



Common Expenses Can Be a Fuzzy Subject

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Today's column is the 11th installment in our annual review of laws affecting community associations. We continue with a review of House Bill 601, which became effective July 1, 2008, and which primarily addresses condominium insurance and post casualty repair cost allocations.

HB 601 addresses an issue that often spawns confusion, how to divide costs in a multi-condominium association. By definition, a multi-condominium association is a condominium association that operates more than one legally declared condominium.

Allocating costs in multi-condominium associations is often frustrating for boards and managers, due to the complexity of the law. The general concept is that the common expenses affiliated with a particular condominium are assessed against only the unit owners in that condominium. Such costs are often referred to as "common expenses of the condominium." Conversely, costs incurred for the benefit of the association as a whole are typically spread among all unit owners in all condominiums, and are often referred to as "common expenses of the association."

There is no hard and fast rule as to what costs are considered common expenses of the condominium as opposed to common expenses of the association.

While certain items are clear, there is plenty of room for interpretation in the middle. For example, corporate filing fees are a clear example of common expenses of the association. Conversely, costs affiliated with painting a building in a particular condominium are common expenses of the condominium.

To make things a bit more complicated, the law also permits certain multi-condominium associations to operate on a consolidated financial basis, where there is basically no distinction in allocating costs among the various condominiums. This option exists only for condominiums where at least one of the condominiums was created prior to 1977, and then consolidated financial operations must be approved by two-thirds of the entire association membership.

In general, hazard insurance premiums and post-casualty repair costs are, for those multi-condominium associations that do not operate on a consolidated financial basis, considered common expenses of the condominium (meaning they are borne by unit owners in that condominium only).

HB 601 provides that a multi-condominium association may elect, by a majority vote of the collective members of the condominiums operated by the association, to operate such condominiums as a single condominium for purposes of insurance

matters, including but not limited to the purchase of hazard insurance and the apportionment of deductibles and damages in excess of coverage. The election to aggregate the treatment of insurance premiums, deductibles, and excess damages “constitutes an amendment to the declaration of all condominiums operated by the association”, and such costs shall be stated in the association’s budget.

This new law appears to constitute a significant departure from previous law, and would permit associations to equally assess all unit owners (or assess on a weighted basis in those condominiums that share expenses in that fashion) for insurance costs and casualty-damage repair, even for post-1977 condominiums, and apparently even if the condominiums do not otherwise operate on a consolidated financial basis.

One question that will no doubt be debated in the future is whether a majority vote is sufficient in cases where the declarations of condominium may require a higher percentage for amendment, such as two-thirds or seventy-five percent. The statute implies that the majority vote is sufficient, but there is a relatively complicated body of law, which is by no means applied consistently by the courts, dealing with retroactive application of amendments to the condominium statute to existing associations.

In last week’s column, we looked at how the new law allocates repair costs after an insured casualty, but where there are insufficient insurance proceeds due to the deductible (Condo Owners Should Heed ‘Plaza East’, August 31).

HB 601 also addresses how multi-condominium associations “opt out” of the “Plaza East rule.” This section of the new law applies to all multi-condominium associations, regardless of whether

or not they elect to aggregate insurance expenses. According to Section 718.111(11)(k)(1) of the new law, a multi-condominium association that has not consolidated its financial operations may “opt out of Plaza East” with approval of a majority of the total voting interests in that condominium. The new law goes on to say that such vote may be approved without regard to mortgagee consent requirements contained in the declaration.

To summarize, we have spent the past several months reviewing some fairly significant changes to the condominium laws brought about by HB 995 (effective October 1, 2008) and HB 601 (effective July 1, 2008). Although there are many major changes to the law, I think that the two most important things to remember from these new laws are the following.

First, the provisions of HB 995, outlawing multi-year board terms (with exception for associations who vote to continue two-year staggered terms) is an issue that will need to be addressed by nearly every association (New Law Affects Board Make Up, June 29). Many are already taking votes to ratify continuance of two-year staggered terms.

Secondly, as discussed last week, HB 601 will have the effect of changing insurance deductible cost allocations, an issue that every association faces. Under the new law, the association will be obligated to pay deductible costs for all items it insures, regardless of any contrary provision in the declaration of condominium. However, the new law permits a vote to provide for a different method of cost allocation, also an issue many associations will be closely looking at in the coming months.

Next week, we will turn our attention to some new laws affecting homeowners’ associations.

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

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