



Bidding Process Hinges On Budget For Association

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Q: Does Florida law require a homeowners' association to bid any purchase, or can the board just purchase at any place if it is not a sole source item? **H.S. (via e-mail)**

A: Chapter 720.3055 of the Florida Homeowners' Association Act provides that all contracts as described in the law, or any contract that is not to be fully performed within one year after the making thereof, for the purchase, lease, or renting of materials or equipment is subject to competitive bidding. However, competitive biddings does not apply unless the cost of the item exceeds ten percent of the total annual budget for the association, including reserves. The law does not require the association to accept the lowest bid.

The law is similar for condominium associations, and is found in Section 718.3026 of the Florida Condominium Act. The main difference is that the condominium law establishes a five percent threshold for triggering competitive bidding requirements, while the law applicable to HOAs uses the ten percent standard.

Q: Can a member of the board of directors also serve on the Architectural Review Board? **S.B. (via e-mail)**

A: Unless prohibited by the governing documents for the association, there is no prohibition in the law against a board member

serving as a member of the Architectural Review Board.

Q: I read your recent articles regarding the new association laws. Does the new law regarding elections, which provides for one-year board terms, apply to homeowners' associations? **J.M. (via e-mail)**

A: No.

HB 995 only applies to condominium associations regarding this point. HB 995 became effective October 1, 2008.

Under the new law, every condominium association in the State will have to elect board members for one-year terms, in all future elections.

There is one exception to the law. Associations can provide for two-year staggered terms for board members, if approved by a majority of the entire voting interests (there is usually one voting interest per unit), not just a majority of those who vote.

Associations with three-year terms in their current bylaws would need an amendment. Associations that have two-year staggered terms, would need to take a vote to "opt in" to the new law.

Q: I live in a 36-unit condominium. Does HB 995 and the changes made regarding manager licensing apply to us? We are self managed. Are

we now required to hire a manager? **H.V. (via e-mail)**

A: No.

The new law simply lowers what is commonly referred to as the “de minimis exemption” of the manager licensing statute. Under previous law, a manager could manage a community of less than fifty units (provided it had a budget of \$100,000.00 or less), without holding a license. The new law reduces the exemption for non-licensed management to ten units or less.

Condominiums of more than fifty units under the old law, or those with more than ten units under the new law, are not required to hire a manager or a management company. However, if a manager is hired, they have to be licensed unless the “de minimis exemption” applies.

Please also note that the “de minimis exemption” is applied on an aggregate basis, so that a manager that managed two six-unit condominiums would now have to be licensed, since they would be managing, in the aggregate, more than ten units.

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.

Q: I have a question regarding House Bill 995, which became effective October 1, 2008. How is the new law on the waiver of audits and other year-end financial reports being phased in? **V.G. (via e-mail)**

A: The law to which you refer now prohibits associations from waiving their year-end financial reporting requirements (audit, review, or waiver) for more than three consecutive fiscal years.

According to a memo issued from the Florida Division of Condominiums, Timeshares, and Mobile Homes, the Division is taking the position that the law applies to waivers taken after the effective date of the law change. Therefore, it is the state agency’s opinion that financial reporting requirements may be waived for three consecutive fiscal year-ends following October 1, 2008.

Since it is generally the law that changes to statutes are intended to have prospective application, I believe the Division’s interpretation of the law is correct.