



Master Associations Required to Elect Board

Cost, time involved can be quite high

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Q: I live in a condominium that is part of a larger complex where there are four other condominiums. Each condominium has its own association and there is a master association as well. Does the master association have to comply with the condominium election laws when we elect the directors of the master association? **E.M. (via e-mail)**

A: The first issue is whether the master association would be considered a “condominium association”. If so, its operations must be consistent with the Florida Condominium Act (Chapter 718, Florida Statutes). The Condominium Act defines the term “association” to include any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership. Typically, if a master association is composed only of condominium unit owners, then it will be considered a condominium association and it must comply with the Condominium Act. However, if the master association includes non-condominium unit owners, the association could be a “homeowners association” governed by the provisions of Chapter 720, Florida Statutes. For example, if you live in a large community which

includes a neighborhood of single family homes, a townhouse community, and a condominium, the master association would not be considered a “condominium association”. In your case, it sounds as if your master association is probably a “condominium association” as defined by the law.

There are many areas where the Condominium Act does not neatly address the operation of a “condominium master association”. In fact, there is not even a definition of a “master association” in Chapter 718. There have been numerous attempts over the past decade or so to provide legislative clarification, but those efforts have not been successful for a variety of reasons.

One of the areas that the Condominium Act does not neatly address is master association elections. That is because many master association bylaws provide that the president (or other representative) from the condominium association is automatically appointed to the board of the master association. However, the Condominium Act does not recognize an appointment process and requires all directors to be elected in accordance with the provisions of the Condominium Act. This generally requires a notice to be sent out 60 days before the meeting, and there is a self nomination process wherein a unit owner can stand for election to the Board.

A few years ago, the agency that regulates condominium associations, the Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes issued a ruling stating that a master condominium association was required to elect the board of directors and that a system whereby certain officers of the condominium associations were automatically appointed to the master board conflicted with the Condominium Act. Therefore, even if the association's bylaws provide for an appointment system, an election of directors would have to be held. As you can imagine, this can be problematic for some master associations. There are some master associations with thousands of owners and the cost and time involved in conducting a condominium-style election (with the two notice system, the secret ballots, the two envelope system, etc.) can be quite high. However, until the legislature amends the Condominium Act to address the unique circumstances of master associations, it is the system that governs.

Q: My husband and I live in a high rise condominium. When we went to a recent meeting to vote on an amendment, we were told that we could not vote individually. They told us that Florida law only allows one vote per unit. Is that correct? **D.M. (via e-mail).**

A: There is no Florida law that limits the number of votes that can be cast to one per unit. The authority to limit votes to "one unit, one vote" is found within the condominium documents of the community. The majority of condominium documents contain the "one unit, one vote" limitation. Most condominium documents will also require that a voting certificate be filed when a unit is owned by more than one person or by some entity such as a corporation. Voting certificates, unlike proxies, have an indefinite term and only expire when the unit is sold or until the owners change the designated person. The voting certificate notifies the association which owner (or corporate officer) is entitled to cast the vote for a specific unit. Sometimes, the condominium

documents will not require a voting certificate where a unit is owned by a husband and wife. In those cases, husbands and wives are not authorized to cast separate votes when only one vote is allowed per unit.

Q: My condominium board recently distributed the annual budget for 2008 and, not surprisingly, the assessment has increased, although not as much as two years ago after the hurricane. I asked the treasurer about some of the items in the budget, and she said that some of them were increased or added because the board is concerned these expenses might rise, but they cannot be sure. I asked if we can expect a refund at the end of the year if these expenses do not rise, and she said that was doubtful. Can you explain the legal limitations on a board making a budget? **D.H. (via e-mail)**

A: When a condominium board prepares and adopts an annual budget, it must comply with Section 718.112(2)(f) of the Florida Condominium Act and show amounts budgeted by accounts and expense classification. By law, the budget must provide sufficient funds so that the association does not run a deficit. Obviously, without a crystal ball, estimating the exact expenses is difficult, if not impossible.

It is crucial for the board to spend some time thinking about the types and amount of expenses that will come due in the coming year. Careful thought and planning can avoid the burden and expense of levying a special assessment during the year, which is not always possible in every association without member approval, and sometimes the required member approval is not easily obtainable. Therefore, as both a legal and practical matter, the board is well-advised to budget slightly on the high side of potential expenses. Moreover, it is prudent for a board to establish an operating reserve (which is really just surplus funds in the association's general operating account) to cover the cost of completely unexpected expenses, some of which will inevitably arise during the year. The trick, and the point your question appears to raise, is in

determining how much operating surplus is enough.

Many associations have the benefit of history to estimate future expenses. But a well thought out budget will also consider inflation, contracts that are expiring and will need to be renewed, likely at a higher cost, special projects planned for the upcoming year, and extraordinary circumstances. One timely example of an extraordinary expense is “bad debt”, which simply refers to the failure of members to pay their assessments. The recent collection and foreclosure experience of most every association is that more and more owners are delinquent in the payment of their assessments. While the Condominium Act contains some very good remedies for the association to pursue delinquent owners, delinquencies often create cash flow issues which, if not adequately planned for, can cause major problems for the association.

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In any event, condominium owners do own their pro rata share of funds held by the association, and the board is constrained to spend funds only on proper common expenses. Therefore, any surplus funds in the association account are held, essentially, in trust by the association for the benefit of the community.

For a great resource on the budgeting issue, I recommend you go to the Division of Florida Land Sales, Condominiums and Mobile Homes web site and review the educational publication “Budgets & Reserve Schedules” which can be found at http://www.myflorida.com/dbpr/lsc/documents/budgets_and_reserves.pdf.