.

This answer is somewhat different in the condominium association setting. The Florida Condominium Act also lists "statutory" committees, which include committees that are empowered to take final action on behalf of the board, or which make recommendations to the board regarding the association's budget. Again, the "statutory" committees must operate in the "sunshine."

All other committees in a condominium association are "non-statutory" committees. Unlike in the homeowners' association setting, those committees are still subject to the "sunshine" requirements unless the bylaws for the association specifically exempt them from the "sunshine" laws.

As to your second question, voting procedures are generally covered by the association's bylaws. Even so, a good procedure to implement when the board is faced with a controversial issue is to appoint representatives from both sides of the issue to help tabulate the votes. This procedure helps to limit the perception that the votes are being tabulated either incorrectly or unfairly. It is probably unnecessary to go to the expense of

hiring an outside accounting firm to tabulate the final vote, particularly if the votes are counted in the open with the assistance of those representing both sides of the issue. However, the board of directors does have the option to bring in outside help.

FREE COURSE ON OPERATIONS OF FLORIDA COMMUNITY ASSOCIATIONS TO BE HELD IN FORT MYERS.

A free course on operations of Florida condominium associations will be held on Friday, January 11, 2008 from 9:00 am to 12:00 noon 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 the core responsibilities of associations. It touches on practical operational needs such as self-management, the bidding process for outside service providers, maintenance issues, accounting and legal services and how to plan for and conduct board meetings. Please note that this course does not count for manager CEUs for community association managers.

Registration is not required, but space is limited. To reserve a space, please call Laura Hagan at 727-525-0962 or e-mail fleducation@caionline.org. Course seating may be limited to one owner occupant per condominium unit based on space availability. To see a complete list of classes in your area, visit www.caionline.org/florida.

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.