



Condo Considers Eliminating Management Firm

While not legally necessary for any association to hire a managing firm, considerable work can fall to board.

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Q: I serve on the board of my condominium association. For years we have had a management company. Now, due to a number of factors including several of our members are in arrears in the payment of their assessments and banks are foreclosing on units, some members of our association want to eliminate the management company to save money. It is my understanding that we must have a management company due to the fact that our condominium has more than fifty units. Is there any way around this requirement?

D.S. (via e-mail)

A: Your question includes a common misunderstanding about the requirements for hiring a management company or manager. First, it is not legally necessary for any association to hire a manager or management company, unless required by the community's governing documents. The association may be "self-managed" if it so chooses. However, if an association elects to hire a management company or manager, it must hire a licensed community association manager if the association contains more than fifty units or has an annual budget in excess of \$100,000.00.

One problem with being self-managed is that a considerable amount of work can fall to the volunteer board members. Moreover, an

experienced community association manager cannot only do the work to administer the association, but most likely can do it more cost-efficiently than the inexperienced, self-managed board. Your collections issue is a good example. A good manager can be instrumental in keeping members current in their payment obligations.

I am aware of some associations that are self-managed to save money, but the board hires an "administrative assistant" to take up some of the work load. When an unlicensed administrative assistant is employed, it is important to understand that a community association manager, as defined in Chapter 468, Florida Statutes, includes a person who controls or disburses funds of the association, prepares budgets or other financial documents, assists in the noticing of conduct of community association meetings, and coordinates maintenance for the residential development or other day-to-day services involved with the operation of the association. Therefore, an unlicensed administrative assistant's role and ability to perform important tasks is limited. Both the unlicensed administrative assistant and the association could face potential legal liability for failing to comply with the license requirements in the statute.

Q: We have one unit owner in our condominium demanding to see our check stubs. Since we turn these over to a CPA for compilation reports given at our annual meeting, must we meet his requests? **M.E. (via e-mail)**

A: The Condominium Act provides a very detailed list of what records constitute the “official records” of the association. Accounting records are official records of the association and must be maintained for a period not less than seven years. The Florida Condominium Act provides that detailed records of all receipts and expenditures constitute accounting records and must be maintained by the association. The Condominium Act also includes within its definition of “accounting records” a statement of account for each unit regarding the payment of their assessments, all accounting statements and financial reports and all contracts for work to be performed, including bids for that work. It should be noted that the association is required to maintain bids for work for a period of only one year.

It is likely that both the check stubs and the financial reports compiled by the CPA are “accounting records” and therefore “official records” of the association. It is also important to note that the Condominium Act provides that “all other records” of the association that are related to the operation of the association are also official records. Once again, this would include check stubs. Even if the association is sending check stubs to the CPA for their compilation of reports, they, or copies of them, would have to be made available for an owner’s inspection.

As you may be aware, official records of the association are open to inspection by association members. The right to inspect the official records includes the right to make copies for which the association can charge a reasonable expense. The association is also authorized to create reasonable rules regarding the frequency and manner of record inspections. The Condominium Act provides that records must be made available within five working days after receipt of the written request. If the association fails to provide the records within

ten working days after receipt of the written request, a rebuttable presumption is created that the association willfully failed to comply with the statutory requirements, and an owner who is denied access to official records is entitled to the actual damages or minimal damages for the association’s willful failure to so comply. Minimum damages are set by statute as \$50.00 per calendar day, up to ten days, with the calculation beginning on the eleventh working day after receipt of the written request.

Q: The architectural review committee (ARC) in my homeowners’ association has a design guidelines booklet that has been published, but not recorded in the public records. The ARC wants to amend some of the rules in the booklet, and the recorded declaration of covenants, conditions and restrictions does provide authority for the ARC to make changes and revisions. However, a director contends that only rules within the declaration can be enforced and that the ARC is not able to change rules without an amendment to the declaration, which requires a two-thirds (2/3) vote of the entire membership. Is the director correct? **M.F. (via e-mail)**

A: The framework you described for architectural control is quite common in homeowners’ associations. Most often, there is a provision in the declaration which authorizes the association to enforce architectural review standards, and most often, the board of directors of the association is either obligated to, or has the option to, appoint an ARC to carry out the architectural control function. Typical provisions do call for the adoption of specific design guidelines, and often provide the ARC or the board with the authority to amend those guidelines without member approval. Of course, any such amendment cannot conflict with any provision contained in the declaration, which is a superior document to all other governing documents of the association, including design guidelines. Therefore, the answer to your question depends upon the specific wording in your declaration. In my experience, it is possible, and even typical, that the board or the ARC can amend design guidelines without member approval.

You may know from prior columns that the Florida legislature enacted a new statute on this point effective July 1, 2007. Specifically, Section 720.3035 of the Homeowner's Association Act now requires that any approval or disapproval of members' improvements to their property, and any enforcement standards for the external appearance of parcels, shall be permitted only to the extent the authority is specifically stated or reasonably inferred as to location, size, type or appearance in the declaration or other published guidelines and standards that are authorized by the declaration. The new statute appears to be designed to remove

broad discretion of the ARC or the board in each specific case, and instead requires that ARCs and boards make decisions based upon well-defined, written criteria. The statute has yet to be tested in court to determine its exact requirements, but the clear mandate is that ARCs and boards establish detailed design guidelines just as the ARC in your community appears to be interested in doing. Since the declaration provides the ARC with the authority to revise those guidelines, I would expect that authority is valid and consistent with the statute.

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.

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